

07.02.2022

Item No.23
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 3416 of 2016
(Via Video Conference)

M/s SMC Comtrade Ltd
versus
Mukesh Soni & Ors.

In Re: An Application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 filed challenging the order dated 05.09.2016 passed by the learned Chief Metropolitan Magistrate, Calcutta in connection with Hare Street Police Station Case No. 481 of 2015 under Sections 403/406/409/418/420/421/422/506 read with Sections 34/120B of the Indian Penal Code.

Mr. Suman Kumar ... Petitioner (In Person).

Mr. Bhaskar Roy,
Ms. Jeenia Rudra ... For the Opposite Party Nos. 1 to 5.

Mr. Sudip Ghosh,
Mr. Bitasok Banerjee ... For the State.

The petitioner has challenged the order dated 05.09.2016 passed by the learned Chief Metropolitan Magistrate, Calcutta thereby rejecting the protest petition filed by the petitioner.

Without going into the merits of the case, I am of the opinion that there must be a discipline in respect of cases investigated firstly and a subsequent complaint being filed in a different State and the investigation of the case being pursued over there. In this case, the complainant first informed on 26.06.2015 to the Officer-in-Charge, Hare Street Police Station regarding the incident which took place regarding the subject matter of one kilogram of gold. The same was a detailed letter of seven pages including 24 paragraphs wherein at paragraph 9 it was averred as follows :

“9. That the accuseds despite taking the delivery of the Gold and their assurances to make the payment of the consideration amount within 24 hours of the delivery, miserably failed to make the payment, and hence the Complainant Company had to approach the accuseds when the accuseds had failed to deposit the consideration amount even till 27.04.2006 despite several requests made by the representative of the Complainant’s Company, absolutely in derogation of their assurances and commitments but the accuseds cited some compelling reasons and requested for some more time to deposit the said amount. The Complainant, believing the accuseds and honouring the true business spirit, given another day to the accuseds to deposit the said amount of consideration, but to the utter shock and dismay of the Complainant Company, the accuseds again failed to deposit the said amount and stopped picking up the calls of the Complainant Company’s representative. Though, smelling some foul play going on, the Complainant Company, finally constrained to lodge an F.I.R against the accused no. 1 and 3 being FIR no. 144/2006 under Section 420/406 of the I.P.C on dated 06.05.2006, but the accused no. 1 being the influential person managed to remove its name from the Charge sheet except the name of the accused no.3 who was in accordance with the accused no.1 was a minor on the said date of the commission of the offences against the Complainant Company and about which the accuseds were well aware, though with the mala fide intention to part the Complainant without paying any consideration amount induced the Complaint Company to authorize the accused no. 3 for taking the delivery of the said 1 Kg Gold, knowing that the accused no. 3 will have the benefit of his minority even if any criminal action is initiated against him. The true copy of the F.I.R

no. 144/2006 dated 06.05.2006 is annexed as ANNEXURE G.”

However, as the police authorities did not act on the same, an application under Section 156(3) of the Code of Criminal Procedure was filed before the learned Chief Metropolitan Magistrate, Calcutta wherein the same set of facts were repeated and in paragraph 5. E), it has been stated as follows :

“5. E) That the Complainant Company, smelling some foul play going on, finally constrained to lodge an F.I.R with the Police Station, Manak Chowk, Jaipur City against the accused no. 1 and 3 being FIR no. 144/2006 under Section 420/406 of the I.P.C on dated 06.05.2006, but the accused no. 1 being the influential person managed to remove its name from the Charge sheet except the name of the accused no.3 who was in accordance with the accused no.1 was a minor on the said date of the commission of the offences against the Complainant Company and about which the accuseds were well aware, though with the mala fide intention to part the Complainant without paying any consideration amount induced the Complaint Company to authorize the accused no. 3 for taking the delivery of the said 1 Kg Gold, knowing that the accused no. 3 will have the benefit of his minority even if any criminal action is initiated against him. The true copy of the F.I.R no. 144/2006 dated 06.05.2006 is already annexed as ANNEXURE G with the Police Complaint (ANNEXURE L).”

The whole problem cropped up with the order being passed under Section 156(3) of the Code of Criminal Procedure when the learned Magistrate directed the FIR to be registered by the Hare Street Police Station. In fact, pursuant

to the order passed, the concerned Officer of Hare Street Police Station issued summons along with few questions which is reflected to enclosure of this revisional application at page 76 being question No.10 which is as follows :

*“10. Whether you have filed Narazi or appeal in respect of the findings and Judgement in connection with Manak Chowk P.S. Case No. 144/2006 ?
If yes, kindly elaborate.”*

Finally the Investigating Officer submitted a final report before the learned Magistrate with the following conclusion :

“The investigation of the case was carried out covering all aspect and it was found that the entire alleged incidence took place at Jaipur, Rajasthan and the defacto complainant has already filed several criminal and civil cases in different courts in the selfsame issue. Necessary valued opinion of the Ld Chief PP, Bankshall Court (South), Kolkata and Superiors were obtained and the investigation of the case was closed declaring the case FRT U/S 420/403/406/506/409/418/421/422/34/120B IPC.”

Mr. Roy, learned advocate appearing for the private opposite party nos. 1 to 5 submits that the present petitioner approached the jurisdictional court at Jaipur, Rajasthan by filing complaint case on the selfsame subject matter and the same was dismissed. A revisional application against the said order was preferred before the higher forum which was also dismissed.

Mr. Ghosh, learned advocate appearing for the State has produced the case diary.

I have considered the submissions of the respective parties as also the order passed by the learned Chief Metropolitan Magistrate, Calcutta. Some of the observations made by the learned Chief Metropolitan Magistrate, Calcutta may not be in tune with the merits of the case i.e. whether the case is a criminal case or a civil case. But the most important part obviously is that when a case has been initiated in a different State and trial has been concluded and a verdict being declared, how can in respect of the same case by additional facts of conspiracy, a separate case be registered in Kolkata ?

On perusal and assessment of the records, which have been placed before this Court, I am of the opinion that initial order passed by the learned Chief Metropolitan Magistrate, Calcutta by ignoring that on the selfsame facts a case was initiated and/or instituted at Manak Chowk Police Station, Jaipur being FIR No. 144 of 2006, a direction was passed upon the Officer-in-Charge, Hare Street Police Station. The Officer-in-Charge, Hare Street Police Station had no other option except to pursue the investigation and arrived at his findings under Section 173 of the Code of Criminal Procedure.

It has been informed on behalf of the State that meanwhile a prayer was advanced by the Officer-in-Charge, Hare Street Police Station for transmitting the records of Hare Street Police Station Case No. 481 of 2015 to the learned Chief Metropolitan Magistrate, Jaipur, but the same was also not accepted.

Be that as it may, having regard to the factual scenario and an investigation being already conducted by an investigating agency of a different State, I am of the opinion that the petitioner should have availed his remedy before the same State and before the same Court, if subsequently it has come to his knowledge regarding the conspiracy in respect of the same factual foundation. No separate case could be registered in a different State only on the issue of conspiracy by ignoring the factum of the main offence. Thus, I am of the opinion that the conclusion arrived at by the learned Magistrate does not call for any interference by this Court.

Accordingly, the revisional application being CRR 3416 of 2016 is dismissed.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)