03-03-2022
Subha
Item- 10
Ct -.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
(Via video-conference)

C.R.R 3638 of 2017
IA No. CRAN 4 of 2020 (Old No. CRAN 1143 of 2020)

In Re: An application under Section 482 Cr.P.C.

In the matter of : ***Vinod Kumar Gupta & Anr.*** …Petitioners.

Mr. Sandipan Ganguly, Sr. Adv,
Mr. Karan Dudhwewala
….for the petitioners.

Mr. Saikat Basu
Mr. Abhishek Acharya
….for the opposite party.

The present revisional application has been preferred challenging the proceedings being CR Case No. 102 of 2017 under Sections 420/406/506/34 of the Indian Penal Code pending before the learned Judicial Magistrate, 4th Court, Siliguri, as also the orders passed therein.

The accused petitioners herein happen to be the Managing Director of Dollar Industries Ltd. and one Sumeet Agarwal and the complainant herein happens to be one Chetan Agarwal, Proprietor of Chetan Agency.

It has been alleged in the complaint that the accused persons approached the complainant for dealing with their products and convinced the complainant to sell their products.

On such representation, the complainant was convinced and as such handed over two signed blank cheques as security. The said cheques being *cheque no. 410478* and *410479* were drawn on *ICICI Bank, Siliguri Branch*. With passage of time, the business activities commenced and the complainant paid for the goods which were delivered to them, but after few months, the complainant faced problem as the accused persons by violating the agreed terms of business engaged some other dealers in the same area. Ultimately, the complainant informed the accused persons their inability to continue with the business and settled the accounts, it was further requested that the accused Company should lift 73 boxes/cartons of hosiery products valued at Rs.25,90,352/- which were lying with the complainant.

It was also asked by the complainant that before settlement of accounts, all the goods which were lying with the dealers relating to the complianant should also be collected and the said list was also handed over.

On several occasions, the complainant Company requested the accused persons to settle his accounts, but they avoided the same on flimsy ground and surprisingly on 31.12.2014, a demand notice was issued to the complainant claiming an amount of Rs.40,00,000/- being dishonoured for the cheque no. 410478 drawn on ICICI Bank, Siliguri Branch.

Three cases were also registered being CS Case No. 0007286 of 2015 pending before the learned Metropolitan Magistrate, Calcutta, GR Case No. 3590 of 2015 pending before the learned Additional Chief Judicial Magistrate, Siliguri and CR Case No. 74 of 2015 pending before the learned Judicial Magistrate, 2nd court, Siliguri.

The complainant alleged that the said cheque was never issued to M/s. Dollar Industries Limited in discharge of any liability and in spite of returning all the goods worth Rs.25,90,352/- as per their direction and all arrears being cleared, yet the complainant's account was never settled.

The accused persons from the inception have been trying to take advantage of the innocence of the complainant and has deceived him by various mis-representations.

It is alleged that by various means the accused persons threatened the complainant to pay them Rs.40 lakhs, but as the complainant refused to do the same, on 22nd January, 2016 in the evening hours the accused persons came to the office of the complainant and threatened him that if within a month he does not deposit a sum of Rs.40 lakhs in the account of Dollar Industries Ltd, they would institute false cases.

Finding no other alternative, complainant lodged a compliant with the Siliguri Police Station, but no steps were taken by the police authorities and as such having no other alternative, the complainant has initiated the present case.

Mr. Sandipan Ganguly, learned senior advocate appearing on behalf of the petitioners submits that even if the allegations made in the petition of compliant are accepted to be true in its entirety, no case has been made out so far as the present petitioners are concerned. To that effect, learned advocate relied upon a judgement of the Hon'ble Supreme Court in the case of *Sunil Kumar –vs- Escorts Yamaha Motors Ltd. & Ors.,* reported in (*1999) 8 Supreme Court Cases 468.*

Learned senior advocate relied upon paragraph 5 of the said judgment which is set out below:-

> "Bearing in *mind the law laid down by this Court in the cases referred to earlier and the contentions raised by the learned counsel appearing for the parties and on examining the allegations made in the FIR, we are persuaded to accept the submission of Mr H. N. Salve and Mr Arun Jaitley, appearing for the respondents that the necessary ingredients of the offence of cheating or criminal breach of trust have not been made out and on the other hand the attendant circumstances indicate that the FIR was lodged to pre-empt the filing of the criminal compliant against the informant under Section 138 of the Negotiable Instruments Act. The High Court, therefore, was well within its power in quashing the FIR as otherwise it would tantamount to an abuse of the process of court. We, therefore, see no justification for our interference with the impugned decision of the High Court in exercise of power under Article 136 of the Constitution."*

The attention of this court was drawn to the judgement of the Hon'ble Supreme Court in Mahindra & Mahindra Financial Services Limited & Anr. –vs- Rajiv Dubey reported in (2009) 1 S.C.C 706 and also Eicher Tractor Limited & Ors. –vs- Harihar Singh &

Anr. reported in (2008) 16 SCC 763, wherein under similar circumstances, the Hon'ble Supreme Court was pleased to interfere with the subsequent proceedings initiated at the instance of the accused pursuant to the proceedings under Section 138 of the N. I. Act.

Mr. Saikat Basu, learned advocate appearing on behalf of the complainant/opposite party submits that the case is at the very initial stage and the complainant must be afforded opportunity to adduce its evidence.

Learned advocate for the complainant/opposite party further submits that the complainant has been asked to face the ordeal of criminal trial under Section 138 of the N. I. Act without any fault on his part and security cheques have been placed for encashment without their being any dues on his part.

It is his further contention that the present case has a separate cause of action and as such, the same should not be interfered with.

Having regard to the authorities relied upon by the learned advocate for the petitioners more particularly, the observations made by the Hon'ble Supreme Court in the case of Sunil Kumar(Supra) regarding the circumstances under which the case has been initiated to pre-empt the filing of the criminal compliant against the informant under Section 138 of the N. I. Act, I am of the opinion that the ratio laid down therein squarely applies to the facts of the present case and as such further continuance of the same would be an abuse of the process of law.

Consequently, the complaint case being CR Case No. 102 of 2017 pending before the learned Judicial Magistrate, 4th Court, Siliguri is, hereby, quashed.

Accordingly, the present revisional application being CRR 3638 of 2017 is allowed.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

Interim orders, if any, are, hereby, made absolute.

All concerned parties are to act in terms of a website copy of this order duly downloaded from the official website of this court.

(Tirthankar Ghosh, J.)

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