

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Before:

The Hon'ble Mr. Justice Ananda Kumar Mukherjee

C.R.R. 1615 of 2020

With

IA No. CRAN 1 of 2022

Athaluri Veeranjaneeya Prasad alias Anjaneya Prasad

Vs.

The State of West Bengal & Ors.

For the Petitioner:

Mr. Abhijit Basu
Mr. Sankha Subhra Roy
Mr. Arghya Kamal Das

For the State:

Ms. Faria Hossain
Mr. Anand Keshari

For the Opposite Party No.3:

Mr. Sabysachi Banerjee
Mr. Pratim Priya Dasgupta
Mr. Aasish Choudhury
Mrs. M. Palana
Ms. Puja Tripathi

Heard on:

24.6.2022

Judgement delivered on:

30.6.2022

Ananda Kumar Mukherjee, J. :-

1. The revisional application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner assailing the criminal proceeding

against him, arising out of Hare Street Police Station Case No.202 of 2020 dated 09.09.2020 under Sections 120B/420/406/409 of the Indian Penal Code.

2. The fact of the case in brief is that SRC Company Infrastructure Private Limited is a company incorporated with the Registrar of Companies, Hyderabad and it undertakes construction of building and civil engineering works. Petitioner is one of the two Directors of the said company which have its registered office at Anjai Nagar, Gac---, Hyderabad, Telengana.

3. SRC Company in course of regular business took up a civil construction work of raw water reservoir at Mali and allied works of Ultra Super Critical Coal based Thermal Power Project at Godda, Jharkhand. A work order was issued by Adani Infra (India Private Limited) in favour of SRC Company Infrastructure Private Limited in December, 2019. For the purpose of execution of the said work certain works were required to be undertaken on behalf of the SRC company and as a part of the exercise, another Work Order dated 06.12.2019 was issued by SRC Company Infra Private Limited in favour of Ambica Construction Company which is represented by Proforma

accused/opposite party no.5. The said Ambica Construction Company on its part delegated some of its work under the work order dated 06.12.2019 to M/s. Laxmi Stone Work of Dumka, Jharkhand which is represented by the de facto complainant (OP No.2). The rates on which the work was offered to M/s. Laxmi Stone Works were mentioned in the work order/communication.

4. Subsequently, the de facto complainant and his men representing M/s. Laxmi Stone Works stopped the work as was agreed with Ambica Construction Company. The petitioner and SRC company Infra Private Limited were committed to the main work for which the service order was issued by Adani. Due to stoppage of work a severe loss was suffered by the petitioner and SRC company as well as Adani. The de facto complainant M/s. Laxmi Stone Works after being initially satisfied and after accepting the terms and conditions discussed with SRC company, started raising disputes upon issuance of the work order on 07.02.2020 and refused to undertake the work in terms of the work order. The de facto complainant with an ulterior motive of putting the petitioner in trouble implicated him in a false criminal case with unauthorized claim for money. The defacto complainant first raised an unauthorized bill dated 17.02.2020 which was beyond the scope of the work order issued in favour of the de facto complainant. When dispute was raised regarding

acceptability and genuineness of the claim made in the bill, the de facto complainant lodged a F.I.R. before Hare Street police station on false allegation. The case was registered under the order of Joint Commissioner of Police (Crime) Kolkata Police and Hare Street Police Station/ Detective Department/Anti – Cheating Section of Kolkata Police and started investigation. Petitioner contended that O.P. No.2, the complainant stated that he deployed men and machinery at Godda, Jharkhand on assurance of getting of rental service charge together with the requisite GST amount and furthermore alleged that he ultimately raised all bill/tax – invoice dated 17.02.2020 on the alleged buyer SRC/Company Private Limited, for an amount of Rs.1,03,01,400/- (Rupees one crore three lakhs one thousand and four hundred only) inclusive of his rental service charges for machines and other expenses, like GST and SGST.

5. According to the petitioner, the complainant stated that he was compelled to lodge the complaint as his Bill with tax invoice was not being paid. The defacto complainant disclosed that Nitesh Himmatsinghka, the son of the elder brother of the mother of defacto complainant made a representation before him that he had got a job of excavation at Godda, Jharkhand in the project of Adani Power (Jharkhand Ltd.) and Nitesh (O.P. No. 3) wanted the defacto complainant to deploy his machines for the work in the project. On

27.12.2019, Anup Modi was taken to Godda, Jharkhand by Nitesh and introduced to the petitioner. A representative of Adani instructed petitioner and Nitesh to start the work. On 27.12.2019 both Nitesh and the petitioner asked opposite party no. 2, Anup Modi to deploy the machinery. Nitesh executed a bond dated 26.12.2019 promising to keep the defacto complainant harmless and also a bank cheque drawn upon Kotak Mahindra Bank, Brabourn Road, Calcutta.

6. Relying upon the representation of Nitesh, defacto complainant deployed machines at the site. Further machines were added in course of time and all the papers and registration certificates of the vehicles were made over to the representatives of Nitesh for obtaining their entry pass. Sanket Tulsyan, Vijay Himmatsinghka and Rajesh were named as representatives of Nitesh. On 4.2.2020, Nitesh advised Anup, the brother of the defacto complainant to stop the work and accordingly the work was stopped and a letter was sent through email to Nitesh, the petitioner and proforma opposite party no. 5 that work could be resumed upon finalization of rate of payment. Nitesh advised the defacto complainant not to resume without payment and asked the defacto complainant to wait for the response of SRC. On 6.2.2020, the petitioner and Nitesh spoke to the defacto complainant over telephone and it is alleged that the petitioner told him that rate payable to proforma accused opposite party no.

5 could be paid and Nitesh also insisted that the same should be accepted but as the rate was not disclosed, the complainant told them that he could consider only after the work order is issued indicating the rates.

7. On 7.2.2020, a work order offering new rates was issued with a provision that diesel shall not be supplied. Nitesh provided diesel on 8.2.2020 and 9.2.2020 and then refused to supply further diesel and asked the defacto complainant to stop the work. At this, the defacto complaint pressed Nitesh to make payment and asked him to submit a bill to SRC. In spite of repeated request by the defacto complainant, neither Nitesh nor SRC cared to make any payment. The father of Nitesh who is a proforma accused, opposite party no. 4 was contacted. It is alleged that he worked out two figures but no payment was made. An FIR was then alleged at the Hare Street Police Station against the petitioner and opposite party nos. 3 to 5 alleging offence punishable under Section 120B/420/406/409 of the IPC.

8. The petitioner prayed for quashing of the proceeding against him arising out of Hare Street Police Station Case No. 202 of 2020 under Section 120B/420/406/409 of the IPC on the ground set out as follows:

- i. That the petitioner cannot be implicated with any of the criminal liabilities as stated in the complaint.

- ii. The dispute laid down in the complaint is civil in nature which has no criminality involved and is liable to be quashed.
- iii. It would be an abuse of the process of Court for the criminal case is allowed to continue against the petitioner.
- iv. The dispute raised in the complaint would indicate that the defacto complaint has secured a work order by any means and thereafter started raising dispute about the terms of agreement and on the basis of same, he is making unauthorized claim. The allegation in the complaint fails to make out any glaring case against the defacto complainant and his main allegation is against Nitesh Himmatsinghka (O.P. No. 3) and opposite party nos. 4 and 5 and that the case has been initiated with the purpose to harass the petitioner and squeeze money.

Under the circumstances, the petitioner has prayed for quashing the proceeding against him.

9. The defacto complainant/opposite party no. 2 has not appeared in this case after service of notice.

10. Opposite party no. 3 has appeared and filed a separate application being CRAN 1 of 2022, praying for modification of order dated 9.2.2021 passed

in C.R.R. 1615 of 2020 whereby the Investigating Agency was directed not to file a report in final form in this case without leave of the Court. It is submitted on behalf of the opposite party no. 3 that the complaint has been lodged by Mr. Ajoy Kumar Modi, one of the proprietors of M/s. Lakshmi Stone Work against the applicant and others, giving rise to Hare Street Police Station Case No. 202 of 2020 in connection with which the applicant/opposite party no. 3 was arrested on 13.3.2020 and subsequently enlarged on bail on 14.4.2020.

11. It is gathered from the submissions made on behalf of the petitioner that the company by the name of Adani Infra (India) Ltd. issued a work order for construction of a Raw Water Reservoir at Mali and allied works in a thermal power project at Godda, Jharkhand in favour of SRC company private ltd. After the work order was issued, SRC Company Infra Private Ltd. appointed Ambika Construction Company, represented by accused proforma opposite party no. 5 as sub-contractor and issued a work order dated 6.12.2019. Since Ambika Construction company is based at Rajasthan and did not have sufficient resource in the State of Jharkhand, they requested SRC Company Infra Pvt. Ltd. for time to mobilize the work. During such time, opposite party no. 3 and the petitioner of SRC company who were engaged in similar field of business, having prior acquaintance with the applicant, agreed to help SRC Private Ltd. in completing the work of Adani and referred the name of defacto

complainant/opposite party no. 2, Mr. Ajoy Kumar Modi of M/s. Lakshmi Stone Works, a close family relative of opposite party no. 3. After a meeting SRC appointed M/s. Lakshmi Stone Works as sub-contractor along with the M/s. Ambika Construction company. It was agreed that Lakshmi Stone Works shall provide required machinery for excavation and SRC company shall provide diesel for running the machinery. Subsequently, a dispute erupted and the defacto complainant/opposite party requested SRC to increase the rate of transport and excavation which was duly approved, but SRC Company Infrass refused to supply diesel any more. The defacto complainant then raised a monthly rental bill/Tax-invoice dated 17.2.2020 for an amount of Rs.1,03,04,400/- drawn upon SRC Company Infrass Private Ltd. Due to non-payment of the said amount by SRC, opposite party no. 3 was requested to intervene in the matter. Opposite party no. 3 not being a party to the transaction could not help the applicant who asked defacto complainant/opposite party no. 2 to stop the work until the amount was paid by SRC. On 13.10.2020, Police Officers from D.D. Lalbazar arrested the opposite party no.3 by stating that an FIR has been registered against him by the defacto complainant/opposite party no. 2 on the allegation of siphoning and misappropriating Rs.1,03,01,400/-. The father of opposite party no. 3 was no way involved was also implicated as an accused in the case and a MOU dated

14.10.2020 was executed on the terms that the accused person admitted and acknowledged that on account of default in payment of rent for the machinery hired from the first party, being debt are liable to pay Rs.1,03,01,400/- to the complaint/first party. The second party/accused person agreed in the MOU to pay the rent and settle the matter amicably. While talks for settlement was going on, opposite party no. 3 was arrested. According to opposite party no. 3, the MOU was executed under coercion as it was verbally expressed by the defacto complainant/opposite party no. 2 that unless the sum of Rs.1,03,01,400/- was paid by the father of the applicant /opposite party no. 3, the applicant shall remain behind the bars. The opposite party no. 3 herein has urged that he has not issued the cheque No. 000057 and the same is a forged document.

12. The opposite party no. 3 after being released on bail learnt from a copy of the FIR that defacto complainant has alleged that a cheque of Rs.1,03,01,400/- dated 3.8.2020 was issued by opposite party no. 3 which was dishonoured on 5.8.2020 on the ground that his account had been closed. He also gathered from the FIR that an indemnity bond was allegedly executed by him/O.P. No. 3 in favour of the defacto complainant/opposite party no. 2 to secure the payment of Rs.1,03,01,400/-. It is contended by opposite party no. 3 that the cheque dated 3.8.2020 allegedly issued by him as an authorized signatory of C.S. construction is false. It is also stated that C.S. Construction

was shut down long before the date mentioned in the cheque and furthermore the defacto complainant/opposite party no. 2 with his other associates visited the office of the applicant to discuss regarding pending bills and somehow managed to have access to the drawer and took out a leaf from the cheque book without knowledge of the applicant. According to him, he found that cheque no. 000057 was missing.

13. Learned advocate for opposite party no. 3 submitted that a letter dated 30.1.2021 was issued by him addressed to the Joint Commissioner of Police alleging that fraud was committed against him and on that basis police had sent the documents, i.e. the cheque and the indemnity bond for scientific analysis and a report has been received disclosing that the signatures of the applicant on such documents were forged.

14. Learned advocate for the State Mr. Anand Keshari submitted that investigation in the case has been completed resulting in a Final Report but the report has not been submitted due to the interim order by the Court which is still in force. It is further submitted that the Investigating Agency has received the report from the Questioned Document Examination Bureau, Calcutta which reveals that the signature marked as Q1 and Q2 are not genuine and they are imitation of the form/ model of the admitted signatures marked as A1 to A 17. Incidentally, Q 1 is the signature which appears on the cheque of Kotak

Mahindra Bank bearing no. 000057 dated 3.8.2020 and Q 2 is the signature which appears on non-judicial stamp paper, purportedly the Indemnity Bond containing disputed signature of opposite party no. 3.

15. On conspectus of the facts and circumstances, I find that the petitioner was engaged in some construction work as a Director of SRC. From the face of the FIR as well as the contents of the Case Diary, I find no material to attract the ingredients of the offence under Section 120B/420/406/409 of the IPC against the petitioner. The role of the petitioner is that of a business partner and there is nothing on record to show that he has defrauded the defacto complainant. In the case of **Indian Oil Corporation vs. NEPC India Ltd.**, reported in **2006 (6) SCC 736**, it was held **".....Any effort the settled civil dispute and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged....."**.

16. In view of the facts and circumstances of this case, I am of the opinion that continuation of this criminal proceeding against the petitioner would amount to an abuse of the process of the Court. Thus the proceeding arising out of Hare Street P.S. Case No. 202 of 2020 is quashed in respect of the petitioner. From the submissions made by learned advocate for the State, it is gathered that the investigation has ended in a Final Report. It is also found that

the signatures on the questioned documents did not match with the signature of opposite party no. 3.

17. Under such circumstances the interim order dated 9.2.2021 stands vacated. The Investigating Officer is permitted to submit the Police Report before the Jurisdictional Court.

18. The revisional application as well as CRAN 1 of 2022 are thus allowed.

19. Let a copy of this order be communicated to Learned Chief Metropolitan Magistrate, Calcutta for information.

20. Urgent certified copy of this order may be supplied to the parties expeditiously if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)

S.D./K.S.

