

26.04.2022

Item No.4
Ct.No.34
dc.

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

C.R.R. 1724 of 2020

**Rajesh Chandrabhanji Kingrani
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973 filed in connection with Serampore Police Station Case No. 161 of 2016 dated 10.04.2016 (G.R. No. 806 of 2016) under Sections 406/420/506/34 of the Indian Penal Code.

Mr. Debasis Kar,
Mr. Subhajit Chowdhury ... For the Petitioner.

Mr. Madhusudan Sur,
Mr. Manoranjan Mahata ... For the State.

The present revisional application has been preferred challenging the proceedings arising out of Serampore Police Station Case No. 161 of 2016 dated 10.04.2016 under Sections 406/420/506/34 of the Indian Penal Code wherein the police authorities after completion of investigation was pleased to submit charge-sheet under the same sections.

The genesis of the case relates to an application under Section 156(3) of the Code of Criminal Procedure which was instituted by one Sk. Aslam (opposite party no.2 herein) alleging commission of offences against Ikon Remedies Pvt. Ltd., M/S. Innovative Pharmaceuticals, Amitabha Mukherjee and Rajesh Chandrabhanji Kingrani (petitioner herein). The learned Magistrate on receipt of such application was pleased to send the same to the Officer-in-Charge of the police station

for treating the complaint as FIR and investigate into the allegations.

The spirit of the allegations reflects that there were transactions between the complainant and the accused persons and it has been specifically narrated that the accused persons taking advantage of their power and position entered into a deep-rooted criminal conspiracy and jointly cheated the complainant by forcing him to sign on blank papers and on blank cheques.

The Investigating Officer of the case in his report under Section 173 of the Code of Criminal Procedure under the heading "Brief facts of the case", in fact, stated the same version of the complainant that the case was made out as the complainant was forced to sign on papers as also on blank cheques which are illegal and arbitrary.

Learned advocate appearing for the petitioner submits that Innovative Pharmaceuticals initiated case under Section 138 of the Negotiable Instruments Act in respect of the dishonoured cheques against the complainant being the partner of Neha Medical Agency. It is his submission that the present case has been initiated for circumventing the provisions of the progress of the Negotiable Instruments Act with an ulterior and malafide motive.

Mr. Sur, learned advocate appearing for the State produces the case diary.

I have perused the case diary which does not reflect that any document has been seized by the investigating agency or any attempts was taken for assessing the truthfulness or correctness of the allegations. The case is solely based on the statement of the complainant and his two witnesses and the two police officers associated with the case.

I have considered the allegations made in the application under Section 156(3) of the Code of Criminal Procedure, the report under Section 173 of the Code of Criminal Procedure as well as the materials available in the case diary.

In the case of **Sunil Kumar Vs. Escorts Yamaha Motors Ltd. and Others** reported in **(1999) 8 Supreme Court Cases 468**, the Hon'ble Supreme Court in paragraph 5 was pleased to observe as follows :

“5. 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 complaint against the informant

under Section 138 of the Negotiable Instruments Act.

.....”

Further in ***Mahindra & Mahindra Financial Services Limited and Another Vs. Rajiv Dubey*** reported in ***(2009) 1 Supreme Court Cases 706***, the Hon’ble Supreme Court in similar factual background was pleased to hold that in order to pre-empt the impending proceeding under Section 138 of the Negotiable Instruments Act criminal complaint was filed and relying upon the principles laid down in ***State of Haryana Vs. Bhajan Lal*** reported in ***AIR 1992 SC 604***, the Hon’ble Supreme Court was pleased to quash the criminal case.

Having regard to the principles set out by the Hon’ble Supreme Court in the aforesaid two decisions, I am of the opinion that the present case is covered by the same principles and Serampore Police Station Case No. 161 of 2016 dated 10.04.2016 was initiated to pre-empt all the cases initiated at Nagpur under Section 138 of the Negotiable Instruments Act. Thus, further continuance of Serampore Police Station Case No. 161 of 2016 dated 10.04.2016 is an abuse of process of the Court and as such, the same is liable to be quashed.

Accordingly, all proceedings of Serampore Police Station Case No. 161 of 2016 dated 10.04.2016 (G.R. No. 806 of 2016) under Sections 406/420/506/34 of the Indian Penal

Code including the charge-sheet filed therein are hereby quashed.

With the aforesaid observations, the revisional application being CRR 1724 of 2020 is allowed.

Interim order, if any, is hereby made absolute.

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

The case diary be returned to Mr. Sur, learned advocate for the State.

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.)