

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 1875 of 2020

With

CRAN 3 of 2021

With

CRAN 5 of 2021

M/S Wellcraft Interiors & Ors.

-Vs.-

State of West Bengal & Anr.

For the petitioners : Mr. Sabyasachi Banerjee,
Mr. Sarvapriya Mukherjee,
Mr. Yashobardhan Kochar,
Mr. Balaji Chakroborty

For the Opposite party No.2 : Mr. Ayan Bhattacharjee,
Mr. Amar Dudhwewala,
Mr. Karan Dudhwewala

Heard on : 03.01.2022, 21.01.2022, 27.01.2022,
31.01.2022, 02.02.2022, 11.02.2022,
16.02.2022, 01.03.2022, 02.03.2022,
08.03.2022, 09.03.2022, 10.03.2022,
16.03.2022 & 24.03.2022.

Judgment on : 08.04.2022

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the proceeding being complaint case no. CS/17198/2020 pending before the learned Metropolitan Magistrate, 16th Court at Calcutta under Section 420/506/120B of the Indian Penal Code, 1860 read with Section 184/188 of the Companies Act, 2013 and all orders passed therein including the order dated 15th September, 2020 wherein the Learned Chief Metropolitan Magistrate, Calcutta was pleased to take cognizance of the offence.

In course of hearing of the revisional application it was pointed out regarding the order dated 03.11.2020 wherein the learned Metropolitan Magistrate, 16th Court, Calcutta, was pleased to express his satisfaction regarding the offence being committed for the purposes of issuance of process under Section 420/120B of the Indian Penal Code and Section 184/188 of the Companies Act. Attention of the Court was drawn to the amendments which were incorporated in the Companies Amendment Act, 2020 wherein the following alteration has been made in respect of Section 184/188 of the Companies Act which are as follows:

“In Section 184 of the principal Act, in sub-section (4), for the words “punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both”, the words “liable to a penalty of one lakh rupees” shall be substituted.”

.....

“In Section 188 of the principle Act, in sub-section (5). –

(a) in clause (i), for the words, “punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both”, the words “liable to a penalty of twenty-five lakh rupees” shall be substituted;

(b) in clause (ii), for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”, the words “liable to a penalty of five lakh rupees” shall be substituted.”

The issue of fine and punishment which was there in the original Act has been altered in the amended provisions which are only restricted to penalty. Section 454 of the Companies Act refers to authorities who would adjudicate the penalties and the Criminal Court is out of the purview of such authorities.

As the order dated 03.11.2020 refers to cheating, conspiracy and collusion in respect of related party transaction as has been observed by the learned Metropolitan Magistrate in the order issuing process, I am of the opinion that the learned Magistrate should freshly consider regarding the applicability of the Companies Act both in respect of the present petitioners before this Court as well as so far as the issuance of process is concerned by a Criminal Court in respect of the allegations made in the petition of complaint and the subsequent examination of the complainant and its witnesses and/or documents which have been placed before the Court. Accordingly, no interference is made so far as the order dated 15.09.2020 passed by the learned Chief Metropolitan Magistrate is concerned wherein the learned

Metropolitan Magistrate was pleased to take cognizance of the offences so far as the facts narrated in the complaint are concerned, however, the order dated 03.11.2020 which has spelt out the relevant provisions for which process has been issued requires a fresh consideration in view of the observations made above. Accordingly, the order dated 03.11.2020 is set aside.

The learned Metropolitan Magistrate, 16th Court, Calcutta is directed to freshly consider the materials available before him and thereafter, decide regarding the applicability of the relevant provisions prior to issuance of process.

With the aforesaid observations CRR 1875 of 2020 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

Department is directed to send back the Lower Court Records to the Learned Metropolitan Magistrate, 16th Court, Calcutta within a week from date.

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

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)