

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 5421 of 2015

Eragam Sudhir Reddy & others

....

Petitioners

Mr. S.K. Padhi, Sr. Advocate

-Versus-

State of Odisha and another

....

Opposite Parties

Mr. Pradip Kumar Rout, AGA, OP No.1

None for OP No.2

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

16.09.2022

Order No.

07.

1. Heard learned counsel for the petitioners and learned counsel for the State. None is present on behalf of opposite party No.2.

2. Instant petition under Section 482 Cr.P.C. is filed by the petitioners praying for quashing of the FIR under Annexure-8 corresponding to G.R. Case No.1223 of 2015 pending before the learned J.M.F.C.(O), Rural, Bhubaneswar on the grounds stated therein.

3. In fact, opposite party No.2 lodged an FIR dated 13th November, 2015 whereupon Jatni P.S. Case No.463 of 2015 was registered under Sections 420/120(B)/34 of IPC.

4. Perused the copy of the FIR which is at Annexure-8 and the copy of the work order under Annexure-1 along with other connected documents filed along with the petition.

5. Mr. Mishra, learned counsel appearing for the petitioners submits that in fact the work order was issued in favour of opposite

party No.2 to supply security service which was extended by Annexure-2 and in so far as the outstanding dues is concerned, it was paid to opposite party No.2 and while claiming so, he refers to vouchers and other documents which are at Annexure-3 series. It is contended that after work order, the understanding between the parties was that if at all there is any dispute with regard to the dues, they should have to approach an Arbitrator but then opposite party No.2 straightway lodged the FIR alleging cheating and conspiracy against the petitioners, who are none other than the Board of Directors of the company. It is contended that the dispute is arising out of contractual obligation and for that, opposite party No.2 should have approached the Arbitrator for dispute resolution mechanism as per Clause-6 of the Agreement and in such view of the matter, in absence of any ingredients of cheating and conspiracy, the criminal proceeding in G.R. Case No.1223 of 2015 pending before the learned court below cannot be sustained and therefore, the FIR should be quashed, which is objected to by Mr. Rout, learned AGA on the ground that the contention of the petitioners is based on facts and emerge from a contract which involve disputed questions of fact and can only be raised and adjudicated upon during the trial if in the event there is chargesheet is filed and hence, it calls for no interference.

6. The Court perused Annexure-1 issued in favour of opposite party No.2 and thereafter it was extended by Annexure-2 dated 23th June 2015. The details of the payments made by the petitioners' company in favour of opposite party No.2 have been mentioned in Annexure-4 series. Mr. Mishra, learned counsel for the petitioners submits that all the dues of opposite party Nos.2 have been cleared in the meantime and the outstanding that remains payable is at Rs.6,559/- only. The Court finds that the dispute arose

from a contractual obligation and if any obligation failed to be discharged by the petitioners, opposite party No.2 should have availed the alternate dispute resolution mechanism and could have applied for and approached the Arbitrator which has been agreed upon by both the parties under Annexure-1. In other words, if there was a contractual dispute, the opposite party No.2 was required to invoke the said provision seeking appointment of Arbitrator which he did not do instead forthwith approached the local police and lodged an FIR i.e. Annexure-8.

7. Considering the above facts and materials on record, the Court finds since it is purely civil dispute culminated from a contract and in absence of mens rea involving the Board of Directors of the Company in question, no case of cheating and conspiracy as alleged by opposite party No.2 is prima facie made out. In other words, it is not a case where opposite party No.2 in order to realise the outstanding dues, lodged the FIR against the petitioners instead of availing the remedy available to him under the contract. Thus, the Court finds that there is no case made out against the petitioners for a criminal liability. Accordingly, it is ordered.

8. The CRLMC stands allowed.

9. Consequently, the FIR under Annexure-8 and in criminal proceeding in connection with G.R. Case No.1223 of 2015 pending before the court of learned J.M.F.C.(O), Rural, Bhubaneswar is hereby quashed for the reasons discussed herein above.

10. An urgent certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge

