

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2053 of 2019

Souvick Nandi & another.

....

Petitioners

M/s. Haripad Mohanty, M.M. Swain,
MR. Masihullah, S. Biswal, Advocates

-versus-

State of Odisha & another.

....

Opposite Parties

Addl. Standing Counsel – For O.P.No.1-State

M/s. Tukuna Kumar Mishra, D. Dash,

Advocates – For O.P. No.2

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
06.05.2022**

**Order
No.**

12. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) seeking for quashing of the order dated 26.12.2018 passed by the learned S.D.J.M., Rayagada in I.C.C. No.65 of 2016 filed by the present opposite party no.2.
- 2.** Heard the learned counsel appearing for both the sides and perused the relevant papers on record.

3. Vide the impugned order, the learned Court below has taken cognizance of offence under Sections 417, 418 and 420/34 of the Indian Penal Code (for short "IPC") against the present petitioners. The petitioner no.1 is the Director and the petitioner no.2 is an employee of M/s. Research Software Private Limited, a Company, basically engaged in importing computer training under the brand name and style "WIN", having its registered office at Calcutta. Pursuant to a written agreement executed on 27.10.2018, franchise was granted by the petitioner-company to the opposite party no.2 for running computer training centre in the brand name and style "WIN" at Rayagada as per the terms and conditions embodied in the agreement. It was stipulated, inter-alia, under the agreement that the Franchise shall pay non-refundable fee of Rs.2 lacs and in addition thereto, 20% of the gross receipts of students / corporate fees, towards royalty to the Franchiser. It is alleged by the opposite party no.2 (Franchise) vide his complaint that although as per the agreement he paid

Rs.2 lacs to the accused-petitioners, and made ready the Computer Education Centre at Rayagada by investing huge amount, the accused persons, in violation of the terms of the contract, went on postponing the date of opening of the said centre and failed to provide the agreed apparatus and kits, and requisite training to him, and thereby the petitioners committed cheating and caused wrongful loss to him. It may be stated here that the opposite party no.2 filed a complaint before the Court below, which on being registered as I.C.C. No.17 of 2013 was referred to police giving rise to Rayagada P.S. Case No.234 of 2013 corresponding to G.R. Case No.591 of 2013 and after completion of investigation, police submitted final report with a finding that the complainant failed to fulfill the terms and conditions of the Franchise Agreement and later on with intent to get back the Advance Money (Non-refundable amount) filed the case. The learned S.D.J.M., however, acting upon the protest petition of the complainant registered as

I.C.C. No.65 of 2016 took cognizance of the offences indicated above vide the impugned order.

4. As it further appears, at the instance of the present petitioners, there has already been launched a criminal prosecution in the court of the Chief Judicial Magistrate, Alipore corresponding to Bhawanipore P.S. Case No.586 of 2011 against the opposite party no.2 on the accusation of non-payment of the royalty @ 20% of the gross receipts from the students fee, and in the said case, police has submitted charge-sheet for breach of trust against the opposite party no.2. According to the petitioners, the opposite party no.2 has initiated the present crimination action as a counter blast to the aforesaid prosecution launched by them, with false allegations.

5. It is also apparent on record that before taking recourse of the criminal proceeding, the opposite party no.2 filed a case under Consumer Protection Act, 1986 bearing C.C. No.221 of 2011 in the District

Consumer Disputes Redressal Forum, Rayagada which was disposed of ex-parte in favour of the opposite party no.2 on 07.10.2011, with award of compensation etc. against the present petitioners. The said order, however, has been stayed by the State Consumer Disputes Redressal Commission, Odisha, Cuttack, in the appeal preferred by the present petitioners.

6. There is no legal bar for launching of a criminal prosecution as an alternative or parallel to a civil proceeding, provided the ingredients of any offence are made out on the basis of the same cause of action. In the case at hand, there is no dispute that both the sides are bound by the contract entered into by them on 27.10.2018. Payment of two lakh rupees by the opposite party no.2 to the company of the petitioners was made as per the terms of the contract, and whether or not the petitioners performed their part of contract is a question of fact which is open to be decided in a Civil action, if any initiated, for

enforcement of the contractual obligations or for any other relief on the basis of the contract. In the facts and circumstances indicated above, and the ingredients of the offences taken cognizance of vide the impugned order being not made out, even from a prima-facie view, continuance of the criminal proceeding against the petitioners would be an abuse of the process of the Court.

7. Hence, the CRLMC is allowed quashing the impugned order.

8. Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

