

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2514 of 2021

Hemanta Meher

....

Petitioner

Mr. Milan Kanungo, Senior Advocate assisted by
Mr. Dipankar Acharya, Advocate

-Versus-

State of Orissa and Another

....

Opposite Parties

Mr. Tapas Kumar Praharaj, SC, OP No.1
None for OP No.2

CORAM:

MR. JUSTICE R.K. PATTANAIK

ORDER

01.12.2022

Order No.

- 06.
1. Heard learned counsel for the petitioner and learned SC for the State.
 2. Notice to opposite party No.2 was issued as per the Court's order dated 9th March, 2022 and postal tracking report which is at Flag-B confirms that notice has been duly served on opposite party No.2. But then, none appears for opposite party No.2 at the time of call.
 3. Instant petition under Section 482 Cr.P.C. is at the behest of the petitioner praying for quashing of the criminal proceeding in Khariar P.S. Case No.82 of 2021 corresponding to C.T. Case No.78 of 2021 pending in the court of learned J.M.F.C., Khariar on the grounds stated therein.

4. Learned counsel for the petitioner submits that the criminal proceeding pending before the court of learned J.M.F.C., Khariar in C.T. Case No.78 of 2021 arising out of Khariar P.S. Case No.82 of 2021 cannot be sustained in law since because the dispute predominantly arising out of a contract. It is further submitted that the informant, namely, opposite party No.2 could not have lodged the FIR for such a dispute which arises out of a contract. Under the above circumstances, learned counsel for the petitioner referring to a decision of the Apex Court in the case of **Mitesh Kumar J. Sha Vrs. The State of Karnataka & Others** in Criminal Appeal No.1285 of 2021 decided on 26th October, 2021 submits that the criminal proceeding is untenable in law since it is a case of mere breach of contract.

5. Mr. Praharaj, learned counsel for the State on the other hand submits that the petitioner since received the consideration amount but did not supply the GPS Tracking System products, Khariar P.S. Case No.82 of 2021 was registered under Sections 406, 409, 417 and 420 of IPC and accordingly, the criminal proceeding has been initiated against the petitioner.

6. Learned counsel for the petitioner refers to the agreement dated 5th October, 2017 between the parties, a copy of which is at Annexure-3 to contend that the petitioner supplied the product for an amount of Rs.2 lac and failed to supply the rest amount, as a result of which, opposite party No.2 lodged the FIR, which is primarily a contractual obligation for which there is a clause in the said agreement for arbitration. While contending so, learned counsel for the petitioner cites Article 20 of the Agreement of Distributorship as at Annexure-3. On a proper reading of the said document, the Court finds that the parties are subject to arbitration law with a clause that any dispute, controversy or claims arising out of or relating to the agreement or the breach, termination or

invalidity thereof, shall be settled by arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996.

7. Regard being had to the above facts and considering the nature of dispute which is arising out of a contract, it appears to be a case of breach of contract and hence, the Court is of the considered view that the criminal proceeding which has been initiated at the instance of opposite party No.2 cannot be sustained in law. In fact, the Supreme Court in **Mitesh Kumar J. Sha** (supra) observed that on innumerable instances expressed its disapproval for imparting criminal colour to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute and such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety. The Apex Court in **Hridaya Ranjan Prasad Verma & Others Vs. State of Bihar & Another** reported in (2000) 4 SCC 168 held and observed that the distinction between mere breach of contract and the offence of cheating is a fine and it depends on the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this, subsequent conduct is also not the sole test; mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction that is the time when the offence is said to have been committed and therefore, it is the intention which is the gist of the offence; and to hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. In the following words, the Apex Court held that a civil dispute should not be entertained in the shape of a criminal proceeding.

8. Considering the nature of the dispute as per Annexure-1, the Court finds that it is basically a breach of contract and for certain amount, the product was supplied and being a contractual obligation, if at all any such dispute existed between the parties, the

opposite party should have invoked the arbitration clause as per the agreement. It is a breach of agreement and a dispute of civil nature. Since, the petitioner obliged for a part and failed for the rest and considering the transaction in the entirety, it may be justified to claim that there was bad intention since the very beginning from the side of the petitioner to defraud opposite party No.2. Having said that, the Court arrives at a logical conclusion that the proceeding pending before the learned J.M.F.C., Khariar in C.T. Case No.78 of 2021 arising out of Khariar P.S. Case No.82 of 2021 should be quashed. Accordingly, it is ordered.

9. In the result, the CRLMC stands allowed.

10. Issue urgent certified copy of this order on proper application.

(R.K. Pattanaik)
Judge

U.K.Sahoo

