

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 49 of 2017
with
IA No. CRAN 1 of 2017 (CRAN 730 of 2017)

Jaldhi Overseas Pte. Ltd. & Ors.
Vs.
State of West Bengal & Anr.

Mr. Sabyasachi Banerjee
Mr. Ayan Bhattacharjee
Mr. Anirban Dutta
Mr. Amitayu Kundu
Mr. Pradip Kumar Sarawagi
... For the petitioners

Mr. Bidyut Kumar Roy
Ms. Sima Biswas
... For the State

Mr. Jaydeb Ghorai
... For the opposite party no.2

This revisional application has been filed with a prayer for quashing the proceedings arising out of Shakespeare Sarani Police Station Case No.142 dated 7th May, 2016 under Sections 406/420/120B with added Sections 467/468/471/477 of the Indian Penal Code corresponding to GR Case No.983 of 2016 pending before the learned Chief Metropolitan Magistrate, Kolkata.

The case was initiated through an application under Section 156(3) of the Code of Criminal Procedure (in short, CrPC) filed before the learned Chief Metropolitan Magistrate, Kolkata.

The dispute over the proceedings is that there was a Contract of Affreightment was made between the petitioners and the private opposite party no.2 on 23rd July, 2007 whereby the petitioners had to

make 27 shipments of high quality coal over a period of three years. Private opposite party no.2 was managed only the partial arrangement to lift cargoes from Australian ports in spite of the fact that the petitioners had nominated vessels to carry such cargoes as per Contract of Affreightment.

In view of breach of such contract by the private opposite party no.2, the petitioners suffered a considerable amount. Accordingly, a Settlement Agreement was entered into by and between the parties whereby the private opposite party no.2 agreed to discharge its liability by paying a sum of US \$6 million by way of settlement. Subsequently, the private opposite party no.2 delayed in paying the instalments and thereby it failed to comply the Settlement Agreement.

On 17th May, 2010, the private opposite party no.2 paid a sum of US \$4 million being part of the Settlement after expiry of agreed time and thereby the claim amount got reinstated to the original US \$12.075 million less the amount paid. Again private opposite party no.2 became liable to pay in terms of agreed Settlement Agreement dated 18th August, 2009 and a second Contract of Affreightment was entered into. Ultimately, it was agreed between the parties that in case of further delay in payment by the opposite party no.2 within agreed time, the opposite party no.2 would consent to an award being entered against it in the Singapore Arbitration. Admittedly, private opposite party no.2 failed to make payment under second Settlement of Agreement and the arbitral reference which had already commenced under the first Settlement wherein the private opposite party no.2 had unequivocally submitted to the jurisdiction of the Arbitral Tribunal by filing its settlement of defence and participated in

the hearing before the Tribunal when final award was passed by the Singapore International Arbitration Centre.

On 27th April, 2016, private opposite party no.2 filed an application under Section 156(3) of the CrPC before the learned Chief Metropolitan Magistrate, Kolkata, seeking investigation by the Officer-in-Charge of Shakespeare Sarani Police Station. On 24th August, 2016, the petitioners filed an application, being Execution Case No.434 of 2016 for execution of final award dated 20th January, 2016 and also for execution of interim award dated 7th January, 2015, being Execution Case No.433 of 2016 before the High Court. It is further seen that the private opposite party no.2 also filed one Title Suit, being Title Suit No.1067 of 2016 on 2nd September, 2016.

Punjab National Bank also filed an application before the National Company Law Tribunal, New Delhi, under Section 7 of the Insolvency and Bankruptcy Code, 2016. The National Company Law Tribunal admitted the same and ultimately was pleased to dispose of the appeal, being Company Appeal (AT) (Insolvency) No.1055 of 2019, filed by the petitioners against the order dated 5th September, 2019 passed by the National Company Law Tribunal in CA No. (IB)-202 (PB) of 2017, thereby holding the petitioner no.1 as identified contingent creditor. Thereafter, the petitioners proceeded with the international arbitration against the Republic of India under the Rules of United Nations Commission on International Law.

Learned advocate on behalf of the petitioners submits that the issue raised in the proceeding is totally civil in nature and moreover the issue was already adjudicated by the Arbitrator and after the

award was passed, the application under Section 156(3) of the CrPC was filed by the private opposite party no.2. That apart, it is submitted that Section 154(3) of the CrPC has not been complied with at the time of filing an application under Section 156(3) of the CrPC.

Learned advocate appearing on behalf of the State has filed one status report which is kept with the record.

Mr. Jaydeb Ghorai, learned advocate on behalf of the private opposite party no.2 has filed one written instruction of the private opposite party no.2 contending, inter alia, that the private opposite party no.2 has no objection in allowance of the instant criminal revisional application. Let the written instruction be also kept with the record. That apart, learned advocate on behalf of the private opposite party no.2 has submitted that the proceedings may be quashed.

Considering the exclusive civil nature of the dispute which was also adjudicated by the Arbitrator by passing an award, I find no reason to continue with the proceeding, otherwise it would result in an abuse of process of law.

In the result, the proceedings arising out of Shakespeare Sarani Police Station Case No.142 dated 7th May, 2016 under Sections 406/420/120B with added Sections 467/468/471/477 of the Indian Penal Code corresponding to GR Case No.983 of 2016 pending before the learned Chief Metropolitan Magistrate, Kolkata, against the three petitioners, stands quashed.

The revisional application, being CRR 49 of 2017, and the corrected application, being CRAN 1 of 2017 (CRAN 730 of 2017), stand disposed of.

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

Criminal Section is directed to supply certified copy of this order, if applied for, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)