

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 259 of 2019

Sambhunath Roy & Ors.

Vs

The State of West Bengal & Anr.

For the Petitioners

: Mr. Milon Mukherjee,
Mr. Jagabandhu Roy,
Mr. Swapan Mallick,
Mrs. Manasi Roy.

For the State

: Ms. Rita Dutta.

For the Opposite Party

: Mr. Rabi Sankar Chattopadhyay,
Mr. Kaustav Sen.

Heard on

: 06.02.2023

Judgment on

: 28.02.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred praying for quashing of the proceeding being G.R. Case No. 628 of 2017 arising out of Singur Police Station Case No. 173 of 2017 dated 07.05.2017 Under Sections 420/406/386/34 of the Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Chandernagore, Hooghly.

The petitioner's case is that the petitioner Nos. 1 and 2 are carrying on Gold business in Hyderabad. The Defacto Complainant namely Alfazuddin of the present case being Singur Police Station Case No. 173/2017 and his two sons namely Sarfarzuddin Mallick and Asaruddin Mallick resident of Singur, District - Hooghly, West Bengal were doing Gold business and they had business relation with petitioner Nos. 1 and 2.

In the month of June, 2015 Alfazuddin Mallick and his sons contacted petitioner No. 1 over phone and disclosed that they had some antique jewellery ornaments. Alfazuddin Mallick came to Hyderabad on 16.06.2015 and had discussions with petitioner Nos. 1 and 2 and Alfazuddin wanted to sell the antique jewellery ornaments the photographs/catalogues of which were shown to them and the finance was fixed at Rs. 95,00,000/-. It was agreed that Rs. 50,00,000/- would be paid in cash and the rest amount Rs. 45,00,000/- would be transferred through TRTGS.

The petitioner Nos. 1 and 2 who had earlier business relation had completely believed Alfazuddin and Rs. 50,00,000/- in cash was straightway given to him and the rest amount of Rs. 25,00,000/- was transferred through 2 Bank Accounts vide RTGS reference No. 059605000679 belonging to Sarakar Jewellers of petitioner No. 1 vide RTGS No. 10129250939.

As the opposite party did not deliver the ornaments in spite of advance, the petitioner lodged a complaint against him with Charminar Police, Hyderabad.

A memorandum of understanding was executed between the parties. A counter case was filed by the opposite parties against the petitioners being Singur P.S. on 2017 stating there in that the opposite party and his sons were forcefully taken to the petitioner's office and the son was holding a revolver and forced the opposite party to sign the memorandum of understanding out of fear (the case under revision).

On completion of investigation the police submitted charge sheet for offence punishable under section 420/406/386/34 IPC against the petitioners.

Mr. Milon Mukherjee, learned senior counsel appearing for the petitioners has submitted that the dispute in the present case relates to a contractual obligation and the complaint has been filed giving the civil dispute a colour of criminal offence.

The present case has been filed by the opposite party making false allegation just to avoid payment of the settled amount.

That none of the ingredients required to constitute the offences alleged are present. The First Information Report does not disclose any prima-facie case against the petitioners having committed the offence as alleged in the F.I.R. That only to harass and humiliate and to lower down the business reputation of the petitioners purposely with a malafide intention in order to avoid payment in respect of the settled amount and to deprive the petitioners from the legitimate claim, the present case has been registered against the petitioners by giving a civil dispute colour of criminal offence. As such having regard to the aforesaid facts and circumstances, initiation and continuation of the present proceeding is an abuse of process of Court and is liable to be quashed for the ends of justice.

The opposite party no. 2 has brought to the notice of the court that the allegations in the written complaint filed against the petitioners are on entirely different facts.

The dispute between the parties is regarding the sale and storage of potatoes by using the cold storage run by the opposite party no. 2.

It is the case of the opposite party no. 2 that as he could not return the advance given to him by the petitioners for storage and sale of potatoes, for the fault of the petitioners themselves, the petitioners by

holding a revolver to his head made him and his sons sign a memorandum of understanding against the will and wish of the opposite party and his sons.

Ms. Rita Dutta, learned counsel for the State has placed the case diary.

Heard both sides. Perused the materials on record and the case diary.

Admittedly there is a civil dispute between the parties arising out of business transactions. There is also a case and counter case and this is a revision to quash the counter case.

When the situation is as in this case, the case is fit for mediation.

Accordingly the matter is remitted to the Learned Magistrate with the direction to refer the matter for mediation to the concerned District Legal Services Authority and make all endeavor to have the matter settled preferably within a month at that level.

CRR 259 of 2019 is accordingly disposed of.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)