

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 425 of 2016

M/s. Haldia Steels Limited

Vs.

The State of West Bengal & Anr.

With

C.R.R. 426 of 2016

IA No. CRAN 2 of 2016 (CRAN 1732 of 2016)

M/s. Haldia Steels Limited

Vs.

The State of West Bengal & Anr.

Mr. Sandipan Ganguly, Sr. Adv.

Ms. Manasmita Mukherjee, Adv.

Mr. Rahul Ganguly, Adv.

Mr. Pankaj Agarwal, Adv.

Ms. Champa Pal, Adv.

.....For the Petitioner in CRR 425 of 2016

Mr. Rahul Ganguly

Ms. Manasmita Mukherjee

Mr. Pankaj Agarwal, Adv.

Ms. Champa Pal, Adv.

.....For the Petitioner in CRR 426 of 2016

Mr. Imarn Ali Adv.

Ms. Debjani Sahu, adv.

.....For the State in CRR 425 of 2016

Mr. Bidyut Kumar Roy

Ms. Debjani Sahu

..... For the State in CRR 426 of 2016

Mr. Sachit Talukdar

Mr. Anirudhya Dutta.

.....For the opposite party no. 2 in both CRR no.
425 of 2016 & 426 of 2016

Heard on :25.07.2023,01.08.2023, 02.08.2023,
04.08.2023, 09.08.2023, 25.09.2023

Judgment on : 17th October, 2023

Bibhas Ranjan De, J.

1. Both the revision applications having identical contentious issues are required to be disposed of by this common judgment.

CRR 425 of 2016**Background:-**

2. The application was filed challenging the order dated 05.10.2015 passed by Learned Chief Metropolitan Magistrate, refusing the prayer for further investigation of the case.
3. An application under Section 156(3) of the Code of Criminal Procedure (for short CrPC) was filed by the petitioner before the Learned Chief Metropolitan Magistrate, Calcutta which was forwarded to Shakespeare Sarani Police Station where complaint was registered as Shakespeare Sarani Police Station Case No. 318 of 2014 under Section 120B /406/ 420 of the Indian Penal Code by the Petitioner's Company, M/s. Haldia Steels Limited represented by Kaushik Banerjee, a Manager and Authorized Representative against the opposite party no. 2, Suresh Kumar Aggarwal proprietor of M/s. Haryana Minerals . The aforesaid complaint was filed alleging, *inter alia*, that the petitioners company was induced to make advance payment of Rs. 50,00,000/- (Fifty lacs) through demand draft towards supply of Manganese Ore which got duly credited to the account of opposite party no. 2. But the advanced amount was misappropriated by not supplying any Manganese Ore to

the petitioner's company as per memorandum of understanding dated 12.12.2007 whereby opposite party no. 2 agreed to supply all Manganese raised by it to the petitioner's company and nobody else.

4. According to memorandum of agreement, dated 12.12.2007 opposite party no. 2 being owner of the proprietorship business of mining under the name and style of Haryana Minerals was to convert his proprietorship business into a private limited company. Upon such incorporation, opposite party no. 2 was to transfer all his shares to the petitioner's company or its nominees by 20.03.2008 after getting total consideration amount of Rs. 3,20,00,000.00/-(Rupees three corers 20 lacs only). At the time of execution of agreement petitioner company was to pay 50,00,000/- (rupees fifty lacs). According to agreement, petitioner's company was to pay Rs. 1,00,00,000/- (rupees one crore) by cash against receipt thereafter. On 15th February, 2008 petitioner's company was to pay Rs. 25,00,000/- (rupees twenty five lacs) to the opposite party no. 2. Again on 20.03.2008 petitioner's company was to pay a sum of Rs. 95,00,000/-(rupees ninety five lacs). According to memorandum of agreement petitioner company

was to pay balance amount of Rs. 50,00,000/- (rupees fifty lacs) by cheque to the opposite party no.2 at the time of transfer of total shares. In the mean time petitioner's company was to continue purchase of Manganese Ore from the date of execution of the agreement until the transfer of shares. Opposite party no. 2 was to pay all government revenues viz. royalty, forest cess, rent, sales tax and other dues payable in respect of the scheduled area.

CRR 426 of 2016

Background

5. The application was filed challenging the order dated 05.10.2015 passed by Ld. Chief Metropolitan Magistrate, refusing the prayer for further investigation of the case.
6. An application under Section 156(3) of the Code of Criminal Procedure (for short CrPC) was filed by the petitioner before the Learned Chief Metropolitan Magistrate, Calcutta which was forwarded to Shakespeare Sarani Police Station where complaint was registered as Shakespeare Sarani Police Station case no. 317 of 2014 under Section 120B /406/ 420 of the Indian Penal Code by the Petitioner's company, M/s. Haldia Steels Limited represented by Kaushik Banerjee, a Manager

and Authorized Representative against the opposite party no. 2, Dattulal Muralidhariji Gandhi proprietor of M/s. Mohini Industries. The aforesaid complaint was filed alleging, *inter alia*, that the petitioner's company was induced to make advance payment of Rs. 1,00,00,000/- (Rupees one crore) through demand draft towards supply of Manganese Ore which got duly credited to the account of opposite party no. 2. But the advanced amount was misappropriated by not supplying any Manganese Ore to the petitioner's company as per memorandum of understanding dated 12.12.2007 whereby opposite party no. 2 agreed to supply all Manganese raised by it to the petitioner's company and nobody else.

7. According to memorandum of agreement dated 12.12.2007 opposite party no. 2 being owner of the proprietorship business of mining under the name and style of Mohini Industries was to convert his proprietorship business into a private limited company. Upon such incorporation, opposite no. 2 was to transfer all his shares to the petitioner's company or its nominees by 20.03.2008 after getting total consideration amount of Rs. 3,20,00,000.00.(rupees three crore twenty lacs only). At the time of execution of agreement petitioner

company was to pay 50,00,000/- (rupees fifty lacs). According to agreement petitioner's company was to pay Rs. 1,00,00,000/- (Rupees one crore) by cash against receipt thereafter. On 15.02.2008 petitioner's company was to pay Rs. 25,00,000/- (rupees twenty five lacs) to the opposite party no. 2. Again on 20.03.2008 petitioner's company was to pay a sum of Rs. 95,00,000/-(rupees ninety five lacs). According to memorandum of agreement the petitioner company was to pay balance amount of Rs. 50,00,000/- (rupees fifty lacs) by cheque to the opposite party no. 2 at the time of transfer of total shares. In the mean time petitioner's company was to continue purchase of Manganese Ore from the date of execution of the agreement until the transfer of shares. Opposite party no. 2 was to pay all government revenues viz. royalty, forest cess, rent, sales tax and other dues payable in respect of the scheduled area.

Argument advanced on both the revision applications.:

8. Ld. Senior Advocate, Mr. Sandipan Ganguly, appearing on behalf of the petitioner in both the revision applications has contended that petitioner company being one of the most reputed concerns in the field of iron and steel since 1996, was

engaged in the business of manufacturing ferro alloys and they were looking out for a steady source of supply of Manganese Ore. At this juncture, the accused namely Suresh Aggarwal (opposite party no.2 in connection with CRR 425 of 2016) and Dattulal Muralidhariji Gandhi (opposite party no. 2 in connection with CRR 426 of 2016) approached the officers of the petitioner company with a proposal to operate the Manganese Mine which was allotted to their (opposite party no. 2 in CRR 425 and 426 of 2016 respectively) proprietorship firm by the State of Madhya Pradesh. A sum of Rs. 3.20 crore had been agreed upon in the memorandum of understanding (for short MOU) dated 12.12.2007. In terms of the M.O.U. the opposite party no. 2 was to firstly convert their proprietorship firm to a private limited company duly incorporated under the Companies Act, 1956 and then transfer the shares of the said companies in the name of the petitioner company or its nominees by virtue of which the petitioner company would become the owner of the said new company resulting in a position through which they can utilize the mining lease granted in favour of the proprietorship firm of opposite party no. 2 in both the cases.

9. Mr. Ganguly has, next, submitted that in sharp contrast to the terms of the agreement neither of the opposite party no. 2 (in connection with both CRR 425 and 426 of 2016 respectively) took any requisite steps to transfer the proprietary concern into a private limited company. Moreover, in both the cases opposite party no. 2 created an independent company namely Haryana Minerals Manganese Ore (P) Limited in connection with CRR 425 of 2016 and Mohini Manganese Ore (P) Limited in connection with CRR 426 of 2016 with a mala fide motive. Moreover, in CRR 425 of 2016 after formation of the private limited company the opposite party no. 2 transferred only 28% shares of the said company in favour of the petitioner. Thus, the independent status of the proprietary concern holding the mining lease in CRR No. 425 and 426 of 2016 respectively was preserved and the petitioner was handed over ownership of a private limited company, having no assets at all.

10. Mr. Ganguly has contended that as per Rule 17 of the Mineral Concession Rules 1960, any kind of transfer of the mining lease would require previous consent in writing of the State Government. This said fact was definitely within the knowledge of the opposite party no. 2, claiming to be an expert

in mining affairs. Despite this knowledge the opposite party no. 2 induced the petitioner company to enter into the agreement dated 12.12.2007 and thereby obtaining Rs. 96,20,350.00/- (Rupees ninety six lac twenty thousand three hundred fifty) in connection with CRR 425 of 2016 and Rs. 3,26,000,00/- (Rupees Three crore twenty six lac) in connection with CRR 426 of 2016.

11. In both CRR 425 & 426 of 2016 Mr. Ganguli submitted that obtaining of environment clearance from the requisite Governmental Department which is a pre-condition for operation of a mine was to be provided by the opposite party no. 2. Although, obtaining monetary benefits opposite party no. 2 did not obtain the requisite Environment Clearance from the requisite Government Department which resulted in conversion of the said mine to a mere piece of land without any commercial value therefrom as there wasn't any way of extraction of Manganese Ore.

12. Mr. Ganguly, has further contended that a letter bearing reference no. 3-66/2004/12/2 dated 29.12.2008 in connection with CRR 425 of 2016 and a letter bearing reference no. 3-65/2004/12/2 dated 17/09/2008 in

connection with CRR 426 of 2016 purportedly issued by the Mining Department Government of Madhya Pradesh was handed over to the petitioner by the opposite party no. 2 in both the cases which was false and fabricated document. On subsequent scrutiny it got also transpired that the property tax as also the tax for non-ferrous mining and metallurgical industries were continuously paid in favour of the Government of Madhya Pradesh by the proprietorship firm of opposite party no. 2 (in connection with CRR 425 of 2016 and CRR no. 426 of 2016) even after incorporation of the private limited company dated 12.03.2008 in case of Haryana Mineral Manganese Ore Private Limited in connection with CRR 425 of 2016 and 29.01.2008 i.e. date of incorporation of Mohini Manganese and Ore(p) Ltd. in connection with CRR 426 of 2016 which meant the records of the Government still reflected the propriety concerns as the holder of the mining lease and not the private limited companies subsequently incorporated in both CRR 425 of 2016 and 426 of 2016 consequently.

- 13.** Mr. Ganguly has relied on a case of ***State of M.P. Vs. Awadh Kishore Gupta and others*** reported in ***(2004) 1 Supreme Court Cases 691.***

14. In opposition to that, Ld. Advocate Mr. Sachit Talukdar, in both the revision applications, has contended that the petitioner did not disclose in the Section 156 (3) complaint that a written agreement was entered into between the parties to acquire the mining lease and thereafter undertake the operations thereof. The only complaint was the alleged non-supply of Manganese Ore pursuant to a verbal agreement. Mr. Talukder has further countered the claim of the petitioner regarding failure to convert the proprietorship itself to a company and creation of new company instead. Mr. Talukder assailed that such procedure does not exist. The only procedure possible is the creation of a separate company and such company be permitted through its objectives in the memorandum of association to acquire/take over or operate with firms having similar objective.

15. Mr. Talukder has further submitted that the opposite party no. 2 in both the cases have duly performed their part as depicted in the agreement dated 12.12.2007. Furthermore, the Managing Director of the petitioner company and his father were the sole Directors of the newly formed company since 2008 till the time instant proceeding was initiated.

16. Next, Mr. Talukder advanced his argument regarding the letters issued by the Government of Madhya Pradesh by submitting that transfer of mining lease in favour of the newly formed companies in both the cases is not at all purportedly forged. In support of his contention, to make it more credible, Mr. Talukder relied on the order thereby transferring mining lease in favour of the newly formed companies received through RTI from Government of Madhya Pradesh.

17. Mr. Talukder again submitted that sole allegation found in the 156(3) complaint preferred by the petitioner regarding the alleged non-supply of Manganese Ore by the opposite party no. 2 despite receiving payment for the same was not substantiated by the complainant by submitting documents like the Purchase Order, copy of the memorandum of understanding reportedly executed between the petitioner company and company of opposite party no. 2 in both the cases.

18. Before parting with his argument, Mr. Talukder has referred to the agreement between the parties (MOU) and submitted that opposite party no.2 of both the cases deposited taxes with regard to their respective mining lease according to

the directives mentioned in the clause 9 & 10 of the same so as to ensure that the mining lease did not lapse. Mr. Talukder also contended that the allegation of failure to obtain environmental clearance was never drawn to the notice of the opposite party no. 2 in both the cases by the petitioner.

- 19.** Mr. Talukder, in support of his contention relied on the following cases:-

Anita Malhotra Vs. Apparel Export Promotion Council
reported in ***(2012) 1 Supreme Court Cases 520***

Datti Kameswari Vs. Singam Rao Sarath Chandra and another 2015 SCC OnLine Hyd 389.

- 20.** Both the Ld. Advocates, Mr. Imran Ali and Mr. Bidyut Kumar Roy, appearing on behalf of the State in connection with CRR 425 and 426 of 2016, has submitted that the final report was submitted relying on the investigation of a case of a civil nature and memorandum of understanding (agreement) between the parties was duly complied with by transferring the mining lease in favour of the newly formed companies by the opposite party no. 2 in connection with both the revision applications.

21. In ***Awadh Kishore Gupta*** (supra) the Hon'ble Apex Court laid down the following principle in dealing with an application under Section 482 of CrPC for quashing proceedings:-

“ **13.** It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In *Chand Dhawan v. Jawahar Lal* [(1992) 3 SCC 317 : 1992 SCC (Cri) 636] it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case (Crime No. 116 of 1994) registered by the Special Police Establishment, Lokayukta,

Gwalior. We set aside the impugned judgment. The State shall be at liberty to proceed in the matter further.”

22. *Anita Malhotra* (supra) held as follows:-

“ **16.** A reading of the above provisions makes it clear that there is a statutory requirement under Section 159 of the Companies Act that every company having a share capital shall have to file with the Registrar of Companies an annual return which includes details of the existing Directors. The provisions of the Companies Act require the annual return to be made available by a company for inspection (Section 163) as well as Section 610 which entitles any person to inspect documents kept by the Registrar of Companies. The High Court committed an error in ignoring Section 74 of the Evidence Act, 1872. Sub-section (1) of Section 74 refers to public documents and sub-section (2) provides that public documents include “public records kept in any State of private documents”. A conjoint reading of Sections 159, 163 and 610(3) of the Companies Act, 1956 read with sub-section (2) of Section 74 of the Evidence Act, 1872 makes it clear that a certified copy of annual return is a public document and the contrary conclusion arrived at by the High Court cannot be sustained.

19. In *Harshendra Kumar D. v. Rebatilata Koley* [(2011) 3 SCC 351 : (2011) 1 SCC (Civ) 717 : (2011) 1 SCC (Cri) 1139] , while considering the very same provisions coupled with the power of the High Court under Section 482 of the Code of Criminal Procedure, 1973 (in short “the Code”) for quashing of the criminal proceedings, this Court held: (SCC pp. 361-62, para 25)

“25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to

take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents—which are beyond suspicion or doubt—placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have a significant bearing on the matter at prima facie stage.”

23. In ***Datti Kameshawari*** (supra) it was held in paragraph 16 as follows:-

“ **16.** A learned Single Judge of the same High Court in W.P. No. 7860 of 2014, dated 19-03-2015 held that the certified copies of the map of the house and building construction permission from Nigar Nigam obtained under the Right to Information Act, 2005 can be taken as secondary evidence and it was held as follows:

Clause (f) of Section 65 of Evidence Act makes it crystal clear that a certified copy permitted under the Evidence Act or by any other law in force can be treated as secondary evidence. Right to Information Act, in my view, falls within the ambit of “by any other law in force in India”. The definition of “right to information” makes it clear that certified copies of documents are given to the citizens under their right to obtain information. In my view, the court below has rightly opined that the documents can be admitted as secondary evidence. I do not see any merit in the contention that the documents obtained under the Act of 2005 are either true copies or attested copies. The definition aforesaid shows that the same are certified copies. Even otherwise, it is interesting to note that in Black Dictionary, the meaning of “certified copy” is as under:-

“Certified copy” - a copy of a document or record, signed or certified as a true copy by the officer to whose custody original is entrusted.”

Since the documents are covered under section 65 of the Evidence Act, there was no need to compare the same with the originals.”

24. Keeping an eye on the aforesaid observations of the Hon’ble Apex Court, I delve into the merit of the revision applications at hand.

Decision:

Admitted facts:-

25. It is not disputed that there was an agreement (MOU) between the identical petitioner of both the revision

applications and opposite party no. 2 of the revision applications. According to the agreement opposite party no. 2 of both the revision applications were to convert their respective proprietorship business of mining into a private limited company to be incorporated under the Companies Act and upon incorporation of the private limited companies mining lease of both the proprietorship concerns shall be transferred in the name of newly incorporated private limited companies.

- 26.** Further admitted fact is that in respect of CRR 425 of 2016 opposite party no. 2 transferred 28% share to the petitioner company and in case of CRR 426 of 2016 100% share was transferred to Petitioner's Company.

Contentious issues:-

- 27.** It is true that the applications under Section 156(3) of CrPC in both the cases were filed alleging non-supply of Manganese Ore in spite of payment of consideration money but investigation of this case was conducted covering all the issues between the parties in terms of MOU. This fact has not been denied by Mr. Talukder at the time of argument. Therefore, law was put into motion by making application

under Section 156(3) of CrPC in terms of agreement and disputes between the parties and the investigation was conducted accordingly covering all issues raised by the parties. I do not find any Provision in the Code of Criminal Procedure to restrict the investigating officer strictly on the issue raised in the written complaint only. Therefore, I am not agreeable with Mr. Talukder on this issue.

28. According to agreement (MOU) opposite party No. 2 in connection with both the revision applications were to obtain environmental clearance from the appropriate authority but nowhere in the case diary, I find any single scrap of paper showing environmental clearance which was a pre-requisite for running mining activities as mentioned in the mining lease.

29. According to agreement (MOU), both the opposite party no. 2 in connection with revision applications agreed to transfer the mining lease of their respective proprietorship concern in favour of newly formed private limited companies. According to opposite party no. 2, they already transferred their respective mining lease in favour of the newly incorporated companies in terms of a document issued by the

Madhya Pradesh Government. In fact during investigation, investigating officer relied on the transfer of shares in favour of the newly formed companies according to the order of transfer of mining lease issued by the Government of Madhya Pradesh and consequently investigating officer submitted final report.

30. To make the order of transfer of mining lease issued by Madhya Pradesh Government, more credible, opposite party no. 2 submitted the transfer order obtained through an application under the Right to Information Act, countering the allegation of forged document raised on behalf of the petitioner.

31. The documents obtained through RTI submitted before this Court did not comply with the prescribed parameters of the RTI Act, 2005. The requirement is that the CPIO has to endorse on the document "True copy of the document supplied under RTI Act," sign and seal the document containing his name, the title of CPIO and the name of his public authority. Therefore, the document obtained through RTI cannot be said to be admissible.

32. That apart subsequent deposit of tax in respect of mining lease has further created a doubt regarding transfer of mining

lease in favour of the newly formed private limited companies. From the evidence collected in the case diary it appears that both the proprietary firms of opposite party no. 2 in both the cases were continuing to pay all kind of taxes including lease rent, surface rent etc. for a period subsequent to the date of incorporation of newly formed private limited companies (12.03.2008 in connection with CRR 425 of 2016 & 29.01.2008 in connection with CRR 426 of 2016).

33. Before parting with, it comes to my notice that as per Rule 17 of the Mineral Concession Rules, 1960 any kind of transfer of the mining lease requires previous consent in writing of the State Government which is missing in our case.

34. All the discussion hereinabove, in my opinion, justify further investigation of this case particularly for revealing the credibility of the transfer of mining lease. Therefore, I need to interfere with the order impugned in connection with both the revision applications which appears to have been made through copy-paste process.

35. As a sequel, orders impugned passed in G.R. case no. 2121 of 2014 and G.R. case no. 2120 of 2014 stand set aside.

- 36.** Learned Chief Metropolitan Magistrate at Calcutta is directed to give direction to the Police to further investigate the case in terms of Provision of Section 173(8) of the Code of Criminal Procedure, accordingly.
- 37.** Both the revision applications being no. CRR 425 of 2016 & 426 of 2016 stand allowed.
- 38.** Interim order, if there be any, stands vacated and all pending applications, if any, stand disposed of accordingly.
- 39.** Case diaries be returned.
- 40.** All parties to the revisional applications shall act on the server copy of this order downloaded from the official website of this Court.
- 41.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]