

11.01.2023

Item No.19
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 562 of 2021

**Bijay Kumar Agarwal & Ors.
versus
Ashok Kundu & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure.

This revisional application was preferred challenging the proceedings arising out of case No. C/63/2020 dated 03.03.2020 under Sections 420/409/34 of the Indian Penal Code pending before learned Judicial Magistrate, 4th Court, Katwa.

The subject-matter of the allegation in the complaint was to the effect that the complainant was carrying on his business of cable channel when the accused persons approached him for his assistance at proper Katwa town. The complainant states that at the relevant period of time about 50/60 operators were working under him and he had customers which range between 50,000 to 60,000. Because of change of government policy and the technology involved in installation of such process, the complainant entered into an agreement in the year 2010-2011.

It has been specifically contended that 15% of the advertisement and 50% of sharing of profits would be the subject-matter of consideration. Taking the same into account and the fact that there are about 1,00,000/-

customers, the complainant alleges that there are dues which have accrued for more than Rs.90,00,000/-.

On the basis of such a complaint being filed, the learned Magistrate was pleased to take cognizance of the offence and subsequently on examination of the witness under Section 200 of the Code of Criminal Procedure was pleased to issue process under Sections 420/409/34 of the Indian Penal Code.

I have considered the contents of the petition of complaint and the allegations made therein. On an assessment of the allegations, I am of the view that there has been violation of conditions of the agreement entered into between the parties which resulted in non-payment. It is a settled proposition of law that mere breach of agreement does not give rise to a criminal proceeding. Having considered the same, I am of the opinion that the process so issued by the learned Judicial Magistrate, 4th Court, Katwa is against the settled proposition of law. Further there has been non-compliance of the provision of Section 202 of the Code of Criminal Procedure as the petitioners were staying outside the jurisdiction of Katwa. Having considered the same, I am of the opinion that the order dated 09.09.2020 passed by the learned Magistrate is without any application of mind and as such, is liable to be set aside. Consequently the process so issued by the learned Magistrate, is hereby quashed.

Accordingly, the revisional application being CRR 562 of 2021 is allowed.

All pending connected applications, if any, are consequently disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)