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C.R.R.565 of 2021

In Re: A petition under Section 482 of the Code of Criminal Procedure, 1973;

Ashok Mehra and another
Versus
The State of West Bengal and another

Mr. Ayan Bhatacherjee,
Mr. Syed Nurul Arefin,
Mr. Rahul Singh.
…for the petitioners.
Ms. Sayanti Santra.
…for the opposite party no.2.
Mr. Saibal Bapuli,
Mr. Arijit Ganguly,
Mr. Sanjib Kr. Dan.
…for the State.

The present revisional application has been preferred for quashing of the proceeding of Case No.C.S. 66093 of 2018 under Sections 420/34 of the Indian Penal Code as also the orders dated July 21, 2018 and July 6, 2019 pending before the learned Metropolitan Magistrate, 14th Court, Calcutta.

The allegations made in the petition of complaint is that the complainant is a proprietorship Concern carrying on business of supplying steel products. The present petitioners being accused nos.2 and 3 on behalf of Atlantic Projects Limited approached the complainant for supply of M.S. TMT Bars at NBCC, Polytechnique, L & T Math, Memari, Burdwan. The complainant supplied goods worth Rs.6,23,385/- against proper bills and vouchers. The goods were loaded and transported to the destination at Burdwan and were duly received at the place. The complainant thereafter regularly started contacting the accused-company and its directors and on one pretext or the other they were avoiding payment to the complainant. However, in discharge of their existing legal dues in relation to the goods supplied to the accused-company a cheque bearing no.014838 dated 04.06.2016 amounting to Rs.6,23,385/- drawn on Dena Bank of India, Burrabazar, Kolkata-700 073 was duly signed by one of the accused as a director in favour of the complainant and it was assured that the said cheque would be honoured on presentation. There was a further request that the said cheque should be presented when the information would be sent to the complainant. The complainant waited for a considerable period of time and did not deposit within its validity period on an expectation that the accused-company would repay the amount of the complainant either by cash or by issuing fresh cheque but to the utter surprise the accused persons neither repaid by way of cash or by way of fresh cheque. The complainant on various occasions went to the office of the accused-company, met with the accused and claimed his legitimate dues after the validity of the cheque was over. However, the accused persons on different pretext deferred in respect of the payment and/or claim of the complainant. However, having no other alternative the complainant through its learned advocate wrote letter dated 08.03.2018 to the accused demanding amount covered by the chqeue as also in respect of the goods supplied i.e.Rs.6,23,385/- from the complainant to be paid within 15 days from the date of receipt of the said demand notice but the said notice returned back with the endorsement “Left”.

The complainant alleges that the accused persons entered into a conspiracy and by way of their business intention allured the complainant to part with its goods and did not have the intention to pay in respect of the supplied goods. Additionally, it has been stated that from the very inception the accused persons had the intention for causing wrongful loss to the complainant and enrich themselves with wrongful gain. It has been contended if the complainant had previous knowledge that the accused persons had the intention of cheating or committing criminal breach of trust in respect of the goods supplied and entrusted to them, he would not have acted upon the representation of the accused persons. The complainant, as such, prayed before the learned court for issuance of process under Sections 420/406/34 of the Indian Penal Code.

On the basis of the aforesaid complaint, learned Chief Metropolitan Magistrate, Calcutta was pleased to take cognizance of the offence and transferred the case to the learned Metropolitan Magistrate, 14th Court, Calcuta. Learned Metropolitan Magistrate, 14th Court, Calcutta by its order dated 06.07.2019 was pleased to issue process after examination of the complainant and its witness.

A perusal of the initial evidence of the complainant and its witness reflect that the main contention is that they supplied M.S. TMT bars at Bansdroni P.S. Site amounting to Rs.6,23,385/- in the month of May, 2016 as per the order placed by the accused company. The bill and challan was thereafter raised. Goods were supplied through transport, namely, Jadav Road Ways. The accused-company gave post dated cheques of 15 days and assured the complainant that they would release the fund. The cheque was not placed as the accused requested him to hold the cheque. The accused thereafter failed to pay the amount and took time for payment and, as such, the accused has cheated the complainant and the accused had no intention to make payment from the inception. The same contention has been made by both the witnesses, that is, the complainant, namely, Rahul Bansal and the other witness being accountant, namely, Vivek Bansal.

Mr. Ayan Bhattacherjee, learned advocate appearing for the petitioner submits that even if the allegations made in the petition of complaint are accepted to be true in its entirety and they are accepted to be correct, the same fails to make out any case so far as the present petitioners are concerned. According to the learned advocate, the present case has been initiated for recovery of money and there is no element of cheating involved. Learned Metropolitan Magistrate issued process only under Sections 420 and 34 of the Indian Penal Code. Learned advocate in order to substantiate his argument drew the attention of the Court to the relevant part of the complaint and compared the same with the examination of the witnesses in the initial evidence.

It has been pointed out that the comparison of the core allegations would reflect that the case is restricted to supply of goods and payment of money. To that effect, attention of the Court was also drawn to last paragraph (paragraph 10) of the petition of complaint wherein the complainant has contended regarding the accountability to refund money. Learned advocate emphasises that it was open to the complainant to approach the appropriate forum for recovery of dues or at the relevant point of time to invoke the provisions of Section 138 of the Negotiable Instruments Act, the complainant having not done the same, he cannot invoke the provisions under Section 420 of the Indian Penal Code subsequently, by giving a civil dispute the cloak of a criminal proceeding.

Ms. Sayanti Santra, learned advocate appearing for the opposite party no.2 submits that from the very inception the accused did not have the intention to pay the money in respect of the goods which were received by them. It has been contended that the accused persons do not dispute receipt of the goods and after bills and challans were raised issued the cheque. However, there was a request on the part of the accused persons for not presenting the cheque without the same being informed and the complainant being a bona fide citizen having heard the request of the accused persons have been exposed to such suffering of financial loss. It has been emphasizsd that had the complainant known from the inception he would not have supplied the goods to the accused-company and the present case, according to the learned advocate, do create a circumstance where by means of fraudulent representations the accused persons have wrongfully enriched themselves.

I have considered the submissions advanced by the learned advocate for the petitioners as well as that of the complainant/private opposite party no.2. I have also taken into account the allegations made in the petition of complaint and the initial evidence under Section 200 of the Code of Criminal Procedure which were taken into account by the learned Metropolitan Magistrate, 14th Court, Calcutta prior to issuance of process. On an assessment of the same, I find that the complainant by his conduct has expressed two things:

(1) Firstly, he has decided to supply the goods without taking any advance and thereafter raised bills and challans. Additionally, he has not presented the cheque which was handed over to him in the year 2016. Further, the demand notice which was issued was for claim of the supply of goods in this case and not even a notice under Section 138 of the Negotiable Instruments Act.

(2) Secondly, the paragraph 10 of the complaint reflects that the complaint has been filed for refund/repayment of the amount for which the goods have been supplied.

If a businessman/complainant decides to carry on its business in a manner which suits his purpose without adhering to the remedies available in law and thereby intending to take a subsequent plea that he has been deceived from the inception, a court of law on an appreciation of the totality of the allegations cannot accede to the same. In this case, what is transparent from the allegations made in the petition of complaint is that the decision to supply the goods without accepting any advance was taken by the complainant, so the same was a policy of the complainant to supply the goods and thereafter accept the money.

A cheque was handed over as has been admitted in the petition of complaint. The cheque was also not presented within its validity period before a bank. The only remedy if he has suffered any loss in respect of the goods supplied for repayment is to approach the civil court for recovery of the dues and/or settlement of accounts.

It is a settled proposition of law that a subsequent failure of promise by no stretch of imagination can come within the definition of Section 415 of the Indian Penal Code to attract the provisions of Section 420 of the Indian Penal Code

Having regard to the same, I am of the opinion that further continuance of the proceeding being C.S. 66093 of 2018 under Sections 420/34 of the Indian Penal Code before the learned Metropolitan Magistrate, 14th Court, Calcutta is an abuse of the process of court which would result in miscarriage of justice. Thus, the same is accordingly quashed.

Consequently, CRR 565 of 2021 is allowed.

Pending application, if any, is 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 of all requisite formalities.

(Tirthankar Ghosh, J.)