

06.01.2023
S/L No.34
KS

C.R.R. 663 of 2021
GSA Retail Limited & Ors.
-Vs.-
M/s. Sarwoday Hosiery Works

The revisional application has been preferred challenging the proceedings being Case No. CN/28/2021 pending before the Learned Metropolitan Magistrate, 13th Court, Calcutta under Sections 406/ 409/ 420 and 120B of the Indian Penal Code.

The sum and substance of the petition of complaint is reflected in paragraph 8 of the petition of complaint which is set out as follows:-

“That, when the complainant firm insisted for the same, the accused persons again promised to issue cheques against their long standing outstanding liabilities. However, the complainant firm has received no such cheques, and in fact, in their true conniving fashion, the accused persons had only misguided the complainant firm and waited out and exhausted the time, after which, recently the accused persons flatly and shamelessly refused that they owe anything to the complainant firm at all. The accused persons however, defrauded in refusing prolonged outstanding sum of Rs.15,53,784/- payable by them to the complainant firm, despite recurrent demands raised.”

It has also been contended that demand for payment of the aforesaid sum was made to the accused persons, however, they have failed and neglected to make such payment and, accordingly, they were liable for the offence under Sections 406/ 409/ 420 and 120B of the Indian Penal Code. Records reflect that by an order dated 21.09.2021, the Learned Magistrate after examining the complainant and its witnesses under Sections 200/202 of the Code of Criminal Procedure was pleased to issue process against the present petitioners fixing a subsequent date for appearance.

The complaint case read as a whole reflects that the case was filed for recovery of outstanding amount of Rs.15,53,784/-. The complaint fails to make out any case under the relevant sections of law as any breach of agreement or for that purpose

failure to repay the outstanding do not make a person liable, until and unless there was initial deception.

On an assessment of the factual circumstances appearing in this case, it would be relevant to rely upon the judgment of the Hon'ble Supreme Court In **MedMeme LLC -Vs.- iHorse BPO Solutions (P) Ltd.** reported in (2018) 13 SCC 374 as follows:-

"12. After going through the allegations contained in the complaint and the material on record, we are of firm conclusion that the matter entirely pertains to civil jurisdiction and not even a prima facie case is made out for the offences under Sections 420, 406 and 409 read with Section 120-B IPC even if the allegations contained in the complaint are to be taken on their face value. The complaint gives a clear impression that it was primarily a case where the respondent had alleged breach of contract on the part of the appellants in not making the entire payments for the services rendered to the appellants. On the other hand, it is not in dispute that substantial amounts have been paid by the appellants to the respondent company for the services rendered."

In **Binod Kumar -Vs.- State of Bihar** reported in (2014) 10 SCC 663 paragraph 19 is relevant for the purpose of this case is as follows:-

"19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120-B IPC, is liable to be quashed."

I have assessed the allegations in the background of the settled proposition of law and I am of the opinion that no case has been made out for prosecuting the present petitioners.

Accordingly, all further proceedings and all orders passed in connection with Case No.CN/28/2021 pending before the Learned Metropolitan Magistrate, 13th Court, Calcutta is hereby quashed.

Thus, C.R.R. 663 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)