

06.07.2023
Item no.54
Court No.551
Avijit Mitra

CRR 753 of 2018
with
IA No. CRAN 2 of 2022

Anand Singh Baid @ Ananda Bed & ors.

Versus

The State of West Bengal & anr.

Mr. Ujjwal Datta

....for the petitioners

Mr. Narayan Prasad Agarwala,

Mr. Pratick Bose

....for the State

The instant criminal revision has been preferred under Section 482 of the Code of Criminal Procedure for quashing of the entire proceedings pending before the learned Judicial Magistrate, 2nd Court, Burdwan being Complaint Case No. C.R. 399 of 2015 under Sections 323/504/506 of the Indian Penal Code.

The present petitioners are arraigned as accused persons before the learned jurisdictional Magistrate, in a petition of complaint filed by the present opposite party no.2 dated 30th May, 2015. After receiving the petition of complaint, the complainant along with his one witness was examined on solemn affirmation, on the basis of which the process was issued against the present petitioners.

The petitioners are here for quashing the entire criminal proceedings. It is the fact of the petitioners before this Court

that the petitioner nos. 1, 2 and 4 are the Directors of M/s. Solux Galfab Private Limited having its registered office at 10, Canning Street, Kolkata-700001. Petitioner nos.3, 5 to 8 are the family members of petitioner nos. 1, 2 and 4.

It is the case of the petitioners that during the course of their business they come to contact with the present opposite party no.2 for construction of some houses/quarters in Orissa. Accordingly, a contract paper was signed between the *de facto* complainant and the present petitioners. During the course of such construction it appears to the petitioners' company that the progress of work as well as the quality of construction is not up to the mark. Accordingly, they ordered not to construct further. A dispute cropped up between the parties. Thereafter a settlement was arrived at, accordingly a memo of settlement was executed between the parties. On the basis of such final settlement, the petitioners have paid the outstanding dues amounting to Rs. 3,75,000/- in favour of Molla Construction Private Limited and Rs. 2,25,000/- to Janata Constructions. The *de facto* complainant is the proprietor of the Janata Constructions.

The payment was duly encashed by the Janata Constructions/*de facto* complainant in the year 2014. After long one year without any specific reason, the defacto complainant has initiated the instant false complaint before the learned jurisdictional Magistrate.

Learned advocate for the petitioners further submits that the present petitioners are residing at Kolkata but the complaint case has mentioned the address of the present petitioners to be under care of Solvent Plant Sethji at Mill of Pemrah under Police Station and District Burdwan. The petition of complaint has also mentioned the address of Ballygunge, Kolkata.

During the course of argument, the learned advocate for the petitioner also cited the Annexure 'A' i.e. the contract of work entered into between the petitioners' company and the defacto complainant, wherein it has been specifically mentioned that in case of any dispute the competent court in Kolkata only have the jurisdiction. He further pointed out that the present petition of complaint was filed only to harass the present petitioners and the family members of the petitioners. No such incident happened as stated in the petition of complaint. They never assaulted the petitioners at any point of time as stated in the petition of complaint. Another point raised by the learned advocate for the petitioners that the learned Magistrate has committed error for not conducting the preliminary enquiry before issuing the process. The present petitioners have their residential address within the jurisdiction of the Kolkata as the instant complaint was filed before the learned Magistrate at Burdwan. So before issuing the process the learned Magistrate shall have adopted the procedure enumerated under Section 202 of the Code of Criminal Procedure. On that score the instant petition of complaint is liable to be quashed.

Learned advocate for the petitioners also pointed out that the notice of the instant revision has been issued several times upon the defacto complainant. It appears from the affidavit of service that, they refused to accept notice. Thus they are not at all interested to proceed with this matter. At this juncture the harassing complaint needs to be quashed.

Learned advocate on behalf of the State submitted before this Court that one petition of complaint was filed before the learned jurisdictional Court. The defacto complainant as well as one of his witness were examined on SA. The learned Magistrate after satisfying the content of the petition of complaint is of opinion that *prima facie* material are there against the present petitioners. Thus the process was issued. This is a very initial stage of criminal proceeding. The criminal proceedings cannot be quashed.

Learned advocate for the State is of also opinion that it would be appeared from the examination of the defacto complainant on SA that the materials under Section 323 of the Indian Penal Code has been made out. Thus the criminal proceedings cannot quashed.

Heard the learned advocates. Perused the materials on record.

It appears to me that the instant petition of complaint contains the fact of work done by the defacto complainant by virtue of an agreement with the petitioners' company. Some amount was also paid by the petitioners' company to the defacto

complainant and from the document it appears that they have also received such amount. The petition of complaint discloses on the day of incident the present petitioners assaulted the defacto complainant by fists and blows and also snatched some documents. The particulars of the documents was not specifically mentioned.

It further appears that the petitioners have proceeded to the local police station but the police station has refused to receive any complaint. The instant criminal revision is pending since 2018. Several times notices were served upon the defacto complainant. It appears from the affidavit of service that the notices were served upon the de facto complainant but they refused to accept the registered consignment. Moreover it appears to me that the address of the present petitioners which appears to be within the jurisdiction of the learned Magistrate is not at all proper. On that score the learned Magistrate should have adopted the procedure of preliminary enquiry under Section 202 of the Code of Criminal Procedure before issuing the process.

According to the decision of Hon'ble Supreme Court in State of Haryana Vs. C.H. Bhajanlal in para 108 following the observations of the Hon'ble Apex Court, it appears to me that the instant criminal revision is harassive and purposive.

Considering the entire circumstances I find there is merit to entertain the instant criminal revision. The present opposite

party no.2/defacto complainant has only initiated the criminal proceeding on sheer vengeance.

Considering the same, the instant criminal revision has got merit and is allowed.

The criminal proceedings pending before the learned Judicial Magistrate, 2nd Court, Burdwan being Complaint Case No. C.R. 399 of 2015 under Sections 323/504/506 of the Indian Penal Code and the connected orders thereof is hereby quashed. The connected applications, if pending, are also disposed of.

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

(Subhendu Samanta, J.)