

12.04.2023
Jaydev
Court-42
Item No.4

CRR/954/2023
Ayush Dhanania
Vs.
State of West Bengal & Anr.

For the Petitioner:-

Mr. Debashis Roy, Adv.,
Mr. Anand Keshari, Adv.

For the Opposite Party No.2:-

Mr. Sekhar Kr. Basu, Sr. Adv.,
Mr. Sanjay Banerjee, Adv.,
Mr. Pratim Priya Dasgupta, Adv.,
Mr. Joydeep Bhattacharjee, Adv.

For the State:

Mr. Ranabir Roychowdhury, Adv.,
Mr. Mainak Gupta, Adv.

The petitioner was working as a commission agent of opposite party No.2 since 2016. Sometimes in March, 2021 the opposite party No.2 obtained an order from Public Health Engineering Department, Government of Meghalaya (PHE) for supply of G.I pipe. The petitioner was engaged by the opposite party No.2 to get the payments against delivery in return for commission. On 22nd September, 2021 the opposite party No.2 was unable to deliver the said G.I pipes within the stipulated time period. A meeting was held in which the opposite party No.2 prayed for an extension of time for compliance of the said demands made by the Public Health Engineering Department, Government of Meghalaya. On 16th December, 2021 the Public Health Engineering Department, Government of Meghalaya published a newspaper notification alleging, inter alia, that the opposite party No.2 committed fraud upon the said

department by supplying materials of inferior quality. Thereafter, Public Health Engineering Department, Government of Meghalaya filed an FIR against the petitioner investigation of which ended in filing final report and the Investigating Officer prayed for discharging the petitioner. On 16th September, 2022 the petitioner made a demand for an amount of Rs.13139182/- upon the opposite party No.2. The petitioner also initiated a proceeding under Section 9 of the Insolvency and Bankruptcy Code (IBC) against the opposite party No.2 before the NCLT, Kolkata Bench. On 12th October, 2022 the opposite party No.2 lodged a complaint before the Sankrail Police Station. On 5th November, 2022 the learned Chief Judicial Magistrate passed an order under Section 156(3) of the Cr.P.C upon an application filed by Jindal (India Ltd) against the petitioner and eight others. On 20th January, 2023 the petitioner received notice under Section 160(1) of the Cr.P.C issued by the Investigating Officer for his interrogation and the petitioner duly complied with the same on 23rd January, 2023.

Under the above backdrop the petitioner has filed the instant revision under Section 482 of the Cr.P.C praying for quashing of the proceeding being G.R Case No.6348 of 2022 arising out Sankrail Police Station Case No.1144 of 2022 dated 8th November, 2022 under Sections 419/420/467/468/469/471/409/120B of the IPC pending before the learned Chief Judicial Magistrate at Howrah.

In the application under Section 156(3) of the Cr.P.C it is alleged by the complainant company that the complainant being the successful bidder was entrusted by the PHE Department, Government of Meghalaya for supply, delivery and stacking of ISI marked medium quantity G.I pipes for water supply. The complainant company was directed to supply 17,393 MT of pipes over a

period of 8-10 months to various designated depots owned or controlled by the PHED, Government of Meghalaya and the Office of the Chief Engineering, PHE, Shillong, Meghalaya. The complainant company appointed 11 transporters including the accused being the logistics companies for the execution of the said job to transport consignments of the said pipes from Jangalpur Factory under Sankrail P.S, designated depots of the PHED, Meghalaya. It is alleged that the said consignments were not delivered at the respective destination. The accused transport companies have entered into a criminal conspiracy with the present petitioner and another co-accused person to misappropriate the said consignments by forging false consignment notes/lorry challans. The petitioner has misappropriated themselves as employees of the complainant companies and misused the office stamp and took unauthorised actions on behalf of the complainant company herein.

It is submitted on behalf of the petitioner that the petitioner has a long standing business relationship with the complainant company since 2016. The job to act as a commission agent for the complainant company started on or about 20th March, 2021. The petitioner has been acting as independent agent of the complainant company, being entrusted with the responsibility to check the consignments sent by the complainant company, to ascertain as to whether the consignments are in proper condition or not. The petitioner was further entrusted by the complainant to request the receiving entities for making the payments against delivered consignments expeditiously in favour of the complainant company. For such act the petitioner is entitled to receive commission from the complainant company. The petitioner has no role to play in the matter of transportation, diversion and re-routing of consignments and it is only the transportation and logistics companies who are privy to such information

and instructions relating to transportation, diversion and re-routing of consignments. Since the complainant company was unable to deliver the products to the PHED, Government of Meghalaya within stipulated time period, a meeting was held on 22nd September, 2021 wherein the complainant company have prayed for extension of time till 31st October, 2021. The PHED, Government of Meghalaya have initiated an FIR dated 11th January, 2022 against the petitioner under Sections 419/420/34 of the IPC on the allegations mentioned therein but police submitted final report after investigation before the learned Magistrate which was accepted by him and the petitioner was discharged. Subsequently, the petitioner demanded his commission by issuing e-mail to the complainant company. The complainant company has filed the application under Section 156(3) of the Cr.P.C only after the petitioner demanded payment of his commission and also to frustrate the proceeding under Section 9 of the Insolvency and Bankruptcy Code filed by the petitioner before the National Company Law Tribunal, Kolkata.

It is submitted by Mr. Roy, learned Advocate for the petitioner that the complainant company has long standing commercial relationship with the petitioner. The petitioner prayed for payment of commission after completion of his job. The disputes between the parties are essentially commercial and civil in nature arising out of a contract. Under such circumstances, the criminal proceeding is not entertainable and the same is liable to be quashed.

Mr. Ranabir Roychowdhury, learned Advocate for the State has produced the case diary. During investigation the I.O recorded the statement of the witnesses including the petitioners. From the course of investigation this Court does not find any incriminating

material which prima facie suggests offence under Sections 419/420/467/468/469/471/409/120B of the IPC. In order to establish a charge under Section 419/420 of the IPC there must be adequate evidence to the effect that the petitioner practiced deception upon a person and thereby dishonestly and fraudulently induces that person to deliver any property to any person or to consent that any person shall retain any property. The second part on the other hand, envisages the cases whereby deception practiced upon a person, the accused intentionally induces that person to do or omit to do something which he would not do or omit to do, if he were not so deceived and which act or omission caused or was likely to cause damage or harm to that person induced in body, mind, reputation or property. From the FIR prima facie this Court does not find the ingredients under Section 415 of the IPC therefore the accused persons cannot be charged under Section 419/420 of the IPC.

The Investigating Officer did not find any evidence of making false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with the property or enter into any express or implied contract or with intent to commit fraud. In the absence of such evidence being collected by the Investigating Officer charge of forgery also cannot stand against the accused. No case has also been made out by the petitioner that the petitioner misappropriated or committed criminal breach of trust in respect of any valuable property of the complainant company. The dispute between the parties is essentially civil in nature arising out of commercial transactions. The complainant company has tried to give a criminal colour of the dispute between it and the petitioner. In view of such circumstances, I do not find any ground for continuance of the criminal proceeding against

the petitioner. Accordingly, further proceeding being G.R Case No.6348 of 2022 arising out of Sankrail Police Station Case No.1144 of 2022 dated 8th November, 2022 under Sections 419/420/467/468/469/471/409/120B of the IPC be quashed.

(Bibek Chaudhuri, J.)