

CRR 1029 of 2011

In the matter of : V. Gupta of Messrs Shilpa Saree

Ms. Manaswita Mukherjee
... for Amicus Curiae

Parties are not represented despite service of administrative notice.

Heard Ms. Manaswita Mukherjee, learned Amicus Curiae.

This application under Section 482 of the Code of Criminal Procedure was filed by Mr. V. Gupta of M/s. Shilpa Saree seeking an order of quashment of the proceeding being C-21250 of 2008 under Sections 420/120B of the Indian Penal Code, pending before the learned Metropolitan Magistrate, IXth Court, Calcutta including the order dated 7th January, 2011 passed by the learned Trial Court.

Briefly stated that M/S. Shankar Styles Station Private Limited a company within the meaning of Companies Act entered into an agreement with M/S. Shilpa Saree and thus the complainant agreed to supply sarees on credit to the accused No. 1 through accused No. 2, an agent on condition that value of the goods delivered would be paid by the accused No. 1 by account payee cheques. The complainant supplied sarees worth Rs.4,28,973/- to the accused No. 1 through accused No. 2 and the accused persons issued account payee cheques aggregating to

Rs.4,28,973/- as agreed upon. Out of the aforesaid amount a sum of Rs.2,20,000/- was realized but four cheques were dishonoured by the banker of the accused persons. Being requested by the accused persons the complainant did not initiate any action but accused persons refused to clear the credit balance. It is contended that the accused persons induced the complainant to supply the sarees worth Rs.4,28,793/- and made him suffer for wrongful loss to their benefit.

Learned Trial Court invoked the provision under Section 200 Cr.P.C. and issued process. From the attending of the facts of the case it is admitted that out of 13 cheques, four were dishonoured. Admittedly the parties entered into agreement and the accused persons made part payment against the goods delivered to him. Therefore there is no reason to hold that accused persons had dishonest intention since inception of contract. It is rightly submitted by Ms. Mukherjee that after the cheques got bounced the efficacious relief available against the accused persons was to take out petition of complaint under Section 138 of the N.I. Act. As there is no ingredient of offence within the meaning of Section 415 of the I.P.C., I am of the view that it would be an abuse of process if the petition of complaint is allowed to remain in force keeping in mind the judgment of Hon'ble Apex Court pronounced in the case of ***State of Haryana Vs. Bhajan Lal reported in AIR 1992 SC at page 604.***

Let a copy of the order be sent to learned Trial Court for information and necessary action.

With the aforesaid observation, the Criminal Revisional application being **CRR 1029 of 2011** thus stands disposed of.

Before parting with the case I record my sincerest appreciation for the able assistance of Ms. Manaswita Mukherjee, as Amicus Curiae.

(Siddhartha Roy Chowdhury, J.)