

CRR 1105 of 2011

In the matter of : Biswa Ranjan Das & Anr.

Mr. Sandipan Ganguly  
Mr. A. Basu  
Mr. Amit Kr. Saha  
Ms. Priyanka Sarkar                      ... for the petitioners  
  
Mr. B.K.Ray                                      ... for the State

Despite several attempts, notice could not be served upon the private opposite party who happens to be the complainant before the learned Trial Court.

This application challenges the order of learned Additional Chief Judicial Magistrate, Siliguri passed in Complaint Case No. C.R. 92 of 2010.

Briefly stated, the petitioners are the partners of a firm under the style "Arya Bakery" having retail outlets in and around the city of Siliguri and dealing in business of bakery goods. In order to expand their business, the petitioners entered into an agreement with 'The Himalayan Co-operative Milk Producers' Union Ltd.,' popularly known as 'Himul', for the purposes of appointment of a franchisee of Himul with regard to Himul parlour situated at L-5 Old SJDA Building, Hill Cart Road, Pradhan Nagar, Siliguri, upon payment of Rs.5 lakhs as security deposit, the petitioners have been paying regularly a sum of Rs.6,500/- towards monthly rent in favour of Himul. In the interest of their, firm, the petitioners took a decision to appoint a smart and educated employee who would be responsible for the entire

business of the Himul Parlour and, accordingly, they appointed Sri Ratan Mahajan as the temporary in-charge of Himul Parlour, who was entrusted to sell all the Himul products and products of Arya Bakery at the rate fixed by the Arya Bakery. He was to deposit the sale proceeds of the Himul Parlour with Arya Bakery. An agreement was also entered into by and between the partners of Arya Bakery and the aforesaid employee. But the opposite party no. 2 soon after his employment started acting contrary to agreed terms and conditions. He used to bring his family members in the said shop room who used to interfere with the braziers of the Himul Parlour. The opposite party no. 2 turned a deaf ear to the request of his employers not to act in contravention to the terms of agreement.

On 17.3.2011, at about 12.35 hours police conducted a search and seizure, and petitioners came to know that it was conducted pursuant to an order passed in criminal Complaint Case No. 92 of 2010 instituted by the private respondent. On further inquiry and after obtaining certified copy of the order sheet the petitioners came to know that the opposite party no. 2 filed a petition of complaint and learned Additional Chief Judicial Magistrate, Siliguri after taking cognizance issued process against them under Sections 386/406/418/420 and 379 of the Indian Penal Code.

Mr. Ganguly, learned senior counsel appearing on behalf of the petitioners makes me go through the copy of the petition of complaint 'Annexure P-4' wherefrom I find that the opposite party no. 2 in his petition of complaint depicted himself as commission

agent of the petitioners duly appointed by Arya Bakery who agreed to give 15 per cent commission on the sale proceeds. The complainant further contended to have invested in the said parlour business a sum of Rs.5,00,000/- by way of cash and cheques from his account and that the parlour was doing good business due to initiatives, claimed to have been taken by the complainant. All on a sudden on 31.01.2010 at about 3-30 P.M. when the parents of the complainant were in the shop, the accused persons entered therein and snatched the keys of the shop from the custody of his parents, took the sale proceeds of the day and ousted them from the shop. The accused even did not allow the parents of the complainant to take out the belonging of the complainant like mobile phone with SIM card. They were threatened of being physically assaulted, even to be killed. The complainant demanded the money so invested by him but the accused nos. 1 and 2 refused to return the money. Police was informed but no action was taken by the police.

Learned Additional Chief Judicial Magistrate, Siliguri, having considered the statement on solemn affirmation, made by the complainant and his witnesses, while examining the petition of complaint under Section 200 of Cr.P.C. was pleased to issue process calling upon the petitioners to surrender to the jurisdiction of the learned Trial Court. According to Mr. Ganguly, learned senior counsel, neither the petition of complaint nor the statement on solemn affirmation contains ingredient of offences for which process has been issued.

There has to be some kind of contracts which would make the petitioners bound to protect the opposite party, therefore, in absence of any legal contract to protect the opposite party no.2, the complainant of the criminal proceeding, offence under Section 418 of the Indian Penal Code cannot be said to have been committed.

Nothing was taken out of the possession of the complainant or any person without their consent. The allegation of the opposite party no. 2 in the petition of complaint was that the accused persons did not allow to take out the belongings of the complainant like mobile phone fitted with a SIM card. This statement even if assumed to be correct does not fit into the definition of theft as laid down under Section 378 of the Indian Penal Code.

The allegation of extortion by putting a person fear or grievous hurt is of no substance. In order to commit an offence called extortion, it is to be proved that the accused persons put the complainant or his parents as alleged in fear of any injury and thereby induced the person so put in fear to deliver any property or valuable security. When the petitioners who have been arrayed as accused persons, in a criminal proceeding, admittedly are the masters of the complainant or the employer of the complainant, they had no reason to induce the complainant to deliver anything, by putting him in fear of injury. Therefore, learned Jurisdictional Magistrate, did not have any reason to issue process.

Taking into consideration the declaration made by the complainant on 04.6.2009, I do not find any ingredient of offence

from the four corners of the petition of complaint to justify the order under Section 204 of the Criminal Procedure Code.

There is nothing to show that the petitioners, since the date , the complaint took charge had any intention to dupe him. This rules out the scope of invocation of the provision of Section 415 of the I.P.C. and thereby to hold the petitioners even prima facie, guilty of committing any offence within the meaning of Section 420 of the I.P.C. Absence of any contractual obligation to protect the petitioners as well absence of ingredient of offence under Section 415 of I.P.C., provision of Section 418 of the I.P.C has no application. Similarly, there is prima facie no ingredient of offence under Sections 386 and 379 of I.P.C.

The impugned order as well as the proceeding being case no. C.R. 92 of 2010, is in my humble opinion is manifestation but abuse of the process of law attended with *mala fide* and to avert such abuse of process of law, I am inclined to invoke the provision of Section 482 of Cr.P.C. to quash the proceeding.

C.R. Case No. 92 of 2010 pending before learned Additional Chief Judicial Magistrate, Siliguri stands quashed.

With this observation, the criminal revision is disposed of along with application, if any.

There shall be no order as to costs.

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

(Siddhartha Roy Chowdhury, J.)