

19-04-2023
Subha
Item no. 57
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 1314 of 2021

Surya Prakash Baid
-versus-
The State of West Bengal & anr.

Re : An application under Section 482 read with Section 401 of the Code of Criminal Procedure.

Mr. Dilip Kumar Samanta
Mr. Biswapriya Samanta

...for the petitioner.

Mr. Srinjoy Das

....for the opposite party no.2.

Mr. Saibal Bapuli, Id. APP,
Mr. Arijit Ganguly
Mr. Sanjib Kumar Dan

...for the State.

Affidavit of service so filed by the petitioner be kept with the record.

The present revisional application has been preferred challenging the continuance of the proceedings being Purulia Town P/ S. Case No. 39 of 2021 dated 06.04.2021 under Sections 420/506 of the Indian Penal Code.

Learned advocate appearing on behalf of the petitioner submits that the allegations made in the first information report were to the effect that the accused petitioner has been alleged to have deprived the complainant of the interest and profit in the business which was entered into on the basis of an agreement.

Learned advocate has also drawn the attention of this court to the relevant part wherein it has been alleged that by an agreement

dated 1st August, 2018 the accused was liable to pay the complainant interest at the rate of 18% per annum on the invested amount of Rs. 38.10 lakhs with the profit share of 50% which amounted to interest of Rs.15 lakhs and profit of Rs.35 lakhs.

There is no allegation according to the petitioner that the principal amount has not been repaid. Learned advocate submits that the dispute is relating to share in profit and do not make out any cause of action for registration of the FIR.

Learned advocate for the private opposite party no. 2 submits that the petitioner induced the complainant to part with his property and thereafter refused to share the profits and interest of the business.

Further according to the complainant, the petitioner came down to his shop and threatened him which do also amount to an offence.

Mr. Arijit Ganguly, learned advocate appearing for the State submits a report of SI of Police, Purulia Town PS. Let the report be kept with the record.

The report also reflects that it is related to share in interest and profit of the business. Having regard to the nature of the allegations, made in the first information report, I am of the view that a civil proceeding has been given a cloak of a criminal proceeding and the same, as such, do not attract the provisions of Section 420 of the Indian Penal Code as mere breach of agreement do not give rise to a case of cheating. So far as the offence as contended under Section 506 of the Indian Penal Code is concerned, the materials have not been collected by the Investigating Agency to such effect. The initiation of the case was on the foundation of non-payment of interest

and profit in respect of the amount so advanced

Having regard to the nature of the allegations as earlier observed the same do make out a case for breach of agreement for which the remedy lies to a different forum and no case under Section 420 of the Indian Penal Code is made out.

Accordingly, all further proceedings of Purulia Town P. S. Case no. 39 of 2021 dated 06.04.2021 and all orders passed therein are hereby quashed. However, so far as the other allegations are concerned regarding the offence of threatening, the petitioner would be at liberty to invoke the jurisdiction of the learned Magistrate under Section 200 of the Code of Criminal Procedure.

With the aforesaid observations, the revisional application being CRR 1314 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

