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C.R.R.1798 of 2021

In Re: A petition under Section 482 of the Code of Criminal Procedure,
1973;

Vijay Dabriwal and another
Versus
The State of West Bengal and another

Mr. Ayan Bhattacharjee,
Mr. Apalak Basu,
Ms. Ritu Das,
Mr. Sangkrito Ray Chaudhuri,
Ms. Sharmistha China.
...for the petitioners.

Mr. Bidyut Kumar Roy,
Ms. Rita Dutta.
...for the State.

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

Ms. Das, learned advocate appearing for the petitioners
challenges the continuance of the proceedings of CN-124 of 2021
under Sections 406/409/420 read with Section 120B of the Indian
Penal Code which is pending before the learned Metropolitan
Magistrate, 13th Court, Calcutta. Learned advocate has drawn the
attention of the Court to the allegations made in the petition of
complaint and submitted that the petitioners were neither the
beneficiary of the transactions referred to in the petition of
complaint nor they have any complicity in the alleged offence.
Further, the allegations in the complaint itself reflect that the sum
which was advanced as loan was directly transferred to the account

of accused no.1. The persons who are responsible for the conduct of the business of the company or his associates allegedly are the accused nos.2 to 8 as referred to in the complaint. The only allegations which is appearing against the present petitioners are that the present petitioners have stated that they would be guarantors in case the accused nos. 1 to 8 failed to repay the amount so entrusted.

I have taken into account the initial evidence of one Sachin Agarwal and Krishna Kumar Pandey who were examined under Sections 200/202 of the Code of Criminal Procedure. So far as the authorised representative of the complainant-company Sachin Agarwal is concerned, he has reiterated regarding the allegations made in paragraph 2 of the petition of complaint so far as the present petitioners are concerned. The other witness Krishna Kumar Pandey referred the petitioners as broker and it is on their representation and assurance such financial accommodation was extended.

I have also taken into account the nature of the allegations made in the petition of complaint and primarily the same is for failure to refund the amount which was extended as financial accommodation. Admittedly, in the four-corners of the complaint, there is no allegation that the present petitioners were beneficiary to the amount which was transferred or was enjoyed by the accused nos.1 to 8 in the petition of complaint. Even if the allegations are taken to be correct in its entirety, the only allegation against the petitioners is that they are financial brokers who

supported the cause of the accused nos.1 to 8 for obtaining financial assistance and guaranteed their conduct.

Having regard to the complicity of the present petitioners as has been alleged in the petition of complaint, I am of the opinion that the petitioners cannot be held to be responsible regarding the non-payment or repayment or failure of payment, petitioners were only introducers. There is no case of conspiracy made out to deprive the complainant.

Having considered the totality of the circumstances, I am of the opinion that prima facie the complainant has failed to make out any case so far as the present petitioners are concerned. Accordingly, all further proceedings of Complaint Case No.CN-124 of 2021 under Sections 406/409/420 read with Section 120B of the Indian Penal Code pending before the learned Metropolitan Magistrate, 13th Court, Calcutta is hereby quashed.

Accordingly, CRR 1798 of 2021 is allowed.

Pending application, if any, is consequently disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)