06.02.2023
S/L No.19
KS

C.R.R. 1810 of 2021
With
IA No. CRAN 3 of 2023 [Not Found]
Rishipal Ruhil & Anr.
-Vs.-
Kotak Mahindra Bank Limited

Mr. Bharat Chugh
Ms. Priyanka Agarwal
…..For the Petitioners
Mr. A. Dutta
Mr. Z. Saltan
…..For the O.P.

The present revisional application has been preferred challenging the proceedings arising out of C.S. Case No.49375 of 2021 under Sections 420 and 406 of the Indian Penal Code pending before the Learned Metropolitan Magistrate, 3rd Court, Calcutta. The allegations made in the petition of complaints were to the effect that the complainant is bank namely, Kotak Mahindra Bank. It has been alleged that the accused approached the complainant/bank to provide corporate credit card facility. The complainant after being satisfied regarding the background, proof of identity of residents and sources of income of the petitioner which was found to be true and genuine sanctioned a Credit Card being ACNo.0004780063350004038 which had a Credit Limit for a sum of Rs.12,294,960/-. It has been further alleged that in order to create fake impression upon the bank to show that he was a person of a repute having permanent place of residence and financial capacity documents were submitted. There were assurances given by the accused for timely repayment of the said Corporate Credit Card and Cash limit facilities which would be availed after issuance of the said corporate credit card. The relevant part of the complaint by way of which the complainant has invoked the jurisdiction of the criminal court is set out as follows:-

"That making false representations to the complainant bank, the accused person was successful to deceive the complainant bank, made the complainant bank a complete befool and induced the complainant for a total value of Rs.12,294,960/- of the same corporate credit card and after using the same by way of various purpose, the accused person adopted subterfuge methods and fraudulent design to hoodwink the complainant and deferred making payment of the said huge amount against the said corporate credit card, total valued with interest of Rs.100,000,00/- only and by this way, making his dishonest intention clear not to make any payment of legitimate dues of the complainant bank and also misused the public money, which is illegally and wrongfully retained by the said accused person.

That observing the dishonest intention of the accused person not to make payment, intimated the accused person in several time by way of phone, but the accused person assured to make payment as early as possible but till date the said outstanding huge amount are not yet paid.

That since the accused person requested the complainant bank to grant him some more time for payment of the aforesaid outstanding dues of the complainant bank, the complainant bank as a matter of courtesy following public ethics kept contact with the accused person, demanding payment, without any action whatsoever, but with the efflux of time, the accused person never displayed any endeavor to make payment to the complainant bank, demanding payment of the said sum of Rs.100,000,00/- only."

The sum and substance of the allegations, as such, is that by way of Credit Card facilities a sum of Rs.12,294,960/- was used by the accused/petitioner and there was an interest due of Rs.1 crore.

Having considered the nature of the transactions complained of and the purpose for initiating the instant complaint case was with the object of recovering outstanding arrears/interest of Rs.1 crore from the present petitioner, I am of the opinion that, as majority regular transactions has taken place, there is no offence under Sections 417/ 426 of the Indian Penal Code being made out. It is a settled proposition of law that mere breach of agreement or contract do not give rise to a cause of action for criminal breach of trust, particularly, in the present case when the parties have continuously transacted amongst themselves.

Having regard to the nature of the transactions complained of, I am of the opinion that a case for recovery is made out, which has been given the cloak of a criminal proceeding.

Thus, all further proceedings arising out of C.S. Case No.49375 of 2021 under Sections 420/ 406 of the Indian Penal Code pending before the Learned Metropolitan Magistrate, 3rd Court, Calcutta as also the orders passed therein are hereby quashed.

Consequently, C.R.R. 1810 of 2021 is allowed.

Pending applications, if any, are disposed of.

Interim order, if any, is made absolute.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)