

16.02.2023

Item No.30
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 1935 of 2021

**Sri Shubhro Goswami & Anr.
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure.

Mr. Nitai Chandra Saha,
Mr. Abhijit Ch. Majumder ... For the Petitioners.

Md. Anwar Hossain,
Ms. Manisha Sharma ... For the State.

Mr. Sugata Mukhopadhyay ... For the Opposite Party No.2.

This revisional application has been preferred challenging the continuance of the proceedings relating to Eco Park Police Station Case No. 59/2021 dated 20.04.2021 under Sections 406/420/386 of the Indian Penal Code. The said case was initiated on the basis of an order passed in an application under Section 156(3) of the Code of Criminal Procedure. The allegations made in the said application are as follows :

The complainant/opposite party no.2 is the owner and proprietor of a construction company viz. M/S. Hindusthan Earth Movers. The accused persons were allotted a plot of land measuring about more or less 200 square metre equivalent to 2 katha 15 chhatak 37 square feet for residential purpose by WBHIDCO at New Town, Kolkata. The accused approached the complainant for construction of their residential unit at the said plot of land and took the

responsibility to make an arrangement for preparation of an agreement regarding the construction of his residence and assured the complainant about the agreement. A typed agreement on a stamp paper was signed by both the parties and in the said agreement, there was a time limit and schedule for completion of the work within 20 months from the date of commencement of the same. After the said work commenced, within 16 months construction work was completed up to 95%. However, there was no permission for construction as per the Building Rule. The accused persons made certain payments at intervals, but all on a sudden, they created hindrances to the construction work on false pretext and disallowed the labours of the company to enter the site where the building was constructed and without paying the dues to the tune of Rs.11,00,000/- to the complainant. On 20.10.2019, the accused persons along with their six associates came to the site of the construction and took custody of the machineries amounting to Rs.2,00,000/- and did not return the same. The complainant apprehended that the said machineries could have been sold. The complainant alleges that the accused persons by their act and conduct caused wrongful loss to the complainant and cheated an amount of Rs.13,00,000/-. The complainant approached Eco Park Police Station, but the police authorities refused to accept any complaint or G.D. entry. The accused having no other option except to approach the Court in view of the offences complained of being committed by the accused persons.

On the basis of the aforesaid complaint, the case was initiated under the provisions of Sections 406/420/386 of the Indian Penal Code.

The present petitioners approached this Court on or about 30.09.2021 when the proceeding relating to Barasat Police Station Case No. 59 dated 20.04.2021 was stayed.

The learned advocate appearing for the petitioner submits that the allegations made in the FIR even if accepted in its entirety and taken as a whole fail to make out any case for the police authorities to investigate as the dispute is purely civil in nature. Learned advocate stressed on the factum of the clauses to the agreement as also the communications which had taken place between the parties and submits that the present proceeding is an abuse of the process of the court and should be nipped in the bud stage.

Mr. Hossain, learned advocate appearing for the State produces the case diary. Learned advocate submits that some documents were collected by the investigating agency at the official site.

Learned advocate appearing for the complainant/opposite party no.2 submits that there are materials available which would show the act and conduct of the present petitioners who by exerting their muscle power took away the machineries and wrongfully retained the same. It has additionally been submitted that the provisions under Section 482 of the Code of Criminal Procedure are to be exercised in the rarest of rare cases and it is only in

exceptional circumstances, the Court should invoke such powers to terminate the proceedings.

I have heard the learned advocates appearing for the petitioners, the State and the private opposite party no.2. The sum and substance of the allegations made in the application under Section 156(3) of the Code of Criminal Procedure which has been treated to be the FIR of the instant case is to the effect that the complainant entered into an agreement and carried out construction work, they were paid from time to time, but all on a sudden, after substantial completion of work, the accused persons unnecessarily stopped the work and restrained the labours from working which resulted loss to the tune of Rs.11,00,000/- and additionally loss of another Rs.2,00,000/- because of illegal withholding of the machineries. The nature of the complaint was for wrongful loss. It is admitted position in the complaint itself that money was paid at intervals. The present case therefore is that on representation, money was paid and construction proceeded. However, the amount which was due was not paid to the complainant. The same as such is a case of breach of agreement and of subsequent failure to pay the money. Once such a situation arises, the provisions of Sections 406 and 420 of the Indian Penal Code are never attracted.

Having regard to the materials which have been collected by the investigating agency, primarily I find that some statements of the witnesses under Section 161 of the Code of Criminal Procedure have been recorded. There were some exchange of lawyer's notices and the agreement

concerned which was entered into between the parties as stated in the FIR. Having considered the nature of the allegations made therein and the transactions entered into between the parties and that the case was initiated only for recovery of outstanding dues, I am of the view that the continuance of the proceedings relating to Eco Park Police Station Case No. 59/2021 dated 20.04.2021 under Sections 406/420/386 of the Indian Penal Code is an abuse of the process of law and if it is allowed to be continued would cause miscarriage of justice.

Accordingly, all further proceedings relating to Eco Park Police Station Case No. 59/2021 dated 20.04.2021 under Sections 406/420/386 of the Indian Penal Code are hereby quashed.

The revisional application being CRR 1935 of 2021 is, thus, allowed.

All pending connected applications, if any, are 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 with all requisite formalities.

(Tirthankar Ghosh, J.)