

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 2159 of 2018****with****CRAN 1 of 2020 (Old NO. CRAN 1147 of 2020)****IN THE MATTER OF****Global Casting Pvt. Ltd. & Anr.****Vs.****State of West Bengal & Anr.**

For the Petitioners : **Mr. Sabyasachi Banerjee, Sr. Adv.,**
Mr. Ayan Bhattacharya, Adv.,
Mr. A.P. Gomes, Adv.,

For the State : **Mr. N.P. Agarwala, Adv.,**
Mr. P. Bose, Adv.,

Judgment on : **29.08.2023**

Subhendu Samanta, J.

The instant criminal revision is preferred u/s 379/401 read with Section 482 of the Code of Criminal Procedure for setting aside an order dated July 19th, 2018 passed by the Learned Metropolitan Magistrate 20th Court at Calcutta in case No. C/ 48727 of 2013 u/s 406/468/420 of the IPC thereby dismissing the application u/s 245(1) of the Code of Criminal Procedure.

The brief fact of the case is that the present respondent no. 2 has filed a complaint case against the present petitioner before the Learned Chief Metropolitan Magistrate, Calcutta. The Learned Chief Metropolitan Magistrate, Calcutta has transferred the said case record to the Learned 20th Magistrate, Calcutta.

The petition of complaint contended the allegation against the present petitioner to the effect that the petitioner No. 1 had supplied inferior quality of goods to the opposite party no. 2 for that the opposite party no. 2 was penalised by its purchaser. It was further alleged that petitioner no. 1 had suddenly stopped to supply the goods to the opposite party no. 2 which had again caused considerable loss to the opposite party no. 2. It has also been pleaded in the said petition of complaint that the petitioner has without intimation or permission of the opposite party no. 2 has deposited some post-dated cheques for encashment beyond the terms and conditions.

Learned Magistrate was pleased to examine the representative of the opposite party no. 2 u/s 200 of the Code of Criminal Procedure and adjourned the prosecution for enquiry u/s 202 of Cr.P.C. One witness was examined u/s 202 Cr.P.C and after perusing the statement of the said witness the

Learned Magistrate has issued the process in the nature of summons against the present petitioner u/s 406/468/420 IPC.

In response to that summons the petitioner appears before the Learned Magistrate and got the order of bail including a favourable order u/s 202/305 of Cr.P.C.

Thereafter the opposite party No. 2 adduced evidences of three witnesses namely PW 1, PW 2, PW 3 respectively before the framing of charge.

At that time the present petitioner has filed an application before the Learned Magistrate u/s 245(1) Cr.P.C therein seeking discharge. After hearing the parties the learned Magistrate has passed the impugned Order on 19.07.2018 by rejecting the application for discharged and fixed the date of framing of charge.

Hence this revision.

Learned Advocate for the petitioner submitted before this court that the impugned order passed by the Learned Magistrate is improper and palpably illegal in the eye of law. Learned Magistrate has failed to appreciate the evidences on record and there by caused error in dismissing the application of the petitioner filed u/s 245(1) of the Cr.P.C. The instant criminal prosecution is purely a civil in nature it has been engineered by the opposite party in a criminal proceeding. The

instant criminal proceeding filed by OP No. 2 is counter blast of the proceeding instituted by the petitioner no. 1 against the opposite party No. 2 and its directors are attending as accused before the Learned Judicial Magistrate at Alipur, South 24 Parganas alleging therein the commission of offences punishable u/s 138/141 of Negotiable Instrument Act 1998, which was registered as case no. C/7039 of 2012 pending before the Learned Judicial Magistrate second Court Alipur, South 24 Parganas. At the stage of trial.

The instant proceeding was only initiated to harass the present petitioner. The allegation as recorded in the petition of complaint has never made out the ingredients of offences punishable u/s 406/468/420 of the IPC. The Learned Magistrate must have considered the evidences of PW 1 PW 2 and PW 3 to find out the sole purport of the ingredients of offence, whether made out or not. Learned Magistrate thus committed error in dismissing the application of the petitioner u/s 245(1) Cr.PC. The impugned order passed by the Learned Magistrate is liable to be set aside.

Learned Advocate appearing on behalf of the state submits that the evidences before charge has already been recorded by the Learned Magistrate. Learned Magistrate has opined that the factual matrix cannot be assessed during the

evidence before charge. Learned Magistrate during the evidence before the charge is a further view that only after conclusion of trial, the correctness of the evidences of PWs can be ascertained. Thus the impugned order passed by the Learned Magistrate suffered no illegality. There is no merit to entertain the instant criminal revision.

Opposite party no. 2 was not represented in spite of the service.

Heard the Learned Advocates perused the materials on record. The basic allegation made in the complaint by the complainant company is that, the accused company has supplied some raw materials which is of inferior quality; due to supply of such raw materials of inferior or quality, they have suffered loss and penalised by their purchasers (Tata Motors). It is stated in the petition of complaint that there are several meeting between the complainant company and the accused company to settle out the matter. Finally it has been alleged that the accused company has stopped supplying the raw materials without any information. It has also been alleged that without complying the necessary terms and conditions the complainant company has deposited some Post dated cheques without information of the complainant.

The business transaction between the two companies is well founded in the petition of complaint. Let me consider whether the offence punishable u/s 406/468/420 IPC is at all made out by the said petition of complaint along with evidences collected by the Learned Magistrate before the framing of charge. Section 406 IPC enunciated punishment for framing Breach of Trust.

Criminal breach of trust was defined u/s 405 of the IPC.

405. Criminal breach of trust.- *Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'.*

There are difference between the criminal breach of trust and breach of trust civil in nature Hon'ble Supreme Court in **Sudhir Vs. CBI (2009) 8 SCC 1** has formulated that **"Act of breach of trust per se may involve a civil wrong but a breach of trust with an ingredients of mens rea would give rise to a criminal prosecution. Criminal breach of trust would inter alia, mean using or disposing of the property by a person who is entrusted with, or as otherwise domain there form. such an Act must not be done dishonestly but**

also in violation of any direction of law or in contract expressed or implied relating to carry out the trust". In the present case it has been alleged by the complainant company that the accused company has committed the criminal breach of trust by not supplying the raw materials. It has stated in the petition of complaint that there were agreements or meetings between the parties to solve out the disputes arising between them. Consequently the conduct of the parties itself shows that the criminal intention (measured) on the part of present petitioners is missing. The basic ingredients of any criminal actions is the mens rea/guilty mind. In this case the accused company was not entrusted any property which he has dishonestly misappropriates. Thus, in this case the offence punishable u/s 406 IPC is not at all made out.

Section 468 is the offence for forgery for the purposes of cheating. It has been alleged in the petition of complaint that the accused has entered into factory of the complainant company stealthily and forged the logo/emblem of the complainant company. The so called emblem or logo was not come under the document or electronic records or part thereof as mentioned in Section 468 of IPC. More over the alleged offence is omnibus and general in nature. No specific date of offence was mentioned in the petition of complaint. The

witnesses of the complainant before the Learned Magistrate also failed to give an account regarding the specific offence punishable u/s 468 of IPC against the present petitioner thus in my view the offence u/s 468 of IPC is not made out in this case. To substantiate the offence of cheating u/s 420 IPC. The complainant has to bring on record the initial deception by the accused company.

It is proved that the complainant company and the accused company had a continuous business relation. The accused company has failed to elaborate the presence of element of deception to the very inception of the business transaction between the two companies. It is true that the business transaction of the companies was going on smoothly and after- wards their relationship, became stained due to some reasons. It is not permitted by the complainant to file a petition of complaint u/s 420 IPC against one company with whom they have the smooth relationship and afterwards such relationship became stained and they found deception of the accused company only during the pendency of the relationship not from the beginning. In view of the above, the ingredients of offence u/s 420 IPC is also not prima facie made out in this case.

Admittedly the accused company has initiated a criminal complaint against the complainant u/s 138 of NI Act. The present complaint was filed after initiation of such prosecution u/s 138 of NI Act . Hon'ble Supreme court in **DP Gulati, Manager accounts, Jet King Infotech Limited Vs. State of U.P. and Anr.** has held that Counter blust of Criminal complaint u/s 420 IPC against a criminal prosecution u/s 138 of NI Act is not maintainable. Some view was adopted by the Hon'ble Supreme Court in **Sunil Kr. Vs. M/s Escorts Jamuna Motors Limited.**

Heard the Learned Advocates perused the materials on record also perused the decision of the Hon'ble Supreme Court. Admittedly one criminal prosecution is pending u/s 138 of NI Act against the present complainant. The present complainant initiated the instant criminal compliant with the allegation of cheating and criminal breach of trust. The complainant has adopted a procedure in the form of criminal complaint against a company which have filed a criminal prosecution u/s 138 of NI Act. The way of approaching the court of Magistrate by the complainant company appears to be the counter blast of the criminal prosecution u/s 138 of NI Act. The private Companies approaching the court of Magistrate against some other private companies having earlier business transaction only to put

pressure upon the other company so that the criminal prosecution initiated u/s 138 of NI Act may be withdrawn. The process of court has been used by the companies with the ulterior motive so that the dispute between the parties may be minimised by the fear of the criminal proceeding. The ends of justice cannot be arrived at between the parties under the fear of the process of the court. The private companies are regularly filing mischievous complaint before the court of Magistrate in similar fashions nowadays.

The Hon'ble Supreme court in several occasions has come heavily upon such conduct of the complainant. The Hon'ble Supreme Court in the case of **State of Haryana Vs. Bhajanlal** has specifically observed that if after taking the petition of complaint and evidences therein to be true, the court find no prima facie offence being made out against the accused persons, the High Court is free to quash the proceeding u/s 482 of Cr.P.C.

Para 102- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2).....

(3).....

(4).....

(5).....

(6).....

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the

proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

So considering the entire facts and circumstances of this case and considering the materials on record I find merits to entertain the criminal revision.

The impugned Order passed by the Learned Magister dated July 19, 2018 passed in C/48727 of 2013 is hereby set aside.

The criminal proceeding has mentioned above pending before the Learned Metropolitan Magistrate 20th Court Calcutta is hereby quashed.

CRR is allowed.

Pending connected CRAN applications are disposed of.

Any order of stay passed by this court during the continuation of the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)