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16.08.2023
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C.R.R.2977 of 2023

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

Jainco Projects (India) Limited and another
Versus
M/s Jeevanjyoti Agencies Private Limited

Mr. Jatinder Singh Dhatt.
...for the petitioners.

The revisional application has been preferred against the complainant/opposite party in respect of a proceeding being C.S. No.50093 of 2019 in respect of offence wherein cognizance was taken under Sections 34/120B/406/420/506 of the Indian Penal Code.

The allegations which have been made in the complaint were to the effect that the accused persons allured the complainant and, as such, by two purchase orders they were successful in getting supply of 300 MT and 200 MT of Zuari cement. The total amount which accrued because of the same is Rs.25,55,394/- and till date a sum of Rs.25,000/- only has been repaid on 17.05.2015. The complainant felt that he was cheated in view of the allurements made by the accused persons and in spite of efforts on different pretext after receipt of the goods they did not make payment and in fact suppressed their identity. Subsequently, when the complainant approached the NCLT, it was divulged that they were non-banking financial company, so they are entitled to immunity.

Having regard to the plea taken by the petitioners that

because of being a non-banking financial company, they are immune to any litigation, I am unable to accept such contention.

Learned advocate appearing for the petitioners has also relied upon an unreported judgment of Karnataka High Court in Criminal Appeal No.5212 of 2016 wherein the Hon'ble High Court was pleased to hold that the principles laid down in case of Priyanka Srivastava and Another Vs. State of Uttar Pradesh reported in (2015) 6 SCC 287 which applies in cases of an application under Section 156(3) of the Code of Criminal Procedure is also applicable particularly with regard to the information furnished under Sections 154(1) and 154(3) of the Code of Criminal Procedure and also an affidavit should be affixed with the application under Section 156(3) of the Code of Criminal Procedure. In the said judgement what weighed with the learned trial court is that information is sent under Section 154 of the Code of Criminal Procedure. In the present case, there is no affidavit and so learned advocate appearing for the petitioners submits that the case should be quashed.

There is difference between the application under Section 156(3) of the Code of Criminal Procedure and a complaint under Section 200 of the Code of Criminal Procedure. In an application under Section 156(3) of the Code of Criminal Procedure, once FIR is registered in that case liberty of the persons so implicated are seriously jeopardized which is a distinguishable feature. In case of a complaint wherein after examination of complainant and its witness under Sections 200/202 of Criminal Procedure Code, process is

issued and until and unless exceptional circumstances exist ordinarily a summon is issued and the accused persons are either released on bail or are allowed to be represented under Section 205 of the Code of Criminal Procedure. The purpose of both the nature of the proceedings are completely different while in case the application under Section 156(3) of the Code of Criminal Procedure, the next stage is vested with the police authorities for initiation of investigation, in case of Section 200 of the Code of Criminal Procedure, it would be the Magistrate who would be in seisin of the proceedings. Secondly, the basic definition of Section 2(d) of 'complaint' do not warrant any affidavit, an oral or written allegation is deemed to be a complaint within the meaning of the provisions of Code of Criminal Procedure. Another issue which is disturbing is that the present case was instituted in the year 2019, more than 4 years have passed and on different pretext the proceedings have been delayed by a person who is trying to frustrate the alleged rightful claim of the complainant.

Further, in a case of such nature which is instituted otherwise than on police report ordinarily in the facts and circumstances of the case, the complainant should be at least given an opportunity to adduce evidence before charge. The accused persons would be at liberty to approach the trial court at the stage of Section 245 of the Code of Criminal Procedure. In the facts of the case, the petitioners would be at liberty to canvass their points so far as the factual circumstances are concerned at the said stage.

Having regard to the issues so canvassed in the present

revisional application, I am unable to satisfy my conscience both in respect of the issues relating to law and the facts of the case.

Accordingly, CRR 2977 of 2023 is dismissed.

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.)