

06.01.2023
S/L No.11
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C.R.R. 2560 of 2021
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IA No. CRAN 2 of 2022
Rajasthan Rajya Vidyut Utpadan Nigam Ltd. & Ors.
-Vs.-
Global Adsorbents Pvt Ltd

Mr. S. Choudhuri
Mr. A. Basu
Mr. E. Bhattacharya
Ms. Pooja Sah
.....For the Petitioners
Md. Shahjahan Hossain
Ms. S. Sultana
Mr. P. Biswas
.....For the O.P.

The revisional application was preferred challenging the proceedings being Case No. CN/731/2021 passed by the Learned Metropolitan Magistrate, 19th Court, Calcutta under Sections 420/ 406/ 422/ 34 of the Indian Penal Code as also the orders passed therein.

Mr. Choudhuri, learned advocate appearing for the petitioners submits that the case was initiated for recovery of the outstanding dues which is applicable from the petition of complaint filed before the Learned Magistrate and is also evident from the examination under Section 200 of the Code of Criminal Procedure of two witnesses who were examined prior to issuance of process namely, the complainant/Biswajit Das and Ashim Kr. Roy. Additionally, it has been submitted that mechanically the Learned Metropolitan Magistrate, 19th Court, Calcutta issued process as none of the offences complained of are made out in the petition of complaint.

Learned advocate appearing for the complainant/opposite party opposes such contentions and submits that there was a deception at the instance of the accused persons and on the basis of which the complainant supplied the quartz sand on credit. The accused persons by their conduct convinced the complainant/his concern and the representations being of such nature which in due course of business compelled the complainant to supply the goods. The complainant having performed his part of duty was entitled to the bills which have been raised. The accused persons did not have the intention from the very inception to pay the entire amount which was committed and, as such after persuasion, the complainant was compelled to approach the Criminal Court and invoke its jurisdiction.

I have considered the submission advanced by learned advocate appearing for the accused/petitioner and the opposite party/complainant. Without going into the details, it would be proper to quote the relevant part of the complaint. Paragraph 5 for the said purpose is set out as follows:-

"5. That upon the request and purchase order of accused no. 2,3 and 5 and inducement of all the accused persons, the complainant company delivered the goods i.e. best quality of Quartz sand, etc. to the accused persons and raised the Invoices for the same and at present the sum of Rs.1,11,428/- is lying due against the goods supplied as per Tax Invoices."

The initial evidence of the complainant and the other witness namely, Ashim Kumar Roy are also set out as follows:-

"That the accused persons above named approached us and assured us to give a good business and accordingly, we showed them our materials and the accused being satisfied asked us to deliver the materials on credit. We delivered goods from time to time and at present the sum of Rs.1,11,428/- is still

outstanding but after getting the delivery the accused persons failed to pay the said amount of Rs.1,11,428/- till date. We sent Advocate notice and several intimations but they neglected to pay the same and hence this case."

The witness namely, Biswajit Das is also set out as follows:-

"That the accused persons above named approached us and assured us to give a good business and accordingly, we showed them our materials and the accused being satisfied asked us to deliver the materials on credit. We delivered goods from time to time and at present the sum of Rs.1,11,428/- is still outstanding but after getting the delivery the accused persons failed to pay the said amount of Rs.1,11,428/- till date. We send Advocate notice and several intimations but they neglected to pay the same and hence this case."

On an assessment of the factual circumstances appearing in this case it is apparent that the process of the Criminal Court was invoked for the purpose of recovery of the outstanding amount in respect of the quartz sand so supplied, it has been held by the Hon'ble Supreme Court In ***MedMeme LLC -Vs.- iHorse BPO Solutions (P) Ltd.*** reported in (2018) 13 SCC 374 as follows:-

"12. After going through the allegations contained in the complaint and the material on record, we are of firm conclusion that the matter entirely pertains to civil jurisdiction and not even a prima facie case is made out for the offences under Sections 420, 406 and 409 read with Section 120-B IPC even if the allegations contained in the complaint are to be taken on their face value. The complaint gives a clear impression that it was primarily a case where the respondent had alleged breach of contract on the part of the appellants in not making the entire payments for the services rendered to the appellants. On the other hand, it is not in dispute that substantial amounts have been paid by the appellants to the respondent company for the services rendered."

In *Binod Kumar -Vs.- State of Bihar* reported in (2014) 10 SCC 663 paragraph 19 is relevant for the purpose of this case is as follows:-

"19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120-B IPC, is liable to be quashed."

Having considered the principles laid down by the Hon'ble Supreme Court and the factual matrix of the present facts/dispute between the complainant and the accused persons, I am of the view that a case for recovery of outstanding dues which has the flavour of a civil dispute has been given the cloak of a criminal proceeding, as such, I am of the opinion that the continuance of the present proceedings would be an abuse of the process of the Court.

Accordingly, all further proceedings and all orders passed in connection with CN/731/2021 passed by the Learned Metropolitan Magistrate, 19th Court, Calcutta is hereby quashed.

Thus, C.R.R. 2560 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

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.)