

25.4.2023

ks.
Sl. No.3

C.R.R. 3659 of 2011
CRAN 1/2011(Old CRAN/2355/2011)
Pawan Kumar Agarwala
Vs.
State of West Bengal & Anr.

Mr. Sourav Chatterjee,
Ms. Subhasree Patel
... For the Petitioner.
Mr. Saswata Gopal Mukherjee, Ld. PP.,
Mr. Madhusudan Sur,
Mr. Dipankar Paramanick
... For the State.

Affidavit-of-service filed by the petitioner is on the record.

Despite service, none appears on behalf of the private opposite party No.2.

This criminal revisional application is a manifestation of displeasure of the petitioner over the proceedings being CR Case No. 9 of 1986 pending before the learned Chief Judicial Magistrate, Darjeeling under section 420 of the Indian Penal Code including the order dated 1st of October, 2010, passed therein by the learned Trial Court. Briefly stated Sri Satya Narayan Agarwal, Opposite Party No.2 filed a petition of complaint before the learned Chief Judicial Magistrate, Darjeeling alleging, inter alia, that accused person being the Director of Poobong Tea Company Limited approached the complainant for supply of hardware materials and had stated that the price of the materials so supplied would be paid by cheques immediately after the delivery. The complainant accordingly supplied materials worth Rs.31,296.33 and the accused person towards part

payment of the bill, issued a cheque vide No.131499 dated 8th May, 1986 drawn on the Vijaya Bank Ltd., C.R. Avenue Branch for a sum of Rs.10,000/- and another cheque vide No. 037163 dated 10th June, 1986 for a sum of Rs.10,000/-. But the cheques were not honoured by Banker of the accused person. The complainant felt deceived and filed the petition of compliant. Learned Trial Court after complying with the provision of Section 200 Cr.P.C. was pleased to issue process against the accused person and ultimately issued non-bailable warrant of arrest on 1.10.2010.

Mr. Chatterjee, learned Counsel appearing for the petitioner submits that the complainant was well aware that the transaction was commercial in nature and alleged non-payment of bill had a flavour of a dispute, civil in nature, which is why he filed a Money Suit No.9 of 1986, before the learned Civil Judge, Senior Division, Darjeeling. The said suit was dismissed being barred by limitation and also for non-compliance of statutory mandate as laid down under Section 69(2) of the Partnership Act. It is submitted by Mr. Chatterjee that law does not permit any proceeding criminal in nature, after dismissal of a Civil Suit on the ground of limitation and in support of his contention Mr. Chatterjee places reliance upon a decision of Hon'ble Apex Court in *Thermax Limited & Ors. vs. K.M. Johny & Ors* reported

in (2011) 13 SCC 412. It is further submitted that admittedly the accused person is one of the Directors of M/s. Poobong Tea Company Limited. In the Civil Suit the complainant made the Company as party while in the Criminal proceedings the petition of complaint was filed without impleading the Company as accused though the grievance basically is against the Company. On this count also, the criminal proceedings prima facie appears to be an abuse of process of law, which the learned Trial Court failed to appreciate.

Pursuant to the direction of this Court learned Public Prosecutor, High Court, Calcutta is representing the State /opposite Party No.1 Mr. Mukherjee Learned P.P. draws my attention to the averment made in the petition that earlier the petitioner made an unsuccessful attempt to quash the proceedings before the learned Trial Court.

It is the settled principle of law that principle of res judicata is not applicable in criminal proceedings. In this regard we can rely upon the decision of Hon'ble Apex Court in Devendra & Ors. vs. State of Uttar Pradesh & Anr. reported in (2009) 7 SCC 495, wherein the Hon'ble Apex Court held :- "Mr. Das, furthermore, would contend that the order of the High Court dated 17.10.2005 would operate as res judicata. With due respect, we cannot subscribe to the said view. The principle of res judicata

has no application in a criminal proceeding. The principles of res judicata as adumbrated in Section 11 of the Code of Civil Procedure or the general principles thereof will have no application in a case of this nature.”

Considering the aforesaid facts and circumstances of the case I am of the view that the proceedings pending before the learned Trial Court being CR Case No.9 of 1986 should not be allowed to remain in force and should be quashed to avert the abuse of process of law, which I, accordingly do. The criminal proceeding being CR Case No.9 of 1986 pending before Learned Chief Judicial Magistrate, Darjeeling stands quashed. The criminal revision is thus disposed of.

Let a copy of the judgment be sent to the learned Trial Court by Special Messenger, cost to be paid by the petitioner, as submitted by Mr. Chatterjee. Liberty is given to Mr. Chatterjee to deposit the Special Messenger Cost within seven days.

Urgent certified copy, if applied therefor, may be supplied upon usual compliance of rule.

(Siddhartha Roy Chowdhury,J.)