

15 18.01.2023
RP Ct.No. 236

CRR 4416 OF 2007
With
CRAN 1 of 2021

In the matter of : Harsh Vardhan Tiwari

Mr. Souvik Mitter
Mr. Avishek Sinha
Ms. Jonaki Saha

Mr. Narayan Prasad Agarwal
Mr. Pratick Bose

... for State

This is an application under Section 482 of the Criminal Procedure Code, 1973 for quashment of proceeding, being C-3642 of 2005, pending before the learned 8th Court of Metropolitan Megistrate under Sections 406/409/420/120B of the Indian Penal Code.

The fact of the case in short is that the petitioner is the representative of M/s. Khadi Gramya Silpo Udyog engaged in process of selling readymade garments. The said concern had a long-standing business relationship with M/s. Abhilasha, a proprietorship concern owned by Shri Suresh Dhanuka. In course of such business the opposite party no.2, being the proprietor of M/s. Avilasha, served a notice through his lawyer upon the petitioner claimaing a sum of Rs.2,47,580.70 paisa. The petitioner responded to such claim by sending a reply on 17th March, 2005 denying all material allegations made by the opposite party no.2 but the opposite party no.2 without considering the content of

the reply moved the jurisdictional Court with an application under Section 156(3) of Criminal Procedure Code, 1973 registered as C/3642/2005 before the learned Chief Metropolitan Magistrate, Calcutta. The learned trial Court after examining the complaint under Section 200 of the Criminal Procedure Code, 1973 was pleased to issue process upon the petitioner and in terms thereof he surrendered to the jurisdiction of the learned trial Court. Initially the petitioner's complaint was forwarded to the jurisdictional police station under Section 156(3) of Criminal Procedure Code, 1973 and police registered a case, being Shakespeare Sarani Police Station Case No.153 dated 13th May, 2005 but police after investigation submitted a final report. Thereafter, the opposite party no.2 filed a petition of complaint, which was examined under Section 200 of Criminal Procedure Code, 1973 by the learned jurisdictional Court and process was issued. Challenging the said order the accused person has preferred this application under consideration.

Mr. Souvik Mitter, learned counsel for the petitioner submits that the petition of complaint would unerringly indicate the fact that the parties to the proceeding were engaged in business and there was no intention on the part of the petitioner to dupe the complainant. Payment was made by the petitioner from time to time to liquidate the outstanding balance. By filing supplementary affidavit the

petitioner produced certain receipts acknowledging such payment by the opposite party no.2 as the proprietor of M/s. Abhilasha. Upon perusal of those documents I find that on 22nd October, 2003 and 12th December, 2003 the petitioner paid a sum of Rs.58,508/- and Rs.58,505/- respectively and a sum of Rs.18,255/- was lying due as on 10th January, 2004. According to Mr. Mitter these documents suggest that in course of business the petitioner company received merchandise from the opposite party no.2 and made payment. If there is any breach of contract, it should be considered as a civil dispute and should not be imbued with colour of criminality. It is further submitted by Mr. Mitter that payment made by the petitioner, and duly acknowledged by the opposite party no.2 is sufficient to indicate that the petitioner never had the intention since inception of transaction to cheat the opposite party. Therefore, non-payment or failure of payment on the part of the petitioner to the opposite party cannot be considered to be an offence within the meaning of Section 420 of Indian Penal Code, which the learned trial Court failed to appreciate.

Mr. Agarwal, learned counsel representing the State also submits that the transactions between the parties are sufficient to hold that the petitioner did not have the mens rea to cheat the opposite party no.2. It is pertinent to place on record that the opposite party no.2 despite receipt of

notice preferred to remain away from the proceeding.

Affidavit-of-service submitted by the petitioner is taken on record.

By several judicial pronouncements it has become settled principle of law that breach of contract would amount to cheating only if the intention of cheating was existing since at the very inception of prosecution. In the case at hand the facts do not indicate such mens rea on the part of the petitioner. In this regard I rely upon the judgment of the Hon'ble Supreme Court pronounced in the case of **Medme LLC & Ors. vs. Ihorse BPO Solution Private Limited** reported in **2018(13) SCC 374** and **Uma Shankar Gopalika vs. State of Bihar & Ors.** reported in **2005(10) SCC 336**. This in my humble opinion is nothing but a civil dispute which the learned trial Court failed to appreciate and took cognizance of the offence, which resulted into miscarriage of justice. This is a fit case to invoke the jurisdiction under Section 482 of Criminal Procedure Code, 1973 to quash the proceeding, being C-3642 of 2005 pending before the learned Metropolitan Magistrate, 8th Court, Calcutta which I accordingly do.

CRR 4416 of 2007 along with CRAN 1 of 2021 is disposed of.

Let a copy of the order be forwarded to the learned Chief Metropolitan Magistrate, Calcutta for information and necessary action.

Urgent Photostat copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(Siddhartha Roy Chowdhury J.)