02.5.2023
Sl.34
Ct. No.3
*SD*

***CALCUTTA HIGH COURT***
***In the Circuit Bench at Jalpaiguri***

CRR 48 of 2023

**In re: Anil Bansal & Anr.**

**... petitioners.**

Mr. Sudip Kr. Paul
Mr. Debanjan Das

... for the petitioners.

Mr. Aditi Shankar Chakraborty
Mr. Aniruddha Biswas

... for the State.

Mr. Bhaskar Roy Mahashaya

... for the Opposite Party No.2.

Challenging the charge sheet being Charge Sheet No.67 of 2019 dated May 31, 2019 in connection with Kurseong Police Station Case No.25 of 2019 dated 06.02.2019, present application under Section482 of the Code of Criminal Procedure has been preferred.

The petitioners have contended that the petitioner no.1 was the Director and the petitioner no.2 was the Manager of the Nurbong Tea Estate under the Darjeeling Organic Tea Estate Private Limited (hereinafter called as "Nurbong Tea Estate').

The petitioners submit that the petitioner no.2 resigned from the said Tea Estate on July 1, 2019. The petitioner no.2 is currently serving as Manager of Killcot Tea Garden since 18.11.2021. The petitioners submit that when the petitioners were working in the Nurbong Tea Estate a written complaint was lodged by the opposite party no.2 on 06.02.2019 alleging that after scrutiny of relevant documents and registers and monthly returns, it was detected that the employees' share of contribution for the period of April 2018, August 2018, September 2018, November 2018 and December 2018 comprising of sum of

Rs.11,85,393/- were deducted by the employer from the wages of the employee but the employer failed to pay those contributions to the statutory fund. The allegations leveled against the petitioners are that being the employer of that Nurbong Tea Estate they have misappropriated the aforesaid money contributed by the workers and as such, they are liable to be prosecuted under section 406/409 of the India Penal Code.

On the basis of said written complain, the aforesaid Kurseong Police Station Case No.25 of 2019 was started and after completion of investigation, police has submitted charge sheet against the petitioners under Section 406/409 of the Indian Penal Code.

Learned counsel appearing on behalf of the petitioners submits that the charge sheet makes it clear that the provident fund Authority has received the said amount of contribution deposited through TR challan for the months of April 2018, August 2018, September 2018, November 2018 and December 2018. Hence it is clear that the employer had no intention in committing the crime.

He further submits that actually the money was kept with the petitioners' safe custody in order to deposit the same before the provident fund authority. Accordingly, petitioners contended that the proceeding is bad in law and continuation of such proceeding will be mere abuse of process of the court, since the amount has already been deposited to the Provident Fund Authority and the challans of which has been given to the investigating authority.

Learned counsel appearing on behalf of the State raised strong objection against the aforesaid prayer and contended that by the deposit of aforesaid money to the provident fund authority at a subsequent stage does not absolve the petitioners from the offence allegedly committed by them. Aforesaid deposit may be considered as a mitigating factor at the time of imposing punishment to be awarded at the end of trial but merely because they have deposited the said amount to the provident fund authority afterwards does not exonerate them from the allegation of committing the offence punishable under Section 406/409 of the Indian Penal Code.

I have considered submissions made by both the parties.

On reading the written complaint as a whole, it appears that the ingredients of the offence under section 406/409 of IPC are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence.

In **Bhajan Lal's case** reported in **1992 Supp (1) SCC 335** the Hon'ble Apex Court laid down certain circumstances where the court may be justified in exercising jurisdiction under section 482 of the code. These are, where the FIR does not prima facie constitute any offence, does not disclose cognizable offence justifying investigation by the police, where the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach just conclusion that there is sufficient ground for proceeding against the accused, where there is an express legal bar engrafted in any of the provisions of the code and 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.

On careful perusal of materials available in the record, it is clear that none of the aforesaid circumstances is present in the case in hand. Investigation has already been ended in charge sheet and at his stage it is impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial.

In view of the above, CRR 48 of 2023 is dismissed.

However, this dismissal order will not preclude the petitioners from raising such issue at the time of framing charge by the court below. The court below is directed to make every endeavour for expeditious disposal of the case and to conclude the entire proceeding preferably within a period of six months from the date of communication of the order.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Ajoy Kumar Mukherjee, J.)**