23 akb | 16.07 2024 | Ct. No. 237

C.R.R. 381 of 2022
Ezina Business Center LLP & Ors.
Vs.
Manish Kumar Saraf

Mr. Manjit Singh
Mr. Gaganjyot Singh
Mr. Biswajit Mal ...*For the Petitioners*

Affidavit-of-service filed on behalf of the petitioner is taken on record. Opposite party is not represented.

This is an application under Section 482 of the Code of Criminal Procedure, wherein the petitioners have prayed for quashing of the proceedings, being No. CS/56986/21 under Section 420/406/120B of the Indian Penal Code (I.P.C) presently pending before Metropolitan Magistrate, 19^{th} court at Calcutta.

Petitioners' contention is that the petitioner No. 1 is a limited partnership firm and the allegation against the petitioners as disclosed in the petition of complaint is that sometimes in the month of April, 2018, the accused persons came to the office of the opposite party and represented that they are in need of salwar suits and other clothes and placed order for the same. The opposite party/complaint further alleged that it supplied huge quantities of clothes on several dates leaving a balance due sum of Rs. 17,93,786/-. It is further alleged that the accused persons have failed to make this payment and acted evasively on being approached for payment.

It appears that the petitioners filed the complaint before the

Court below on 17th September, 2021 and the Court below after taking cognizance, made over the case to the learned Metropolitan Magistrate, 19th Court, Calcutta, who examined the witnesses and on being satisfied after examining the witnesses under Section 200 of the Criminal Procedure Code, issued process under Section 406/420/120B of the I.P.C. On perusal of the initial deposition recorded under Section 202 of the Cr.P.C, it appears that the witnesses have stated that accused persons undisputedly have received dress materials but they have no intention to pay the due amount of Rs. 17,93,786/-. It is further alleged in their initial deposition that since inception of the business relationship, the accused persons have got no intention to make the payment and their intention from the very inception was to cheat complaint.

Mr. Manjit Singh, learned Counsel appearing on behalf of the petitioner submits that even if the averments made in the petition of complaint are to be believed in their entirety, they do not make out the ingredients of any criminal offence. In fact, a plain reading of the petition of complaint would make it clear that the disputes between the parties is purely a civil one and the opposite party in order to extract money, tried to colourize a civil dispute into a criminal proceedings. He further submits that there is ongoing business relationship between the parties and complaint himself alleged in the complaint that an amount of Rs. 17,93,786/- is due. He further submits that in the statement made in the complaint, the complainant admitted that the opposite party made regular payment throughout the duration of their business relationship and it cannot be said that there was any dishonest intention at the very inception of the business relationship. He further submits that though in the written complaint it has been stated that ongoing business relationship started in the month of April, 2018, but the documents annexed with this application clearly shows that the business relationship between the parties started from the month of June, 2017. He further submits that in the above background the continuance of the present proceeding will be sheer abuse of process of the Court, in view of settled position of law decided by the Hon'ble Apex Court and this Hon'ble High Court in this context.

In support of his contention, Mr. Singh relied upon the decisions of the Hon'ble Apex Court in the cases of ***V.P. Srivastava Vs. Indian Explosives Ltd. & Ors,*** reported in **(2010) 10 SCC 361**; ***Vijay Kumar Ghai & Ors. Vs. State of West Bengal & Ors.***, reported in **(2022) 7 SCC 124**; ***Anil Mahajan Vs. Bhor Industries Ltd. & Anr.,*** reported in **(2005) 10 SCC 228**; ***Satishchandra Ratanlal Shah Vs. State of Gujarat & Anr.,*** reported in **(2019) 9 SCC 148**; ***Dalip Kaur & Ors. Vs. Jagnar Singh & Anr.,*** reported in **(2009) 14 SCC 696** and ***International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) Vs. Nimra Cerglass Technics (P) Ltd.,*** reported in **AIR 2015 SC (CRI) 1809**.

I have considered the submissions made by the learned Counsel appearing on behalf of the petitioners. On perusal of the annexures, it appears that the business between the complainant and the petitioners started since 3rd June, 2017. Mr. Singh in this context also pointed out that this complaint case was filed on 17.09.2021 and immediately before filing the case, the petitioners made payments on 17th July 2021 amounting to Rs. 2 lakhs, then again on 30th October, 2021 accused person paid to complaint an amount of Rs. 2.5 lakhs and even after launching this case, on 10th November, 2021 petitioners paid an amount of Rs. 50,000/- to the complainant and as such the approach towards payments on the part of petitioners from time to time clearly suggests that there was/is no intention of deception in the mind of the petitioners.

Past business relationship at least from April, 2018 between the parties is admitted. It also appear form petition of complaint and initial statement on oath made by the witnesses that the dispute between the parties centred around the arrear payment in respect of supplied dress-materials by the complainant to the petitioners. Such business dispute over payment of arrear amount cannot per se give rise to an offence under section 415 or 405 of I.P.C. without presence of any aggravating factor leading to the substantiation of it’s ingredients.

In the case of ***Binod Kumar and other Vs. State of Bihar and another*** reported in **(2014) 10SCC 663**, Supreme Court while dealt with a criminal complaint arising out of retention of bill amount in course of commercial transaction held, that to make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the accused persons but it must also be shown that the accused persons dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the accused persons did not pay the money to the complainant does not amount to criminal breach of trust.

Similarly, Supreme court in a numbers of judgements, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or violation of the commercial terms with that a criminal offence under section 420 and 406 I.P.C

In ***Vesa Holding Private Ltd. & Another Vs. State of Kerala & Others*** reported in **(2015) 8 SCC 293** , Apex Court specifically held that every breach of contract would not give rise to an offence of cheating and only in those case breach of contract would amount to cheating where there was any deception played at the very inception. It was further observed, if the intention to cheat has developed later on, the same cannot amount to cheating. In the case in hand, there is nothing to show that at the very inception, there was any intention on behalf of the accused persons to cheat. The annexure clearly suggests that payments have been made part by part before and even after launching the present criminal proceeding. Non-payment on under payment of the price of the supplied dress materials by itself does not amount to commission of an offence of cheating or criminal breach of trust. Here subsequent conduct of the accused persons clearly shows that there was no such criminal intention at the time of inducement. There are also authorities which suggest that offence under Section 420 & 406 cannot run concurrently in respect of same transaction.

The unchallenged annextures to this application states that the transaction started by the complainant from 2017 and the petitioners have made payments from time to time and complaint states that such payments were made leaving a balance of Rs. 17,93,786/-. Even if I assume that the assertions made in the complaint are correct, even then a criminal offence has not been established in the absence of any allegation of deception by making false or misleading representation or dishonest concealment or any other act or omission or inducement of the complaint to deliver the dress material at the time of agreement being entered.

Having considered the business relationship and the ongoing transactions as appeared from the annexures, I have no other alternative but to come to a conclusion that the complainant petitioner herein has tried to colourize civil dispute into a criminal proceedings. In such view of the matter, further continuance of the present proceeding before the Court below will cause sheer abuse of process of the Court.

Accordingly, C.R.R. 381 of 2022 is allowed.

The impugned proceeding, being No. CS/56986/21 under Section 420/406/120B of the Indian Penal Code pending before the learned Metropolitan Magistrate, 19th Court at Calcutta is hereby quashed. In view of the aforesaid disposal of the C.R.R. 381 of 2022, consequently the application, being IA No. CRAN 7 of 2024 is also disposed of.

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

(Ajoy Kumar Mukherjee, J.)