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IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 305 of 2016

IA NO: CRAN 13 of 2019 (Old No: CRAN 2725 of 2019)

**Shomenath Roy Chowdhury & Ors.
Vs.
State of West Bengal & Anr.**

Mr. Milon Mukherjee, Sr. Adv., Mr. Biswajit Manna, Mr. S Sarkar.	... for the petitioners.
Mr. Rana Mukherjee, Ld. APP. Mr. Bidyut Kumar Ray.	... for the State.

1. Learned counsel appearing on behalf of the petitioners is present.
2. None appears on behalf of the State.
3. Mr. Rana Mukherjee, learned Additional Public Prosecutor of this court and Mr. Bidyut Kumar Ray, learned counsel present in court are requested to represent the State. Concerned authority is directed to regularize their appointment.
4. The instant revisional application has been filed with a prayer for quashing the proceeding of G.R. Case No. 947 of 2015 arising out of Electronics Complex Police Station Case No. 140 of 2015 dated 23.10.2015 under Sections

420/406/120B of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Bidhannagar.

5. The proceeding was initiated by a written complaint submitted by the respondent No.2/de-facto complaint before the learned Additional Chief Judicial Magistrate, Bidhannagar under Section 156(3) of the Code of Criminal Procedure with the following allegations:

Opposite party No.2 dealt in a publishing and printing business under the name and style of M/s Peregrine Publishers & Distributors having it's office at Suit No. F1, Om Tower, 36C, B.T. Road, Kolkata – 700002.

It was alleged that in course of official business the accused/petitioners herein placed some orders for some job works related to medical information books for printing vide Order No. SAF/KOL/0004/14-15 dated 05.04.2014.

It is further alleged that opposite party No.2 did the entire job works and delivered the same along with invoices amounting to of Rs.5,29,090/.

Despite repeated requests through email, letters petitioners did not make any payment to the opposite party No.2.

There was a talk of amicable settlement between the parties but it failed and ultimately opposite party No.2 lodged a complaint before the Electronics

Complex Police Station. That is why the written complaint under Section 156(3) of the Code of Criminal Procedure was filed before the learned Additional Chief Judicial Magistrate, Bidhannagar seeking direction upon the Officer-in-Charge of the Electronics Complex Police Station, Bidhannagar to investigate the matter. After investigation charge-sheet was submitted.

6. Mr. Milon Mukherjee, learned senior counsel appearing on behalf of the accused/petitioners herein has drawn my attention to the several correspondences between the petitioner's company and with one Sajal Kahali. It is also submitted by Mr. Mukherjee that petitioners placed order before the opposite party no.2/company with the assurance of one Sajal Kahali. In support of his contention, he referred to the letter of correspondence between the petitioners and the Mr. Sajal Kahali (Annexure P-3).
7. Referring to all other several communications between Sajal Kahali and the petitioners, Mr. Mukherjee has submitted that petitioner's company pointed out the complaint raised by the petitioner's company regarding quality of the materials delivered in the letter dated 23rd May, 2014 addressed to Mr. Sajal Kahali.
8. Mr. Mukherjee, has further referred to the letter dated 20th March, 2014 and submitted that the petitioners agreed to place purchase order only on the assurance of Mr. Sajal

Kahali. On receiving the complaint regarding quality of the materials delivered, Mr. Sajal Kahali addressed the letter to the petitioner's company intimating the following :

“ I would like to mention here that I had advanced a huge sum of money to the party Peregrine Publishers which they are now refusing to return. As such I request you not to release any payments to the party without informing me first.”

9. Accordingly, Mr. Mukherjee has submitted that on the assurance of Mr. Sajal Kahali petitioner's company placed purchase order before the opposite party No.2 and all the defective materials were sent back to the Sajal Kahali as it appears from the letter addressed to this petitioner's company dated 12th June, 2014.

11. Mr. Rana Mukherjee, learned Additional Public Prosecutor appearing on behalf of the State, in his usual fairness, has submitted that complaint under Section 156(3) of the Code of Criminal Procedure was filed before the Additional Chief Judicial Magistrate, Bidhannagar without applying the provision of Section 154(1) and 154(3) of the Code of Criminal Procedure and in violation of law laid down in **Priyanka Srivastava & Another Vs. State of U.P & Ors.** reported in **(2015)6 SCC 287.**

12. So far as factual aspect narrated by Mr. Mukhrjee is concerned, I find that though the petitioners placed the order and received the materials from the opposite party No.2 but subsequently those materials were found

defective and sent back to Mr. Sajal Kahali on whose assurance petitioners placed purchase order before the company/opposite party No.2 herein. From the relevant correspondence it is also found that Mr. Sajal Kahali asked the petitioners not to make any payment as he already paid huge sum of money to the opposite party. But that does not mean that fact stated in the F.I.R. did not disclose any offence under Sections 420/406/120B of the Indian Penal Code as there was an agreement between the petitioner's company and company/O.P. No.2 herein for delivery of printed materials to the petitioner's company by the company/O.P No.2 herein.

13. I am not agreeable with Mr. Mukherjee regarding no liability of the petitioners in respect of the payment for the work done by the O.P No.2. From the Case Diary, it appears that the O.P No.2 made correspondence to the petitioner's company in respect of payment of bill raised by them for supplying the materials. But so far as the compliance of Section 154(3) is concerned, I find from the written complaint that though the complainant/opposite party No. 2 herein has stated in his complaint under Section 156(3) of the Code of Criminal Procedure that he has lodged a complaint before the Electronics Complex Police Station, Bidhannagar but he never complied with provision of Section 154(3) of the Code of Criminal Procedure in violation of law laid down by the Hon'ble Apex Court in **Priyanka Srivastava (supra)**.

14. On this sole ground, this court is unable to refuse the prayer for quashment.
15. Accordingly, the proceeding of G.R. Case No. 947 of 2015 arising out of Electronics Complex Police Station Case No. 140 of 2015 dated 23.10.2015 under Sections 420/406/120B of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Bidhannagar stands quashed against the **petitioners only**.
16. Interim order, if any, stands vacated.
17. Connected application, if there be any, stands disposed of accordingly.
18. With this observation and direction, the revisional application stands disposed of.
19. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.
20. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)