

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 583 of 2017

Tapan Kumar Ghorai

Versus

The State of West Bengal & Another

For the State : Ms. Faria Hossain, Adv.
Ms. Mamata Jana, Adv.

Heard on : 07.02.2024

Judgment on : 21.03.2024

Ajay Kumar Gupta, J:

1. By the present application, the petitioner seeking for quashing of G.R. Case No. 168 of 2017 arising out of Kharagpur Town Police Station Case No. 23 of 2017 dated 14th January, 2017 under Sections 420/406/323/506/34 of the Indian Penal Code read with Sections 25 and 27 of the Arms Act was pending before the

Learned Chief Judicial Magistrate, Paschim Medinipore now it has been transferred in the Court of Learned Judicial Magistrate, 1st, Kharagpur, Paschim Medinipore.

2. The brief facts are relevant for the purpose of disposal of this case as under:

2a. The opposite party no. 2 lodged a written complaint to the Kharagpur Town Police Station on January 14, 2017 to the effect that he was working as Manager, Sales and Marketing of M/s. Victory Innovatives Private Limited, a company registered under the Companies Act, 1956 alleging therein that in course of business, one of the agents Panchanan Bera of Sayanpura, Beldah introduced the petitioner, namely, Tapan Kumar Ghorai as a fertilizer trader. When one Director N.U.B. Sharma visited his office, they showed his firm house and projected as a big businessman and dealer of huge amount of organic fertilizer. He also introduced himself as a proprietor of the firm and to fortify his claim he further introduced some businessmen dealing in organic fertilizer. Taking advantage of trust, he induced the opposite party no. 2 to deliver possession of several consignments of organic fertilizer valued of Rs. 70,00,000/- approximately. Initially he paid some money only for the purpose of

gaining trust and during the course of his business, he fraudulently manufactured documents in order to induce to deliver possession of the fertilizer and upon demand of the amount dues, he did not make any payment. On 12.01.2007 at about 7.00 PM, the opposite party no. 2 along with N.U.B. Sharma and Biplab Polai had been to the office for payment, when the petitioner assembled with five six other persons and started threatening the opposite party no. 2 and others with dire consequences, when they demanded the money. The petitioner as well as others also assaulted them with fists and blows. Furthermore, Tapan Kumar Ghorai, petitioner herein took out Revolver from his waist and put the Revolver on the forehead of N.U.B. Sharma and threatened that he shall not hesitate to murder them if they dare to demand money and also threatened that they should leave Kharagpur immediately. He also threatened that he shall not pay any money for the consignment. On the basis of a written complaint, a Kharagpur Town Police Station Case No. 23 of 2017 dated 14th January, 2017 has been registered and started under Sections 420/406/323/506/34 of the Indian Penal Code read with Sections 25 and 27 of the Arms Act against the present petitioner and others.

2b. On the contrary, the petitioner contended in the petition that entire allegation is false and fabricated as such he surrendered before the learned Magistrate and got bail. The actual case reveals from the FIR that the dispute is civil in nature. Furthermore, an agreement was arrived at on 23.09.2016 between M/s. Victory Innovatives Private Limited and M/s. Nabodoy Fisheries and Agro Firm wherein the first party shall supply its product to the second party and the second party shall maintain an organization adequate to properly exploit the sales of the product and adequately service the demands relating to the product and customers. First party will supply technical grade of the product in bulk in a logistically suitable packaging and the marketing shall be done by the second party in its own name and the payment shall be made by the second party to first party within 90 days after receipt of the materials. All payments collected by the second party in respect of sales effected shall be deposited in first party's Bank Account and no cash should be handed over to any person and second party agrees to keep deposits of Rs. 10,00,000/- on behalf of his firm with the first party on or before 01.10.2018. The agreement shall come into force from 14.09.2016 and shall remain in force up to 31.03.2021 and, thereafter, it may be renewed for further period. Subsequently, the condition was that if any dispute arises out of this agreement shall be

finally settled under the Arbitration and Conciliation Act, 1996. Disputes were arisen between the parties. As such, the petitioner on 16th January, 2017 filed a suit for declaration and injunction against the opposite party no. 2 and N.U.B. Sharma, Director of M/s. Victory Innovatives Private Limited before the Court of the Learned Civil Judge (Junior Division), 2nd Court at Paschim Medinipore. Which was registered as Other Suit No. 19 of 2017. In the said suit, the petitioner prayed for that according to the agreement dated 23.09.2016, the petitioner has the right to act as the distributor of the products as mentioned in the schedule of the said suit and also for a decree of permanent injunction to the effect that the defendant be restrained from creating any disturbance to act in accordance with the said agreement dated 23.09.2016. The entire matter is totally civil in nature and same is pending. The opposite party no. 2 tried to convert the civil case into the criminal case and filed FIR against the present petitioner is totally out and out false and concocted one.

2c. It is further contended that as the opposite party no. 2 miserably failed to comply the terms and conditions of the agreement dated 14.09.2016, he lodged a complaint in order to ulterior motive and fictitious allegation in order to wreak vengeance. Not only that, the ingredients of the offence under Sections 406/420/323/506/34

are not at all fulfilled. Accordingly, the entire proceeding is an abuse of process of law, which is liable to be quashed and/or set aside.

Under the above facts and circumstances, petitioner has filed this case and same has come up before this Bench for disposal.

3. In spite of giving several opportunities, the petitioner did not appear on call. Even on earlier occasions, no one represented the petitioner. No accommodation was sought for.

4. On the other hand, opposite party no. 2 also did not appear to contest the case.

SUBMISSION ON BEHALF OF THE STATE:

5. Learned counsel appearing on behalf of the State produced the case diary and further submitted that it is true that there was a business transaction between both the parties. Furthermore, there was dues of Rs. 70,00,000/-. It is also true that there was a civil case also pending but the complaint lodged by the opposite party no. 2 against the petitioner is not false and fabricated. There are sufficient ingredients in the written complaint. As a result, an FIR was lodged against the present petitioner under Sections 420/406/323/506/34 of the Indian Penal Code read with Sections 25 and 27 of the Arms

Act. Subsequently, after thorough investigation, a charge sheet was submitted against the petitioner, when a prima facie case has been established against the accused/petitioner under Sections 420/406/323/506 of the Indian Penal Code vide Charge Sheet No. 13/18 dated 31.01.2018 under Sections 420/406/323/506. Therefore, the instant revisional application is liable to be dismissed.

DISCUSSION, ANALYSIS AND CONCLUSION OF THIS COURT:

6. Heard the submission of the learned counsel appearing on behalf of the State and on perusal of the case diary, it reveals the FIR was lodged against the present petitioner, Tapan Kumar Ghorai and others under Sections 420/406/323/506/34 of the Indian Penal Code read with Sections 25 and 27 of the Arms Act. Subsequently, after thorough investigation, the investigating officer seized several documents and recorded the statements of the witnesses under Section 161 of the Cr.PC and finally submitted charge sheet against the accused person/petitioner Tapan Kumar Ghorai S/o Nityananda Ghorai of Inda Saradapally, P.S. Kharagput (T) Paschim Medinipur vide Charge Sheet No. 13/18 dated 31.01.2018 under Sections 420/406/323/506 IPC. A prima facie case has been well established against the said accused/petitioner. Not only that, the learned Court below also took cognizance against the present petitioner. As per the

report of the Inspector-in-Charge, Kharagpur Town Police Station, a date has been fixed on 15.05.2024 for evidence of the prosecution witnesses.

7. Under the above circumstances, though there is a civil suit pending between the parties but the allegations against the petitioner have been prima facie established after collecting materials against the present petitioner/accused. From the perusal of the CD, it appears the materials available against the petitioner are sufficient to take cognizance and the allegation made in the FIR discloses the cognizable offence. Accordingly, the learned Court below rightly took cognizance. Now, it is open to the learned Trial Court to examine the witnesses to come to a final and logical conclusion.

8. The Hon'ble Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others***¹ has also laid down the several guidelines to be followed by the Court while exercising its power under Section 482 of the Cr.P.C./or under Article 226 of the Constitution of India out of those guidelines, few are as under: -

“i) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare

¹ (2021) SCC Online SC 315

cases (not to be confused with the formation in the context of death penalty).

ii) Criminal proceedings ought not to be scuttled at the initial stage;

iii) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

iv) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court;

v) While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

vii) When a prayer for quashing the FIR is made by the alleged accused and the Court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The Court is not required to consider on merits whether or not the merits of the allegations make out a

cognizable offence and the Court has to permit the investigating agency/police to investigate the allegations in the FIR;”

9. In the light of aforesaid discussion and also in view of the guidelines laid down by the Hon’ble Apex Court, this Court finds the case filed by the accused/petitioner has devoid of merit.

10. Under such circumstances, this Court does not find any sufficient reason or grounds to quash the proceeding only on the ground that transaction is civil in nature and no case is made out against the present petitioner under the IPC.

11. Consequently, **C.R.R. 583 of 2017** is, thus, dismissed without order as to costs. Connected applications, if any, are also thus, disposed of.

12. CD is to be returned to the learned counsel appearing on behalf of the state.

13. Interim order, if any, stands vacated.

14. Let a copy of this judgment and order be sent to the learned Court below for information.

15. Parties shall act on the server copies of this order uploaded on the website of this Court.

16. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)