

CRR 1427 of 2022

Satyabrata Dey & Ors.
Vs.
Md. Salauddin

Mr. Soumopriya Chowdhury
Mr. Bikash Shaw
Mr. S.N. Islam ...for the petitioners

Opposite party no. 2 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 proceeding of the complaint case being CS 5127 of 2021, pending before the learned Metropolitan Magistrate, 13th Court, Calcutta.

The opposite party herein filed a criminal complaint against the petitioners along with some other accused persons contending that M/s. Modi Private Limited was the owner of a cinema hall, where the complainant/opposite party was working as a booking clerk and by a letter of authorization dated 28th April, 2017, the directors of the company authorized the opposite party to act as an agent to sell the said cinema hall to a third party with a commitment to provide commission against such sale. Thereafter in a meeting with the petitioner no. 2 and 3 herein, they agreed to purchase the Cinema Hall with a commitment to pay 1% of the sale value as brokerage charges to the complainant for smooth execution of the sale. Thereafter, the opposite party came to know that said cinema hall has been purchased by the petitioners

depriving the opposite party from his brokerage in as much as he received only 50,000/- paid through bank by Mr. Cooper but the accused persons did not keep their assurance to pay 2% brokerage. Thereafter, the complainant/opposite party made several demand for payment of assured brokerage but the petitioners refused to pay the same.

Learned Magistrate by an order dated 10th May, 2021 after taking initial deposition of two witnesses issued process against the present petitioners.

Being aggrieved by that order, leaned counsel for the petitioner submits that the initiation and continuation of the present proceeding is a sheer abuse of process of the court and the court below by issuance of process has committed manifest illegality. He further submits that the concerned Magistrate has failed to conduct a meaningful inquiry within the meaning of Section 202 of the Code of Criminal Procedure before issuing process.

The court below has overreached the order of cognizance and has issued process under certain penal sections which have been declined already in the order of cognizance. The very chain of acquisition leveled by the opposite party is ex-facie false and is abuse of process of court and no credibility can be granted to the so called allegation of threat.

He further submits that to attract culpability under Section 506(ii) of the code, it must be palpable prima facie that there was criminal intimidation or threat perpetrated on the so called complainant. He further submits that even if the written complaint taken at its face value it does not constitute any offence

far from offence under Section 420/506(2)/34 of the Indian Penal Code. He further submits that in order to extract money illegally, the complainant/opposite party herein has given colour over a dispute between the parties which could have been a civil dispute among the parties. Accordingly, he has prayed for setting aside the order impugned.

I have gone through the contents of the written complaint as well as the initial deposition which is almost replica of the written complaint and I find that main allegation leveled by the petitioner in his written complaint is that the petitioners have assured him to pay 2% brokerage which they have not allegedly paid through admittedly vendor/Director of the company paid Rs. 50,000/- towards brokerage to the complainant.

On perusal of copy of order sheet it clearly appears that the complaint was filed alleging commission of offence under Section 406/409/420 read with Section 120B of the Indian Penal Code. However, the filing Magistrate by his order dated 29.1.2021 had taken cognizance only under Section 506(ii)/34 of the Code of the offence alleged. Thereafter, case was transferred to Metropolitan Magistrate, 13th Court. Said Magistrate however issued process under Section 420/506(ii)/34 read with Section 120B of the Indian Penal Code by its order dated 10.3.2021. In the said order, nowhere he mentioned that he has taken second time cognizance under Section 420 or 120B of the Indian Penal Code. Such second time cognizance even, if taken by Magistrate over self-same offence is not permissible under the law since cognizance is taken of the offence and not of the offender. The magistrate cannot take cognizance of the same offence for the second time on the same

materials especially when the earlier cognizance was already taken on specific offence.

So far as taking cognizance and issuance of process under Section 506 (Second part)/34 of the Indian Penal Code against present petitioners are concerned that is also a gross illegality on the part of Magistrate because complainant nowhere in the complaint nor the witnesses of the complaint have stated that petitioners herein have threatened him with dire consequences. The allegations have been specifically attributed against some unknown security guards/bouncers.

At the stage of issuance of summon, detailed reasoning as to why a Magistrate is taking cognizance or is issuing summon is not necessary. But here, I find from the complaint and initial deposition that it does not give rise to any offence against present petitioners, for which cognizance could have been taken by the filing Magistrate and also for which petitioners could have been summoned for trial. It is the duty of the Magistrate to be satisfied before taking cognizance or issuing process that there are sufficient grounds for proceeding against the present petitioners/accused persons. Here instead of taking cognizance he ought to have noted that a dispute over payment of brokerage, has been tried to give colour by lifting certain words from penal code to entangle petitioners in a criminal complaint.

By no stretch of imagination, such allegation leveled in the complaint constitute any criminal offence against the accused persons and as such, continuance of further proceeding before the court below will be a sheer abuse of process of the court. The cognizance taken by the Magistrate as well as the issuance of

process under Section 204 of the Code is itself bad in law on the basis of allegation leveled in the complaint or on the basis of initial deposition given by the witnesses on behalf of the complainant.

In view of above, CRR 1427 of 2022 stands allowed.

The criminal proceeding being CS case no. 5127 of 2021 pending before the learned Metropolitan Magistrate, 13th Court, Calcutta is hereby quashed.

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

(Ajoy Kumar Mukherjee, J.)