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CRR 1273 of 2015

Lexus Motors Ltd & Ors.
Vs.
Madhu Devi Saraf

With

CRR 1322 of 2015

Chandrasekaran Ramakrishnan & Ors.
Vs.
State of West Bengal & Anr.

Mr. Milon Kumar Mukherjee, Sr. Adv.
Mr. Biswajit Manna,
Mr. Aritra Bhattacharya.
... for the petitioners in CRR 1273 of 2015.

Mr. Milon Kumar Mukherjee, Sr. Adv
Mr. Ayan Bhattacharjee,
Mr. Anand KeshAri,
Mr. Arindam Chandra,
Mr. Atish Ghosh,
Ms. Antara Dey
.... For the petitioners in CRR 1322 of 2015 .

1. Affidavit of service is filed and the same be taken on record.
2. None appears on behalf of the opposite party.
3. Both the revisional applications are being taken up for disposal by this common judgment and order as because of identical issue involved in both the revisional applications.
4. These revisional applications have been filed challenging the proceeding in connection with CS Case No. 0010545 of 2015 under Section 379/420/406/120B of the Indian Penal Code

1860 pending before the Chief Metropolitan Magistrate, Calcutta.

5. This case was initiated by an application under Section 379/420/406/120B of the Indian Penal Code by the complainant before the court of learned Chief Judicial Magistrate, Calcutta alleging, inter alia, that the complainant visited the shop room of accused No.1 and met senior manager of the shop room and ultimately purchased one Jagaur Car amounting to Rs. 1,84,73,494/- bearing Registration No. WB02AE9000 from the accused No.1.
6. After purchased some defect were found in the vehicle and the defect was reported to the accused No.1 but ultimately the defect could not be solved and thereby complainant suffered huge monetary loss.
7. It was further alleged that the accused persons cheated the complainant by delivering defective car to the complainant.
8. On receipt of the complaint under Section 200 of the Code of Criminal Procedure, learned Chief Judicial Magistrate, Calcutta took cognizance of the offence and process was issued against the accused persons under Section 379/420/406/120B of the Indian Penal Code.

9. Mr. Milon Kumar Mukherjee, learned senior counsel appearing on behalf petitioner in both the revisional applications has submitted that the entire complaint, there is no specific allegation against any of the petitioners and that apart, he has drawn my attention to the order of learned Chief Judicial Magistrate who took cognizance of the offence and I find that there is no date mentioned in the order itself. Not only that no reason was assigned before taking cognizance of the offence and thereby it appears that cognizance was not taken after applying his judicial mind.
10. After careful scrutiny of the written complaint, I find that there is no specific allegation against the petitioners in connection with both the revisional applications.
11. On careful perusal of the written complaint, I find that the allegation made in the complaint under Section 200 of the Code of Criminal Procedure did not disclose any offence either under Section 420 or under Section 406 of the Indian Penal Code, against petitioners
12. With regard to allegation under Section 379 of the Indian Penal Code, I have gone through the allegation made in para 15 of the written

complaint, wherefrom I find nothing to suggest that petitioners of both the revisional applications are involved in any manner.

13. In such circumstances, I find it profitable to refer the principle laid down by the Hon'ble Apex Court in ***State of Haryana and others vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***, wherein Hon'ble Apex Court observed in paragraph 102 as follows:-

“ 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid

formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) 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.”

14. However, on careful perusal of the entire written complaint, I find nothing specific against any of the petitioners of both the revisional applications and therefore, I am of the opinion, that the case at hand falls within the parameter No.(1) laid down in Bhajanlal (Supra)

15. The proceeding in connection with CS Case No. 0010545 of 2015 under Section 379/420/406/120B of the Indian Penal Code 1860, pending before the Chief Metropolitan Magistrate, Calcutta stands quashed.
16. Accordingly, both the revaisioanl applications stand disposed of.
17. Interim order, if any, in both the revisional applications stand vacated.
18. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)