

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR1993 of 2024

Shri Tarun Jhunjunwala
v/s.

Shri Shyamal Dhar

For the Petitioner: Soumendra Nath Mookherjee, Sr. Adv.,
(through V.C.),
Sandipan Ganguly, Sr. Adv.,
Ayan Bhattacharjee, Adv.,
VVV Sastry, Adv.,
Subhojyoti, Adv.
Sourav Roy, Adv.,
Shounak Mondal, Adv.,

For the Opposite Party: Saikat Ghosh, Adv.,
Ooieseeroop Sinha, Adv.
L. Upadhyay, Adv.

Heard on: 30.07.2024

Date: 05.08.2024

SUVRA GHOSH, J. :-

- 1) The revisional application has been preferred by the petitioner seeking quashing of proceedings being complaint case no. CNS 2855/2024 pending before the Learned Metropolitan Magistrate, 19th Court, Calcutta redesignated as the learned Judicial Magistrate, 19th Court, Calcutta.

- 2) Learned counsel for the petitioner has submitted that the petitioner is a 69 year old person who is the President of Reliance Industries Limited. The opposite party being the owner of the property in question located at 210B/I.T. Kalicharan Ghosh Road, Kolkata – 700050 executed a lease agreement with Reliance on 5th July, 2018 in respect of the property for a period of 30 years commencing from 26th June, 2018 and expiring on 25th June, 2048, upon payment of monthly lease rent to the tune of Rs. 75,000/- subject to an escalation of rent @ 10% on the last paid rent over three years. Clause 9 of the agreement spells out that if the lessor decides to sell the demised premises during validity of the agreement, the lessee shall have the right of first refusal, such right being exercised within 30 days of making the offer by the lessor. Upon failure of the lessee to exercise such right, the lessor shall be free to sell,, assign and transfer the premises to any person of his choice, subject to the rights of the lessee under this deed. It is agreed that the agreement shall not be terminated by the lessor or any person/entity claiming under him at any time during the entire lease period. However, the lessee is entitled to terminate the agreement at any time during the lease period without assigning any reason therefor upon service of three months' notice on the lessor. An arbitration clause has also been laid down in the agreement.
- 3) Subsequently, due to business failure, the lessor/opposite party was not able to repay loan taken by him from the bank for which proceeding was drawn up against him under the SARFAESI Act before the Learned Debt Recovery Tribunal, Kolkata. The opposite party proposed to sell out the

property and such offer was made to the petitioner. Though the petitioner initially agreed to purchase the property, it was not ultimately possible. The petitioner was asked to vacate the property so that it could be sold out to others. Legal notices were issued by the opposite party in this regard and it is urged that the petitioner initially claimed Rs. 60,000/- and thereafter Rs. 1,20,000/- for vacating the property. Upon the petitioner expressing the inability of the company to either purchase the property at the demanded purchase price of Rs. 7,43,32,535/- or pay interest free advance of Rs. 5,00,00,000/-. relation between the parties soured and the present complaint was lodged. There is no prima facie material against the petitioner under section 384/406/420/506/120B of the Indian Penal Code in the complaint. The dispute between the parties is purely civil in nature which has been given a criminal colour.

- 4) Learned counsel has placed reliance on the authorities in Joseph Salvaraja v/s. State of Gujarat and others reported in (2011) 7 SCC 59 in support of his contention.
- 5) Speaking for the opposite party, learned counsel for the opposite party has submitted that the complaint has been lodged against the petitioner in his personal capacity and not against Reliance. The complaint satisfies all the ingredients of the offence alleged and the allegations against the petitioner need to be investigated in order to come to a reasonable conclusion with regard to the guilt of the petitioner. The complaint should not be quashed at the threshold and the petitioner ought to face trial before the learned trial Court. There is no irregularity

or abuse of process in issuance of summons by the learned trial Court. Learned counsel has placed reliance on the authorities in *Priti Saraf and Another v/s. State (NCT of Delhi)* and *Another* reported in (2021) 16 Supreme Court Cases 142, *Sri Krishna Agencies v/s. State of Andhra Pradesh and Another* reported in (2009) 1 Supreme Court Cases 69 and *Trisuns Chemical Industry v/s. Rajesh Agarwal and Others* reported in (1999) 8 Supreme Court Cases 686 in support of his contention.

- 6) I have considered the rival contention of the parties and material on record.
- 7) Cognizance of the complaint has been taken under section 384/420/406/506/120B of the Indian Penal Code. It is necessary to deal with each of the allegations made out in the complaint in order to arrive at a conclusion as to whether the prosecution should continue against the petitioner.
- 8) Section 384 of the Code deals with punishment for extortion. Section 383 defines extortion as hereunder:-

“Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”. No dishonest inducement upon the opposite party to deliver any property or valuable security or anything signed or sealed which may be converted into a valuable security is found in the complaint.

- 9) Section 420 of the Code deals with cheating and dishonestly inducing delivery of property. The provision is reproduced below:-

“420 Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”. The complaint is bereft of such allegation.

- 10) Section 406 prescribes punishment for criminal breach of trust which is defined in section 405 as hereunder:-

“Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”. No such allegation of dishonest misappropriation, conversion, use or disposal of property is found in the complaint. The company has been possessing the property by virtue of the deed of lease which is valid till 25th June, 2048 and its rights as a lessee are protected by the covenants of the deed.

- 11) Section 506 prescribes punishment for criminal intimidation which is defined in section 503 as hereunder:-

“Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation”.

- 12) The complaint spells out that the petitioner lost control of the language and immensely threatened the opposite party “in a different manner” The complainant is apprehensive that steps may be taken by the petitioner for grabbing the property under the umbrella of the company. The allegations made out in the complaint are general and omnibus and do not even prima facie make out a case of commission of the alleged offence against the petitioner.
- 13) The authorities in Joseph Salvaraja (supra) and Priti Saraf and Another (supra) have placed reliance in the judgment in State of Haryana v/s Bhajan Lal reported in 1992 SCC (Cri) 426. In the said judgment, the Hon’ble Supreme Court has laid down guidelines where power under section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India should be exercised.
- 14) The first parameter deals with a situation 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.

- 15) The authority in Trisuns Chemicals Industry (supra) observes that civil profile of an act is not sufficient to denude it of its criminal outfit. The Hon'ble Supreme Court, in the authority in M/s. Sri Krishna Agencies (supra) has held that there is no bar to simultaneous continuance of a criminal proceeding and a civil proceeding/arbitral proceeding if they arise from separate causes of action.
- 16) There is no quarrel with the said proposition laid down by the Hon'ble Supreme Court. The moot question for consideration herein is whether a prima facie case has been made out against the petitioner upon bare reading of the complaint.
- 17) True, jurisdiction under section 482 of the Code ought to be exercised with extreme care, caution and circumspection and should not be used to stifle or axe down a legitimate prosecution. The test is whether the uncontroverted allegations as made out in the complaint prima facie establish the case and also whether continuation of such complaint shall amount to abuse of the process of law.
- 18) In the present case, no prima facie offence under sections 384/406/420/506/120B of the Indian Penal Code has been made out against the petitioner in the complaint. Mere insertion of the provisions does not by itself make out a prima facie offence under the said provisions and it is the substance of the complaint which has to be taken into consideration. The complaint does not disclose any criminal offence, far less an offence under sections

384/406/420/506/120B of the Penal Code and continuation of such complaint shall amount to abuse of the process of law. The complaint appears to be a counterblast of the refusal of the company to purchase the property at the demanded price or pay interest-free advance as claimed. The petitioner cannot be compelled to face the ordeal of trial in such frivolous and vexatious proceeding instituted against him.

- 19) In the result, the revisional application being C.R.R. 1993 of 2024 is allowed.
- 20) The proceeding being complaint case no. CNS 2855/2024 pending before the Learned Judicial Magistrate, 19th Court, Calcutta is quashed.
- 21) There shall however be no order as to costs.
- 22) Copy of this judgment be sent to the the learned Judicial Magistrate, 19th Court, Calcutta for information and necessary action.
- 23) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)