

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

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 2154 of 2024

Anand Hammanna Naik & Anr.
V/s.

Amit Dutta.

For the Petitioners: Mr. Anand Keshri, Adv.,
Mr. Vipul Vednat Adv.,

For the Opposite Party: Mr. Shankha Shubhra Mukherjee, Adv.

Heard on: 12.06.2024

Date: 19.06.2024

SUVRA GHOSH, J. :-

- 1) In the present application, the petitioners have prayed for quashing of proceedings of complaint case no. 2760 of 2023 under sections 406/420/417/120B/504/506 of the Indian Penal Code pending before the Learned Judicial Magistrate, 6th Court, Alipore. The contention of the petitioners is that the opposite party was appointed as Regional Sales Manager for Kolkata location under the petitioners' company Bhoomi Process Management Pvt. Ltd. vide appointment letter issued on 22nd November, 2022 and was on probation for a period of three months. It was observed by the petitioners that the opposite party was not performing his duties diligently and

authenticity of the weekly reports submitted by him was doubtful. The opposite party disclosed his intention to resign from the company by an e-mail sent to the company on 29th May, 2023 and stopped working during the notice period. He was requested to visit the head office of the company at Mumbai and complete the exit procedure including handing over all the belongings of the company in his possession at the earliest which was not complied with by him. Several correspondences were made by and between the parties following which the petitioners were constrained to lodge a complaint against the opposite party before the DCP Zone 7, Mulund Police Station, Mumbai on 28th August, 2023. Since no action was taken by the police, the company initiated a proceeding under section 156 (3) of the Code of Criminal Procedure being Misc. Case No. 499 of 2024 under sections 420/409 of the Code which is pending. The proceeding initiated under section 500 of the Code against the opposite party and others is also pending.

- 2) The mere grievance of the opposite party in not receiving his salary after termination does not constitute an offence under section 406/420/417/120B/504/506 of the Code. The complaint does not disclose any offence which can be taken cognizance of. No initial deception on the part of the petitioner has been made out in the complaint. The petitioners have therefore prayed for quashing of the proceedings against them.
- 3) Per contra, learned counsel for the opposite party has submitted that the opposite party was compelled to resign from the post due to

arbitrary and unlawful notice issued by the company regarding deduction of 50% of his salary without any reasonable cause. Though the petitioners gave an assurance to establish a branch office in Kolkata no such branch office was either located in Kolkata or intended to be located. The opposite party was forced to travel to the Mumbai office over minor issues. Moreover, the company failed to reimburse the tour bills submitted by him prior to his resignation and his balance salary was also not paid.

- 4) The principal allegation made out against the petitioners in the complaint is under sections 406/420 of the Code. Section 406 of the Code refers to punishment for criminal breach of trust which is defined in section 405 as set out hereunder:

Criminal breach of trust. - “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”.”

- 5) The ingredients of offence as enumerated under section 420 of the Code are as follows:-

(i) There should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived

should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind reputation or property. (S.W. Panitkar v/s. State of Bihar reported in 2002 SCC (Cri) 129.)

- 6) 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 made out in the complaint prima facie establish the case and also whether continuance of such complaint shall amount to abuse of the process of law.
- 7) In the present case, the complaint talks about alleged breach of contract and payment of dues. Nowhere has it been stated that there was an intention on the part of the petitioners to cheat the complainant/opposite party at the time of issuance of the appointment letter on 22nd November, 2022. The allegations made out in the complaint are bereft of any guilty intention or mens rea on the part of the petitioners at the inception. No prima facie case of dishonest inducement at the inception is found in the complaint. The averments in the complaint portray a prima facie picture of alleged breach of contract. No entrustment with property or any dominion

over property has also found place in the allegations made out in the complaint. In fact, one of the legal notices issued by the opposite party to the company directors speak of breach of contract and payment of dues and nothing further. Mere insertion of sections 406/420/417 of the Penal Code in the complaint does not by itself make out a prima facie offence under the said provisions and it is the substance of the complaint which is to be taken into consideration. The complainant also does not attract offence under section 120B/504/506 of the Code.

- 8) In the premise, taking into account the contents of the complaint itself, it can be concluded that the complaint does not disclose any criminal offence, far less an offence under section 406/420/417//120B/504/506 of the Code and continuance of such complaint shall amount to abuse of the process of law.
- 9) In the result, the complaint along with proceeding of complaint case no. 2760/2023 pending before the learned Judicial Magistrate, 6th Court, Alipore is liable to be quashed.
- 10) C.R.R. 2154 of 2024 is allowed.
- 11) The complaint proceedings being case no. 2760 of 2023 under sections 406/420/417/120B/504/506 of the Indian Penal Code pending before the Learned Judicial Magistrate, 6th Court, Alipore is quashed.
- 12) The petitioners be released at once and discharged from their bail bonds.
- 13) There will be no order as to costs.

- 14) Copy of this judgment be sent to the learned Judicial Magistrate, 6th Court, Alipore for information and necessary action.
- 15) 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)