

22.08.2024
SL. 62+63
Court No. 551
Suvayan

C.R.R. 2052 of 2012
With
C.R.R. 2410 of 2012

In Re: - An Appeal under Section 482 of the Cr.P.C, 1973.
And

In the matter of: **Nirmala Devi Jha & Ors.**

...for the petitioners.

Mr. Bivasan Bhattacharya
Mr. Amal Kumar Saha
Ms. Irish Paul

...for the petitioners.

Mr. Ayan Bhattacharjee
Mr. Anand Khesari

...for the opposite party.

1. By filing CRR 2052 of 2012 which is a petition under Section 482 Cr.P.C. the petitioners have prayed for quashing of all further proceeding of Complaint Case no. 26932 of 2011 as pending before the learned Metropolitan Magistrate, 8th Court at Calcutta under Sections 420/120B IPC.
2. By filing CRR 2410 of 2010 the petitioners have challenged the legality, validity and correctness of the order dated 10.05.2012 as passed by the self-same Court in the self-same complaint case.
3. On perusal of the entire materials as placed before this Court and after hearing of the learned Advocates for the petitioners and the opposite parties it appears to this Court that admittedly on account of a contractual dispute over distribution of film (movie) the petitioner no. 3 before this Court has filed a Complaint Case no. 1437 of 1998 in the Court of learned Chief Judicial Magistrate, Muzaffarpur against the present opposite parties under Sections

406/409/420/120B IPC. It is not disputed that the said complaint case at Muzaffarpur Court is still pending.

4. It is the case of the petitioners before this Court that out of retaliation the opposite party no. 1 of this case in the year 2011 filed Complaint Case no. 26932 of 2011 in the Court of learned Chief Metropolitan Magistrate at Calcutta against the petitioners under Section 420 IPC. alleging that the petitioner no. 1 before this Court has taken a sum of Rs. 2,50,000/- with a false assurance that she and the other complainants of Muzaffarpur Court case shall withdraw the complaint against the opposite party no. 1 before this Court.
5. It is submitted on behalf of the petitioners that the Complaint Case no. 26932 of 2011 is the outcome of afterthought and the same has been filed to create a pressure upon the petitioners who are the complainants in the Muzaffarpur Court. It is further submitted on behalf of the petitioners that no *prima facie* case under Section 420 IPC has been made out on the part of the opposite party no. 1 and, therefore, the entire proceeding of CRR 2052 of 2012 is required to be quashed and consequently, the order dated 10.05.2012 as passed in Complaint Case no. 26932 of 2011 be set aside.
6. Per contra, learned Advocate for the opposite party no. 1 submits before this Court that at the very initial stage of the pendency of Complaint Case no. 26932 of 2011 this Court should not exercise its jurisdiction under Section 482 Cr.P.C. in view of the fact that the opposite party no. 1 before this Court has submitted sufficient *prima facie* materials as against

the present petitioners (the accused in Complaint Case no. 26932 of 2011) in order to attract the provision of Section 420 IPC.

7. This Court has occasioned to go through the petition under Section 420 IPC as filed in connection with Complaint Case no. 26932 of 2011. In paragraph no. 13 of the said complaint it has been stated that the petitioners before this Court hatched up criminal conspiracy amongst themselves to cheat the petitioners and with that intention they have induced the opposite party no. 1 to pay sum of Rs. 2,50,000/- with a false assurance that on payment of such amount they will withdraw the complaint as filed before the Muzaffarpur Court.
8. In course of his argument learned Advocate for the opposite party no. 1 who is the complainant in Complaint Case no. 26932 of 2011 submits before this Court that from page nos. 18 to 20 of the affidavit-in-opposition as filed by the opposite party no. 1 it would reveal that a copy of the withdrawal petition in respect of Muzaffarpur case has been forwarded to the opposite party no. 1 which would be evident from the letter dated 20th September, 2011 as available at page nos. 18 and 19 of the affidavit-in-opposition of the opposite party no. 1.
9. On perusal of the copy of the complaint, copy of the alleged withdrawal petition and the copy of the letter dated 20th September, 2011 as written by the opposite party no. 1 addressed to the petitioner no. 1 in this case it *prima facie* does not transpire to this Court that said alleged withdrawal petition has been forwarded to the opposite party no. 1 by the

petitioners. There is no forwarding letter of the present petitioners annexing this alleged withdrawal petition before the learned trial court. No money receipt is also filed wherefrom *prima facie* deceitful intention of the present petitioners regarding withdrawal of the complaint case of Muzaffarpur Court can be assumed.

10. Materials have been placed before this Court that in between the petitioners and opposite party no. 1 they existed business dispute. As discussed supra over the alleged dispute of distribution of film, a complaint case was pending before the Muzaffarpur Court and, therefore, the chance of false implication cannot be ruled out especially in absence of any cogent materials over which cognizance of offence can be taken.
11. In considered view of this Court the learned Chief Judicial Magistrate, Calcutta and/or learned Metropolitan Magistrate (now Judicial Magistrate), 8th Court at Calcutta were not correct in taking cognizance of the said complaint case which is based on practically no *prima facie* materials.
12. In view of the discussion this Court considers that it is a fit case for exercise of its power under Section 482 Cr.P.C.
13. Accordingly, CRR 2052 of 2012 is hereby allowed.
14. Consequently, all proceedings in connection with the Complaint Case no. 26932 of 2011 as pending before the learned Metropolitan Magistrate (now Judicial Magistrate), 8th Court at Calcutta under Sections 420/120B IPC is quashed.
15. In view of quashing of the aforementioned proceeding the order

dated 10.05.2012 as passed by the self-same Court in connection with self-same complaint case is also set aside.

16. With the aforementioned observation, CRR 2052 of 2012 and CRR 2410 of 2012 are disposed of.
17. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)