

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 3008 of 2016

Shyambazar Tennis Club & Ors.
Vs.
Tapan Kundu & Anr.

Mr. Kallol Mondal
Mr. Krishan Ray
Mr. Anindya Ghosh
Mr. Souvik Das
Mr. Pronojit Ray
Mr. Sekhar Mukherjee
Mr. Anindya Chowdhury
Mr. Anamitra Banerjee
... For the petitioners

Mr. Mrityunjay Chatterjee
Mr. Sayantan Bose
... For the opposite parties

1. This revisional application has been filed with a prayer for quashing of the proceedings, being CR No.0051646 of 2015 under Sections 406/420/120B of the Indian Penal Code wherein the learned Metropolitan Magistrate, 19th Court, Calcutta issued process on 26th July, 2016.

2. A complaint under Section 200 of the Code of Criminal Procedure was filed by the opposite parties, namely, Tapan Kundu and Swapan Kundu, being members of Shyambazar Tennis Club, a society registered under the Societies Registration Act, 1860, situated at 171/6B, Raja Dinendra Street, Deshbandhu Park, Kolkata – 700004.

3. A complaint was lodged under Section 200 of the Code of Criminal Procedure alleging, inter alia, that the accused/

petitioners herein are the executive members of the Club and they collected subscription from the members but they misappropriated the funds accumulated, in violation of the provisions of the By-laws of the Club.

4. It has been further alleged that the executive members of the Club/petitioners herein appointed a sub-committee to make by-laws contrary to the Rules of the Club.

5. Mr. Kallol Mondal, learned advocate, appearing on behalf of the petitioners has submitted that the complainants did not pay any subscription but tried to enter into the Tennis Club with a view to play tennis and the objection was raised by the petitioners which led this complaint to be filed before the Court. It is further contended on behalf of the petitioners that a civil suit is pending between the parties as well as there is no specific averment regarding misappropriation of funds. Mr. Mondal has drawn my attention to the By-laws, particularly, paragraph 35 and tried to make this Court understand that executive committee has been empowered by the By-laws to appoint sub-committee and also to make by-laws. Mr. Mondal has also contended that there is nothing specific in the written complaint to assume any ingredients of Sections 406/420/120B of the Indian Penal Code. It has been further contended by Mr. Mondal that there is nothing specific in the written complaint regarding initial deception or inducement and far to speak of inducement of any property with the petitioners.

6. Per contra, Mr. Mrityunjay Chatterjee, learned advocate, appearing on behalf of the opposite parties has raised vehement

objection contending, inter alia, that there is sufficient materials in the written complaint to suggest that the petitioners committed offence under Sections 420/406/120B of the Indian Penal Code and also misappropriated funds of the Club accumulated from subscription of the members.

7. On careful perusal of the entire written complaint, I do not find any sentence indicating the mode of misappropriation of funds of the Club.

8. That apart, written complaint does not suggest any kind of inducement on the part of the petitioner to deliver any property by the complainants/opposite parties herein or any averments with regard to the entrustment of any property with the petitioners in the background of allegation of non-payment of subscription by the complainants/opposite parties herein.

9. To constitute an offence under Section 420 of the Indian Penal Code, initial deception is a *sine qua non*. But, in this case, on careful perusal of the written complaint under Section 200 of the Code of Criminal Procedure, I do not find any single word relating to initial deception, rather it was opposed by filing this revisional application that complainants/opposite parties herein did not pay any subscription to the Club.

10. That apart, to constitute an offence under Section 406 of the Indian Penal Code, inducement of any property with the petitioners is an essential element. Unfortunately, the complaint, in its entirety, did not disclose any such averment of inducement.

11. Therefore, save and except omnibus allegation, I do not find any specific averment in the written complaint to constitute any offence either under Section 420 or under Section 406 of the Indian Penal Code.

12. In that view of the matter, question of impleading Section 120B of the Indian Penal Code does not arise.

13. It was alleged in the written complaint that the petitioners illegally appointed a sub-committee and made by-laws. Paragraph 35 of the By-laws annexed with this revisional application clearly specifies that members of the executive committee has been sufficiently empowered to appoint a sub-committee and also to make by-laws from time to time for the purpose of management of the Club.

14. From that point of view, I find hardly any merit in the particular allegation envisaged in the written complaint.

15. Given facts and circumstances, I find that the CR No.0051646 of 2015 pending before the learned Metropolitan Magistrate, 19th Court, Calcutta, generated by an application under Section 200 of the Code of Criminal Procedure by the opposite parties, is liable to be quashed.

16. Accordingly, the proceeding in connection with CR No.0051646 of 2015 under Sections 406/420/120B of the Indian Penal Code pending before the learned Metropolitan Magistrate, 19th Court, Calcutta, stands quashed.

17. With the aforesaid observations, the revisional application, being CRR 3008 of 2016, stands disposed of.
18. Interim order, if any, stands vacated.
19. Pending applications, if any, also stand disposed of.
20. Let a copy of this order be communicated to the learned Metropolitan Magistrate, 19th Court, Calcutta immediately for compliance.
21. Department is directed to send down the Lower Court Records forthwith.
22. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.
23. Criminal Section is directed to supply certified copy of this order, if applied for, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)