

26.04.2024
Court No.237
Item.16
(Srimanta)

IA No.:CRAN/8/2020 (Old No.:CRAN/221/2020)
in
CRR/3043/2016

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973.

And

In the matter of: **M/s. Bishwanath Ferro Alloys Limited & Ors.**
...Petitioners.

Mr. Ayan Bhattacharjee
...for the petitioners.

1. Affidavit-of-service filed in Court today be taken on record.
2. None appears on behalf of the opposite parties.
3. I have heard the learned Counsel appearing on behalf of the petitioners.
4. This revisional application has been filed with a prayer for quashing a proceeding of Case No. CN/0098423/2016 under Sections 418/34 of the Indian Penal Code pending before the Court of the learned Metropolitan Magistrate, 6th Court at Calcutta.
5. Proceeding under challenge generated through an application under Section 200 of the Code of Criminal Procedure filed before the Court of learned Additional Chief Metropolitan Magistrate, Calcutta alleging inter alia that the accused no. 1, M/s. Bishwanath Ferro Alloys Limited is a Public Limited Company within the meaning of Companies Act, 1956 having

its registered office at 3, Saklat Place, 2nd Floor, Police Station – Bowbazar, Kolkata – 700 072.

6. It is further alleged that accused nos. 2 and 3 herein were the whole time Directors and accused no. 4/opposite party no. 4 herein was the Managing Directors and accused no. 5/opposite party no. 5 herein was also director of the opposite party no. 1 and they were responsible for the day to day affairs of the company.
7. It is alleged that the accused/opposite parties entered into a conspiracy among themselves and approached the petitioners/complainant for supply of carbon electrode paste for its business with the representation that the accused company is renowned business house in Ferro Alloys Industry and has good reputation in the market. They also assured that they are very particular in their payment and will never fail in their commitments. Accordingly, Management of the petitioners/complainant company believed in their representation and reposed faith, trust and confidence on them.
8. It is alleged that accused persons/opposite parties herein placed a purchase order on 25.07.2012 for supply of 16 M.T. carbon electrode paste. Petitioners/complainant company duly delivered the said ordered material and raised their bill on 02.08.2012 for Rs.5,61,063/- (Five Lakhs Sixty One Thousand Sixty Three only) for payment. It is further stated in the written complaint that accused/petitioners herein make payment of Rs.2,00,000/- (Two Lakhs only) to the petitioners/complainant company and promised to clear the balance amount of Rs. 3,61,063/- within a short span and requested for some time.

9. It is further stated in the complaint that even after repeated request, reminders accused/opposite parties herein failed to make payment of outstanding dues.
10. Mr. Ayan Bhattacharyya, learned Counsel appearing on behalf of the petitioners has contended that dispute between the parties is purely a civil dispute and that cannot be considered as an offence within the meaning of Section 418 for which the learned Metropolitan Magistrate, 6th Court, Calcutta issued process against the accused under Sections 418/34 of the Indian Penal Code by the order dated 06.08.2016.
11. In support of his contention Mr. Bhattacharyya relied on two reported judgments – (i) **Anil Mahajan –Vs.- Bhor Industries Limited & Anr.** Reported in **(2005) 10 SCC 228** and (ii) **Hotline Teletubes and Components Ltd. & Ors. – Vs.- State of Bihar & Anr.** Reported in **(2005) 10 SCC 261.**
12. After careful perusal of the written complaint under Section 200 of the Code of Criminal Procedure filed before the Additional Chief Metropolitan Magistrate, I find particularly paragraphs 4 to 8 that opposite party no. 2/company supplied 16 M.T. carbon electrode paste to the petitioner-company and thereafter ordered material was delivered to the petitioner-company with their bill of Rs. 5,61,063/- dated 02.08.2012. It is also found that the petitioners paid Rs.2,00,000/- out of entire bill amount and the outstanding amount was not paid by the petitioners to the opposite party-company in spite of repeated request and reminders.
13. Hon'ble Apex Court in **Anil Mahajan** (supra) dealt with the identical facts where complainant delivered 56,94,120 reels of steel grip tapes valued at Rs.3,38,62,860/- to the accused and

out of this amount, the accused made only part payment of Rs. 3,05,39,086/- leaving balance amount of Rs.33,23,774/-. In that case Hon'ble Court found the dispute as a civil in nature and appeal is allowed after affirming the order of learned Additional Sessions Judge who set aside the order of learned Magistrate.

14. In Hotline Teletubes & Components Limited & Ors.(supra) Hon'ble Apex Court observed as follows:-

"This appeal by special leave has been filed by the appellants against the order passed by the Patna High Court, refusing to quash their prosecution under Sections 406 and 420 of the Indian Penal Code (for short "IPC"). In the complaint petition, it has been alleged that the complainant supplied goods to the accused persons, but they failed to pay the price therefor. There is no whisper in the complaint that at the very inception of the contract between the parties, there was any intention to cheat. It appears from a bare perusal of the complaint that it is a case of purely civil liability and no criminal offence is disclosed, much less offences either under Section 406 or 420 IPC. So far as the High Court is concerned, it has not considered this aspect of the matter, but has refused to quash the prosecution observing that it was a fit case where parties should take steps for settlement. In our view, allowing such prosecution to continue would amount to an abuse of the process of Court and to prevent the same, it would be just and expedient to quash the same.

Accordingly, the appeal is allowed and prosecution of the appellants is hereby quashed".

15. On careful reading of the entire written complaint under Section 200 of the Code of Criminal Procedure nothing has

come to my notice that petitioners ever deceived the complainant/opposite parties herein or dishonestly induced to deliver any property within the meaning of Section 415 of the Indian Penal Code to attract the provision of Section 418 of the Indian Penal Code.

16. In terms of the nature of allegation in this case as well as principles laid down by the Hon'ble Apex Court in **Anil Mahajan** (supra) and **Hotline Teletubes and Components Limited & Ors.** (supra), I do not find any reason to allow the proceeding to be continued further to prevent the abuse of the process of law.
17. Accordingly, the proceeding in connection with Case No. CN/0098423/2016 under Sections 418/34 of the Indian Penal Code pending before the learned Metropolitan Magistrate, 6th Court, Calcutta stands quashed.
18. With the aforesaid observation, the revisional application being CRR/3043/2016 is disposed of.
19. Consequently, connected application being CRAN/8/2020(Old No.:CRAN/221/2020) is also disposed of.
20. Parties are to act on the server copy of this order downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)