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02.09 2024

Ct. No. 237

C.R.R. 3379 of 2017
Rajesh Pandey
Vs.
The State of West Bengal & Ors.

Mr. Arnab Chatterjee
Ms. Dhanasree Biswas
Ms. Poulami Bose ...*For the Petitioner*

Mr. Rudradipta Nandy
Ms. Sanjana Saha ...*For the State*

Mr. Sandip Kumar Bhattacharya
Mr. Dipta Dipak Banerjee ...*For the Opposite Party*

Affidavit-of-service filed by the petitioners is taken on record.

This is an application, wherein the petitioner has prayed for quashing of proceedings being G.R. Case No. 2022 of 2016 pending before the learned Additional Chief Judicial Magistrate, Calcutta.

The petitioner's contention is that the petitioner is a businessman by profession and he used to deal in the business of Textiles and garments. The opposite party No. 2 herein lodged a written complaint with the allegations that the petitioner has induced the opposite party No. 2 to part with the business of textile between both the parties and both of them became very close to each other. It is further alleged that that the petitioner induced the opposite party No. 2 to supply textile materials on credit and promised to make payment within 15 days from the date of such delivery. It has been further alleged in the FIR that believing such representation and/or assurance of the petitioner, the opposite party No. 2 sold and/or delivered huge quantity of textile materials worth Rs. 3,72,318/- under various invoices dated

20.8.2016 and the petitioner herein took delivery of the said textile goods without raising any objection regarding their quantity and quality of the goods. It is further alleged in the FIR that thereafter the payment was not made and on being search, the opposite party No. 2/complainant found that the shop of the petitioner is closed and the petitioner become untraceable and for which he has lodged the complaint.

Mr. Arnab Chatterjee, learned Counsel appearing on behalf of the petitioner submits that the petitioner is absolutely innocent and has been falsely implicated in the instant case and the FIR makes it clear that there was no agreement or contract by and between the parties and in the absence of any such contract Section 406 does not have any application. He further submits that in order to constitute an offence of cheating under Section 420 of the Indian Penal Code, the sine-qua-non is that it must be demonstrated prima facie that the accused had an ill intention to defraud the complainant. In fact, there is no material in the record to show that there was any ill intention from the inception on the part of the petitioner to defraud complainant in order to attract Section 420 in the present case.

He further submits that mere breach of contract on the part of the accused by non-refunding the amount, would not constitute an offence of cheating. He further submits that even if FIR story is believed to be true, Section 406/420 of the Indian Penal Code does not attract in the present context. He further submits that in view of the settled position of law Section 420 and 406 cannot run simultaneously in respect of the same transaction. In fact the present proceeding has been initiated for wreaking personal vengeance on the petitioner and to achieve a short cut solution to a civil dispute. As such it is liable to be quashed.

In this context learned Counsel for the petitioner relied on the decision in the cases of ***Uma Shankar Gopalika Vs. State of Bihar & Anr.,*** reported in **(2005) 10 SCC 336;** ***Vesa Holdings Pvt. Ltd. & Anr. Vs. State of Kerala & Ors.,*** reported in **(2015) 8 SCC 293;** ***Madhavrao Jiwajirao Scindia & Ors. Vs. Sambhajirao Chandrojirao Angre & Ors.,*** reported in **(1988) 1 SCC 692** and ***Paramjeet Batra Vs. State of Uttartakhand & Ors.,*** reported in **(2013) 11 SCC 673**.

Mr. Sandip Kumar Bhattacharya, learned Counsel appearing on behalf of the opposite party No. 2 submits that the petitioner has duped and cheated the informant to make wrongful gain. He further submits that the petitioner's prayer for anticipatory bail was rejected by this Court and investigation could not be completed due to pendency of the present application. He further submits that the textile goods were delivered on 26th August, 2016 and it was agreed that within 15 days entire payment would be made but neither the payment was made nor the petitioner after receiving textile goods was made available and his shop was lying closed immediately after receiving the goods. It shows that there was initial deception in the mind of the petitioner and accordingly it is a clear case of cheating. He further submits that investigation has not yet been completed. The Investigating Authority is eager to submit the charge sheet at an early date and as such the argument made on behalf of the petitioner that Section 406/420 of the Indian Penal Code cannot run simultaneously in respect of the same transaction has got no substance as it is too early to make a comment on that. Accordingly he submits that this not a fit case where the proceeding is liable to be quashed.

Learned Counsel appearing on behalf of the State submits that during course of investigation they came to know that the accused person has also committed similar offence in past for which an FIR was registered by Salabatapura Police Station of Surat Police being Case No. 205 of 2016 under Sections 406/409/120B of the Indian Penal Code and another similar case against petitioner has also been registered with the Posta Police Station, being Case No. 226 of 2016 under Sections 406/409/120B of the Indian Penal Code and the amount involved in this two cases is more than Rs. 8 lakhs and Rs. 9 lakhs respectively. He further submits that the petitioner also filed an application for anticipatory bail before this High Court, which has been rejected and now he has come up with the present application in order to stall the investigation. He further submits that due to pendency of the present application, Investigating Agency could not submit charge sheet but they are ready for submission of final report before the concerned

Court.

I have considered the submissions made on behalf of the parties. On perusal of the order dated 11th April, 2017 passed by this Court in C.R. 2510 of 2017, it appears that while rejecting petitioner's prayer for anticipatory bail, this Court is of the prima facie view that the complicity of the petitioner cannot be totally ruled out and custodial interrogation of the petitioner may be necessary for meaningful progress of the investigation.

It further appears from the materials place before the Court that the petitioner has opened a bank account for the transaction in the name of his brother's two minor daughters. Moreover, it further appears that within one month from the date of delivery of the textile goods, FIR was registered alleging offence of cheating against the present petitioner, as petitioner immediate after receiving goods closed his shop and hide himself.

On perusal of the contents of the FIR as well as the materials available so far as in the Case Diary, it appears that it would not be proper to stifle a legitimate prosecution, where outcome of investigation is yet to come and the evidences have not yet been fully collected and produced before the Court. The issues involved either legal or factual cannot be seen at their true perspective unless final report is placed before the Court. The power to interdict a criminal proceeding cannot be the rule, specifically when allegations against the petitioner prima facie discloses offence. The inherent power of the High Court as recognized in Section 482 of the Code are to be used “to give effect to any order under the Code or prevent abuse of the process of any Court or otherwise to secure the ends of justice”. Considering the same, it cannot be said that the present criminal proceeding against the petitioner/accused are in any way an abuse of process of law and/or the Court.

In view of the discussions made hereinabove, C.R.R. 3379 of 2017 stands dismissed. In view of the dismissal of the main application, connected applications are also disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)