IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2199 of 2011

Mohan Singh Rai
-Vs-
The State of West Bengal & Ors.

For the Petitioner	: Mr. Chirag Jamwal
For the Opposite Party Nos. 1 and 2	: Mr. Saibal Bapuli Mr. Avishek Sinha Mr. Bibaswan Bhattacharyya
For the U.O.I. /O.P. No. 3	: Mr. Kallol Mondal
Heard on	: 06.03.2024, 16.05.2024, 23.09.2024
Judgment on	: 06.05.2025

Ananya Bandyopadhyay, J.:-

1. The present revisional application has been preferred by the petitioner, an ex-serviceman currently employed with M/s Innovision Ltd., a company duly registered under the Companies Act and authorised by the Protector General of Emigrants, Ministry of Overseas Indian Affairs, Government of India, to undertake overseas recruitment. The petitioner seeks quashing of the proceedings in G.R. Case No. 1189 of 2011 arising out of Pradhannagar Police Station Case No. 241 dated 05.07.2011, pending before the Court of the Learned Additional Chief Judicial Magistrate, Siliguri, under Section 420

of the Indian Penal Code read with Section 24(1) of the Emigration Act, 1983. It is the specific case of the petitioner that in furtherance of the lawful business activities of M/s Innovision Ltd., a recruitment drive was organised at Hotel Sinclairs, Siliguri, which was attended by the petitioner in his capacity as an employee of the said company. Prior to commencement of the recruitment process, a police officer attached to the D.E.B., Siliguri Police, conducted a raid based on alleged secret source information and proceeded to arrest the petitioner and others, despite being shown a copy of the company's Registration Certificate issued under Sections 10 and 11 of the Emigration Act. The petitioner was thereafter forwarded to the Court under General Diary Entries dated 02.07.2011, and by order dated 03.07.2011, the Learned Magistrate was pleased to release the petitioner and co-accused on ad-interim bail of Rs.800/- each after considering the original certificate and submissions of the Managing Director of M/s Innovision Ltd.

2. Subsequently, the opposite party no. 2 filed another complaint which was treated as an FIR giving rise to Pradhannagar P.S. Case No. 241 dated 05.07.2011, alleging that the petitioner and others had conducted unauthorised recruitment interviews for young women for employment as domestic workers in Singapore. It is alleged that no permission had been obtained from the competent authority, and that the petitioner had failed to produce authorisation letters or valid documents, thereby leading to seizure of a Xerox copy of the registration certificate and arrest of the individuals present. Communication from the Office of the Protector of Emigrants, Kolkata, dated 05.07.2011, confirmed that no permission had been granted

for conducting interviews in West Bengal or any other State within its jurisdiction. It was thus alleged that the petitioner and others had acted fraudulently and dishonestly with the intent to deceive members of the public, thereby committing offences punishable under Section 420 of the IPC and Section 24(1) of the Emigration Act.

3. The petitioner contends that he has been falsely implicated and that there exists no material or cogent evidence to prima facie establish his involvement in any criminal conspiracy or dishonest inducement. It is further submitted that the essential ingredients of the offences alleged—particularly the element of deception or fraudulent intention required under Section 420 of the IPC—are entirely absent. The petitioner acted within the scope of employment under a lawfully registered company and produced relevant documentation at the time of the incident. Therefore, the continuation of the criminal proceedings amounts to a sheer abuse of the process of Court and causes grave prejudice to the petitioner. The revisional application, accordingly, seeks interference of this Hon'ble Court in exercise of its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to secure the ends of justice.

4. The Learned Advocate appearing on behalf of the petitioner submitted that the continuance of the proceedings under G.R. Case No. 1189 of 2011, founded upon the allegations made in Pradhannagar Police Station Case No. 241 dated 05.07.2011, was legally untenable and liable to be quashed inasmuch as the essential ingredients necessary to attract the provisions of Section 420 of the Indian Penal Code were conspicuously absent in the

present case. It was contended that Section 420 penalises cheating and dishonestly inducing delivery of property, which requires, at the very threshold, a false and fraudulent representation made by the accused, followed by a consequential delivery of valuable property by the aggrieved party to the accused, and a further dishonest misappropriation of the same by the accused. In the present matter, it was submitted that there was no allegation from any of the persons who attended the recruitment drive at Hotel Sinclairs that they were either deceived, induced, or dispossessed of any money or valuable security. No complaint was received from any purported victim alleging financial loss, nor was there any claim that any promise of overseas employment was made on fraudulent grounds. It was further submitted that M/s Innovision Ltd., the employer of the petitioner, was a registered recruitment agency under Section 11 of the Emigration Act, 1983, and thus no representation made on its behalf could be said to be false or deceitful. In the absence of any pecuniary loss suffered by any individual or delivery of property upon inducement, the invocation of Section 420 IPC, it was argued, was wholly misconceived and an abuse of the process of law.

5. It was further argued that the criminal jurisprudence in India does not recognise the principle of vicarious liability in prosecutions under the Indian Penal Code, except in circumstances where specific statutory provisions impose such liability. It was urged that unless there is a clear and specific averment as to the individual role played by the officer of a company in the commission of the alleged offence, the said officer cannot be held liable

merely by virtue of his employment or designation. In the present case, the FIR was entirely bereft of any allegation directly implicating the petitioner in the commission of any overt act. The material on record failed to disclose that the petitioner, in his individual capacity, had played any part amounting to an offence under law. It was emphasised that no act, omission, or mens rea attributable specifically to the petitioner had been demonstrated by the prosecution, and as such, his arraignment as an accused in the instant proceeding was without legal justification.

6. In relation to the charges levelled under Section 24(1) of the Emigration Act, 1983, it was contended that the said provision criminalises recruitment or emigration without a valid registration certificate or in violation of the directions issued by the competent authority. It was submitted that M/s Innovision Ltd. was in possession of a valid certificate issued by the competent authority under Section 11 of the Act, and there was no allegation of the company having functioned without such registration. The complaint was premised solely on the allegation that permission had not been taken from the Protector of Emigrants, Kolkata, for conducting the recruitment in West Bengal. However, a plain reading of Section 24 of the said Act does not contemplate penal consequences for breach of conditions attached to the registration certificate unless the company is acting without a valid certificate altogether or in direct contravention of statutory directions. It was, therefore, submitted that even if the allegations were taken on their face value, no offence under Section 24(1) of the Emigration Act was made out against the petitioner.

7. The Learned Advocate for the petitioner concluded that the criminal proceedings initiated against the petitioner were manifestly attended with mala fides and intended to harass him despite the absence of any foundational facts constituting an offence in law. In view of the lack of any specific allegation of inducement, fraudulent intention, delivery of property, or direct involvement, it was urged that the continuation of the impugned proceedings would result in a gross miscarriage of justice, and accordingly, the same ought to be quashed by this Hon'ble Court in exercise of its inherent powers under Section 482 of the Code of Criminal Procedure to prevent abuse of the process of Court and to secure the ends of justice.
8. Pursuant to the directions issued by this Court vide order dated 06.03.2024, the Opposite Party No.3 had filed an affidavit clarifying the factual matrix concerning the report furnished by the Office of the Protector of Emigrants, Kolkata. The deponent, in his official capacity, had affirmed that he had been well acquainted with the facts of the case and had reviewed the contents of the application under Section 482 of the Code of Criminal Procedure, 1973 filed by the petitioner.
9. It had been averred therein that the Office of the Protector of Emigrants, Delhi had been requested to supply necessary details relating to the Recruiting Agent (RA), namely M/s. SRT Innovision Service Pvt. Ltd., including records of its registration under the Ministry of External Affairs, employer mandates, interview permissions during 2011, and documentation evidencing the petitioner's engagement with the said RA. In response, the RA had provided answers to most queries and had conveyed that it had failed to

notify the local Protector of Emigrants regarding the interview held in 2011 at Siliguri due to ignorance of procedural requirements.

10. The Learned Advocate representing the opposite party no. 3 stated although prior correspondence relating to the subject interview could not be located in the official records, the petition itself had indicated that no prior permission had been sought from the then Protector of Emigrants for conducting the said recruitment activity. It had been asserted that, as per the Emigrants Act, 1983 and the relevant government notifications, any recruiting agent intending to conduct interviews for overseas employment had been required to obtain prior permission from the competent authority.

11. The revisional application had been preferred by the petitioner, an ex-serviceman who had been engaged with M/s. SRT Innovision Service Pvt. Ltd., a recruitment agency duly registered under the Companies Act and holding a valid certificate of registration under Sections 10 and 11 of the Emigration Act, 1983. The petitioner had sought quashing of the proceedings in G.R. Case No. 1189 of 2011, arising out of Pradhannagar P.S. Case No. 241 dated 05.07.2011, which had been pending before the Court of the Learned Additional Chief Judicial Magistrate, Siliguri, for alleged offences punishable under Section 420 of the Indian Penal Code and Section 24(1) of the Emigration Act, 1983.

12. The factual background revealed that a recruitment event, which had been conducted under the banner of the petitioner's employer at Hotel Sinclairs, Siliguri, had been interrupted by the police on the basis of information received from undisclosed sources. Although the petitioner had produced a

copy of the company's registration certificate at the time, he had been arrested and subsequently granted ad-interim bail following judicial scrutiny of the original documents. Thereafter, a fresh FIR had been registered at the instance of opposite party no. 2, alleging that the petitioner and others had conducted unauthorised recruitment interviews without obtaining prior permission from the competent authority, and had done so with fraudulent intent to deceive the public.

13. Learned Counsel for the petitioner had contended that the invocation of Section 420 IPC had been legally misconceived, since the essential elements of the offence—fraudulent misrepresentation, inducement, wrongful delivery of property, and dishonest intention—had been entirely absent. It had been argued that no participant of the interview had alleged deception or financial loss, and that the employer-company's registration certificate had established lawful authority to conduct recruitment for overseas employment, thereby negating any presumption of fraud.

14. The proposition of vicarious liability could not be presumed concerning specific overt act or culpable mental state attributable to the petitioner at this stage, moreover any independent role on the part of the petitioner warranting criminal prosecution in his personal capacity, or his mere employment with the recruiting agency raised the institution of the criminal case to incriminate him could not be decided in absence of trial.

15. Regarding the alleged infraction under Section 24(1) of the Emigration Act, it had been submitted that M/s. SRT Innovision Service Pvt. Ltd. had held a valid registration under Section 11 of the said Act, and that the crux of the

complaint pertained merely to non-compliance with the procedural requirement of obtaining prior permission to conduct interviews in West Bengal. Whether it had been an innocuous omission or a motivated violation or a justified invocation will or will not fall within the scope of Section 24(1), which penalized unregistered recruitment or willful disobedience of directions issued by the competent authority, cannot be commented at this juncture.

16. In compliance with the directions passed by this Court on 06.03.2024, the Opposite Party No. 3, being the representative of the Protector of Emigrants, Kolkata, had filed an affidavit affirming that he had reviewed the application under Section 482 Cr.P.C. and had been acquainted with the relevant facts. It had been clarified therein that the Office of the Protector of Emigrants, Delhi, had been requested to furnish documents relating to M/s. SRT Innovision Service Pvt. Ltd., including proof of registration, authorizations from foreign employers, and records of interview permissions for the year 2011. The said agency had responded to most of the queries and had admitted that it had failed to intimate the local Protector of Emigrants regarding the interview at Siliguri due to lack of awareness.

17. The affidavit had further revealed that no prior correspondence could be traced within the office records regarding the said interview. However, on examining the petition, it had emerged that no permission had been sought from the competent authority at the material time. It had been affirmed that although registered recruiting agents were permitted to conduct interviews for overseas employment, they had been mandated to obtain prior

permission under the Emigrants Act, 1983 and relevant government notifications. The documents exchanged between the Kolkata and Delhi offices, along with the RA's replies and the pertinent government guidelines, had been annexed to the affidavit and marked as Annexures A-1 and A-2, respectively. The deponent had also reserved the right to advance further submissions at the stage of hearing.

18. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***[1] the Hon'ble Supreme Court observed as follows :

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> > *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
> >
> > *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an*

[1] 1992 SCC(Cri) 426

order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non– cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

19. The role of the petitioners to be absolved from the alleged offence or even non-involvement as per the allegations cannot be decided at such a nascent stage without completing the process of trial, where his activities as regards

the offences alleged are concerned are to be decided on adducing evidence both oral and documentary.

20. In view of the above discussions, the instant criminal revisional application being CRR 2199 of 2011 along with connected application, if there be any, stands dismissed.

21. There is no order as to costs.

22. Case diary, if any, be returned forthwith.

23. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

24. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)