

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 130 of 2017

With

IA No. CRAN 6 of 2018 (CRAN 2362 of 2018)

Bhola Jaiswal & Anr.

Vs.

The State of West Bengal & Anr.

For the Petitioners

:Mr. Praveen Kapur, Adv.

Ms. Sunanda Ganguli, Adv.

For the State

:Mr. Bidyut Kumar Roy, Adv.

Mr. Manoranjan Mahata, adv.

Heard on

: 08.06.2023, 28.06.2023,

28.07.2023, 25.09.2023

Judgment on

: 04th October, 2023

Bibhas Ranjan De, J.

1. This revision application is filed with a prayer for quashing the proceeding of Hare Street Police Station Case No. 487 dated 07.09.2016 corresponding to G.R. Case no. 1818 of 2016 under Section 120B, 406, 420, 506 of the Indian Penal Code (for short IPC). Pending before the Learned Chief Metropolitan Magistrate, Calcutta.
2. On receipt of a written complaint at Hare Street Police Station on 07.09.2016 at 20.20 hours lodged by one Pyara Lal Sharma the Proprietor of 'Anjani Gases' of premises no. 249 G.T. Road, Liluah, Howrah alleging, *inter alia*, that there was business transaction between said Pyara Lal Sharma and the petitioners on and from month of May, 2014. During business transaction the opposite party 2 started selling/parting away his goods by way of delivering the same to the petitioners/company on different occasions amounting to Rs. 1,64,056,63/-. Ultimately, in spite of several requests petitioner did not make any payment to the tune of Rs. 1,10,23,403.63/-.
3. Ld. Advocate, Mr. Praveen Kapur, appearing on behalf of the petitioners, have referred to the documents showing payment

of considerable amount which was further substantiated by the bank statement collected in course of investigation placed in case diary.

4. Ld. Advocate, Mr. Bidyut Kumar Roy, appearing on behalf of the State relied on the documents collected during investigation kept in the case diary.
5. Mr. Kapur, in support of his contention relied on a case reported in ***The Commissioner of Police Vs. Devender Anand*** reported in **2019 SCC OnLine SC 996**.
6. What I find from the written complaint is that there was business transaction between the parties. As per agreement some goods were delivered by the opposite party 2/ company to the petitioners/company (B.P. Project Pvt. Ltd.). It is also found that a considerable amount out of outstanding dues of Rs. 1,10,23 403.63/- was paid by the petitioner.
7. In ***Devender Anand*** (supra) Hon'ble Apex Court held in paragraphs 7& 8 as follows:-

“ Having heard the learned counsel appearing on behalf of the parties at length and considering the material on record, we are of the opinion that the criminal proceedings initiated by respondent No. 1 - original complainant is nothing but an abuse of the process of law for settling a civil dispute. Even considering the nature of allegations in the

complaint, we are of the firm opinion that no case is made out for taking cognizance of the offence under Section 420/34 IPC. The case involves a civil dispute and for settling a civil dispute, the criminal complaint has been filed, which is nothing but an abuse of the process of law”

- 8.** From the contents of the written complaint, I do not find any allegation of entrustment or dishonest misappropriation within the meaning of Section 405 of the IPC. That apart, written complaint also did not disclose any initial deception on the part of the petitioners and had it been so petitioners would not have paid the considerable amount out of outstanding dues of Rs. 1,10,23, 403.63/-.
- 9.** In the aforesaid view of the matter, I am of the opinion that dispute between the parties is nothing but a civil dispute which can only be decided by a Civil Court having jurisdiction. From the bare reading of written complaint there is nothing to suggest commission of any offence either under Section 402 or 406 of the IPC.
- 10.** Therefore, I have no hesitation to hold that permitting continuance of the criminal proceeding against the petitioners in the aforementioned facts and circumstances would result in

abuse of the process of Court and also in miscarriage of justice.

- 11.** Thus the proceeding in connection with Hare Street Police Station Case No. 487 dated 07.09.2016 corresponding to G.R. Case no. 1818 of 2016 under Section 120B/ 406/ 420/506 of the Indian Penal Code. Pending before the Ld. Chief Metropolitan Magistrate stands quashed.
- 12.** The revision application being no. 130 of 2017 stands allowed.
- 13.** Interim order, if there be any, stands vacated and all pending applications, if any, stand disposed of accordingly.
- 14.** Case diary be returned.
- 15.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 16.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]