(2018) 01 CAL CK 0016

In the Calcutta High Court

Case No : 3713 of 2016

Anchor Electricals Private Limited & Anr. APPELLANT

Vs

The State of West Bengal & Anr. RESPONDENT

Date of Decision : 30-01-2018

Acts Referred:

Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court
Indian Penal Code, 1860, Section 420, Section 406 - Cheatin

Citation : (2018) 01 CAL CK 0016

Hon'ble Judges : Siddhartha Chattopadhyay

Bench : Single Bench

Advocate : Sandipan Ganguly, Ayan Bhattacharya, Subhojit Roy, Anusua Sinha, Manik Lal Poddar

Judgement

1. Challenging the issuance of summon by the learned Metropolitan Magistrate, 14th Court at Calcutta in connection with C/319 of 2015, the petitioner by filing this revisional application has prayed for quashing of the said proceeding.

2. The petitioner''s grievance is such that he has the long standing business transaction with the opposite party and time to time he had been delivering articles to the present opposite party no. 2. The Opposite party no. 2 purchased various electricals goods from the petitioner time to time and for which the petitioner also raised various invoices upon the opposite party no. 2. In between 2005 to 2013 there was a transaction between them which exceeded crores of rupees. In August 2014, invoices were raised upon the opposite party no. 2, which was duly accepted by him and it appears that a sum of Rs.1.55 crores was outstanding. That amount was confirmed by the opposite party no. 2, through his son Naresh Agarwal i.e. his authorised signatory, who vide letter dated August 18, 2014, assured the petitioner no. 1 regarding repayment of Rs.1.55 crores. Ultimately, on 06.01.2015 opposite party no. 2 acknowledged the liability to the petitioner and proposed to make payment of Rs.50 lakhs by January 2015 and

remaining amount would be paid in the month of February 2015 and March 2015. However, in order to discharge payment of outstanding dues, the opposite party no. 2 issued several blank cheques drawn in favour of the petitioner no. 1. Despite promise made by the opposite party no. 2, the opposite party no. 2, wrote a letter to the present petitioner to settle the accounts. This time the petitioner denied the contention of the opposite party no. 2 and asserted by a letter dated 16.08.2015 that the opposite party no. 2 is to pay a sum of Rs.1,03,11,617.80 paise together with interest thereon at the rate of 25% per annum and called upon the opposite party no. 2 to make the said payment. Again in the month of May 2015 opposite party no. 2 responded to the said letter of the petitioner and again at their instance a meeting was held on June 5, 2015 and this time opposite party no. 2 agreed to pay the outstanding sum of the petitioner no.1 by instalments. The said meeting was also attended by the son of the opposite party. In the month of June 15, opposite party no. 2 proposed to pay a sum of Rs.32,10,000/- and this proposal was not acceptable to the petitioner. On July 27, 2015 the petitioner no. 1 issued a lawyer?s letter to the opposite party no. 2 and again called upon the opposite party no. 2 to pay a sum of Rs.62,48,930.60 paise. In the month of July 30, 2015 opposite party no. 2 called upon the petitioner no. 1 to lift the left over stocks and to forward a confirmation notice in his favour. Thereafter, there were many exchanges of letters between the parties and the lawyers. The opposite party no. 2 in the meantime filed a complaint case before the learned Metropolitan Magistrate.

3. As against this, learned Counsel appearing on behalf of the opposite party no. 2 contended that some blank cheques were given to the petitioner as security and the petitioner wanted to encash the same. He however contended that the relation between him and the petitioner was good and they were running their business smoothly. But the trouble started to erupt when the petitioner with some mala fide intention stopped recognizing petitioner''s entitlement to aforesaid incentives, discounts and schemes. Time and again he claimed his entitlements but this received a cold reception. The present petitioner wanted to use the security cheques as a debt. According to him, in June 2015 there was an agreement by which he was asked to pay Rs.5000000/- in one shot and then it will be treated as full and final settlement with no further claim and/or counter-claim from either party. The opposite party no. 2 was under an impression that the account was fully settled. In spite of that the petitioner wrote a letter to him and demanded Rs.62,48,913.60 paise. However, he has given a befitting reply this time. He realised that the petitioner is going to cheat him.

4. To attract Section 406 of I.P.C. there must be an entrustment to a person with property or with any dominion over property, the person so entrusted dishonestly misappropriates or converts to his own use that property or dishonestly using or disposing of that property or wilfully suffer any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract made touching the discharge of such trust. To attract Section 420 of I.P.C., the complainant has to show that there was an

intention to cheat at the first instance. But nowhere in the petition of complaint any such ingredient is seen. The learned Counsel appearing on behalf of the petitioner relied on the decision reported in 2008(2)C.C.R.L. 146. The ingredients of the offence of cheating are:- (a) there has to be a deception of a person, (b) dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property, or, (c) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived. In this case party has business transaction pursuant to some agreements but nowhere in the petition of complaint, it appears that there is any deception at the very inception. Alleged breach of promise even if anything is there that does not constitute a criminal offence of cheating. There is nothing in the petition of complaint that there was a guilty intention at the threshold of the transaction.

5. Considering all these aspects, I am of the view that it is a fit case where Section 482 of Cr.P.C. should be invoked. Accordingly, the revisional application stands allowed. The complaint case bearing No. C/319 of 2015 pending before the learned Metropolitan Magistrate, 14th Court at Calcutta stands quashed.

6. Let a copy of this order be sent to the learned trial court at once for information and taking necessary action.

7. Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.