(2019) 12 CAL CK 0003

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 3795 Of 2014

Electrosteel Steel Ltd. & Ors APPELLANT

Vs

M/s. STP Ltd RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 405, 406, 411, 415, 417, 418, 420
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 177, 178, 179, 180, 181, 182, 184, 185, 186, 188, 200, 205, 305, 397, 401, 482
Constitution Of India, 1950 — Article 226

Citation : (2019) 12 CAL CK 0003

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Anirban Dutta, Sandipan Ganguly, Ayan Bhattacharyya, Apalak Basu, Cedric Fernandez, Sharequl Haque, Sukanta Chakraborty, Anindya Halder

Final Decision : Dismissed

Judgement

Madhumati Mitra, J

Petitioners have approached before this court by filing an application under Sections 397/401 read with Section 482 of the code of criminal procedure praying for quashing of the proceedings of Complaint Case No. C/10607 of 2014 under Sections 420/406/417/418 read with Section 120B and 34 of the Indian Penal Code pending before the Learned Metropolitan Magistrate, 19th Court at Calcutta.

The petitioner, no.1 is a company incorporated under the relevant provisions of the Companies Act, 1956 under the name and style of Electrosteel Steel Limited (for sort said company). Petitioner No. 2 was the non-Executive Chairman of the petitioner no.1 company, petitioner no.3 was the Director and petitioner no.4 was the non-Executive Director of petitioner no.1 company.

The brief facts giving rise to the present application are as followes:-

The opposite party no.2 filed a petition of complaint before the court of Learned Chief Metropolitan Magistrate making allegations against the present petitioners for commission of the alleged offences punishable under Sections 420/406/417/411/418 read with Section 120B and 34 of the Indian Penal Code. On the basis of the said petition of complaint Learned Chief Metropolitan Magistrate took cognizance of the offences as alleged and transferred the complaint case to the Learned Metropolitan Magistrate, 19th Court for Disposal. After examining the complainant under Section 200 of the Code of Criminal Procedure, the Learned Magistrate issued process against the present petitioner to face trial for commission of the alleged offences punishable under Sections 420/406/417/411/418 read with Section 120B and 34 of the Indian Penal Code.

The petition of complaint has been annexed to the present application. Complainant is a company within the meaning of Companies Act, 1956 and carries on business. It was alleged in the said petition of complaint that the accused persons on behalf of their company visited the office of the complainant company and represented themselves to be the Chairman, Director as well as AGM PURCHASE of the accused company and expressed their desire to enter into a fair business deal with the complainant company. Complainant company was induced by the assurance given by the accused company and the accused persons. The complainant company in good faith supplied huge quantity of specified materials/goods to the accused persons as per the request made by them on behalf of their company. The accused persons specifically assured and promised that they would be responsible for payment of the goods/materials supplied to them by the complainant company. The goods/materials were received by the accused persons on behalf of the accused company in good condition to their full satisfaction. The complainant company supplied goods to the accused company from time to time and the accused company acknowledged the delivery of the goods in good condition. The accused company repeatedly promised and assured to the complainant company that the accused company would make payment as early as possible after receiving the goods from the complainant company in good condition. The accused persons issued C-Form in favour of the complainant company.

It was alleged in the written complaint that on the basis of the false representation, the accused company deceived the complainant company and the complainant company was induced to supply goods to the accused persons valued at Rs.20,90,047/- (Rupees Twenty Lakh Ninty Thousand Forty Seven only) from time to time. After receiving goods of the complainant company on several occasions, the accused company deferred making payment of the goods. It was also alleged by the complainant that the complainant company demanded payment of the goods supplied by them to the accused company on several occasions by issuing letter and e-mail but, the accused company did not pay any single penny towards price of the goods supplied by the complainant. The accused persons in their capacity as Chairman and Director AGM PURCHASE requested the complainant company for payment of the outstanding dues of the complainant company. The accused persons attached to the accused company constantly kept relation with the complainant company and assured for payment of the outstanding bills and requested not to institute any case against them for keeping good business terms.

Ultimately the accused company did not pay any single penny to the complainant company against the outstanding bills. It was further alleged by the complainant that the accused company was actuated with a dishonest intention from the very inception and with such dishonest intention from the very inception cheated the complainant company to the extent of an amount of Rs.20,90,047/-(Rupees Twenty Lakh Ninty Thousand Forty Seven only) and thereby committed offence punishable under Section 417 and 420 of the Indian Penal Code.

The Learned Magistrate after considering the initial deposition recorded under Section 200 of the Code of Criminal Procedure issued process against the accused persons to face trial for commission of the alleged offences punishable under Sections 420/406/417/411/418 read with Section 120B and 34 of the Indian Penal Code.

The petitioners after receiving the summons issued by the Learned Magistrate appeared before the Learned Magistrate through their advocates and filed applications under Sections 305 and 205 of the Code of Criminal Procedure for exempting them from personal appearance.

It has been stated by the petitioners in their application that the petitioner company (accused company) runs its business from its Project Office at Bokaro, Jharkhand. On 20.01.2011 the representative of the opposite party (Complainant Company) from their Jamsedpur unit, visited the project office of the petitioner company and met the officials of the purchase department. On January 21, 2011 the complainant company offered to supply Bitumen Tape as per requirement of the petitioner no.1 company. The Accused Company agreed to purchase Bitumen Tape from the opposite party company on the terms and conditions which were mentioned in the purchase order.

On and from March/ April 2011 the petitioner No.1 company was supplied Bitumen Tapes and other materials by the opposite party company on the basis of various purchase orders. The Petitioners (accused) in their application before this court stated that they had made several payments based on the invoices on the terms and conditions of the purchase orders placed from time to time to the complainant company. It has been claimed by the accused company that they had never delayed in payment to the complainant company. It was specifically stated by the petitioners that the petitioners did not have any intention to cause wrongful loss to the opposite party company and the question of committing offences under Sections 417/418/420 of the Indian Penal Code does not arise at all.

It has been contented by the petitioners that there was no entrustment of the property by the complainant company, and as such the essential element of the offence under Section 406 of the Indian Penal Code is not attracted. It has been claimed by the petitioners that the valuable property being the Bitumen Tape supplied to the petitioner company was done in pursuance of the sale transaction duly negotiated at the Project office at Bokaro Jharkhand and there was no entrustment within the meaning of Section 405 of the Indian Penal Code. The petitioners also claimed that primary ingredients of the offence under Section 420 of the Indian Penal Code are missing in the complaint initiated by the opposite party/complainant.

When the revisional application was taken up for hearing on April 22, 2019 the Learned Counsel appearing for the petitioners submitted that he was representing only petitioner Nos. 2 to 4, not the petitioner No.1. A fresh notice was issued to the petitioner No.1. Thereafter petitioner No.1 was represented through Learned Advocate Mr. Anirban Dutta and Mr. Sayantan Sinha.

At the outset the Learned Counsel appearing for the petitioner Nos. 2 to 4 has submitted that the Learned Magistrate has no jurisdiction to take cognizance of the alleged offences as no cause of action took place within the jurisdiction of Learned Metropolitan Magistrate. In support of his contention the Learned Counsel has contended that the entire alleged transaction/negotiation took place at Bokaro site office of the petitioner company (accused company)

His second contention is that the transaction in question is civil and commercial in nature. The continuance of the criminal proceedings against the petitioner would be an abuse of the process of the Court.

The third contention of the Learned Counsel of the petitioner Nos. 2 to 4 is that the criminal proceedings have been initiated by the complainant company with an ulterior motive for wreaking vengeance on the accused/petitioners and view to spite them due to private and personal grudge. According to his contention the entire proceedings are liable to be quashed on this score.

The next contention of the Learned Counsel for the petitioner Nos.2 to 4 is that nowhere in the petition of the complaint, disclosed the specific role played by the petitioner Nos. 2 to 4 in commission of the alleged offences. According to his contention the principle of vicarious liability has no manner of application in respect of the offences under the Indian Penal Code. In absence of specific averments regarding the involvement the petitioner Nos. 2 to 4 in the commission of alleged offences they cannot be prosecuted. The Learned Counsel appearing for the petitioner Nos. 2 to 4 has argued before the court that there were commercial transactions between the accused company and complainant company. Several payments were made by the accused company continuously since May 27, 2011 to January 2012. The order of issuance of the process by the Learned Magistrate against the petitioners was not justified and is liable to be quashed.

On 27.09.2019 petitioner no.1 Electrosteel Steel Ltd. has submitted an affidavit of facts stating that said Electrosteel Steel Ltd. was taken over by Vedanta Ltd.

and presently is under the management of Vedanta Ltd. It has been stated by the petitioner No.1 that pursuant to the operation of resolution plan and its clauses, the existing promoters, share-holders, managers, directors, employee shall not be directly or indirectly held responsible or liable. It has been claimed by the petitioner No.1 that said clause being a part of the said resolution plan which has been accepted not only by the NCLT but also by the NCLAT. The petitioner no.1 has further stated that the petitioner of complaint filed by the opposite party no.2 is devoid of merit and liable to be quashed.

Legality and validity of the criminal proceedings pending before the Learned Magistrate have been challenged by the petitioners. Initially the application for quashing of the criminal proceedings was filed jointly by all the petitioners including the accused company. During the pendency of this revisional application the Learned Counsel of the petitioners drew the attention of the Court that he was not representing the accused company and in absence of instruction from the accused company he was not in a position to conduct the case on behalf of the accused company. In view of the submissions made by the Learned Counsel for the petitioner the Court issued notice upon Petitioner No.1 Company. Pursuant to that notice the Petitioner no.1 entered appearance by filling vakalatnama and also filed an affidavit stating the status of the company in connection with this revisional application.

The Learned Counsel for the petitioner nos.2 to 4 has submitted that Learned Magistrate has no jurisdiction to issue process against the accused/petitioners. At the time of perusal of the petition of complaint it appears that it was mentioned in the petition of complaint that the cause of action arose within the jurisdiction of the Learned Magistrate. Moreover there are specific averments in the petition of complaint that the officials of the accused company visited the registered office of the complainant company regarding alleged supply of goods. The defence version is that alleged transactions were taken place at Bokaro, Jharkhand, which is beyond the territorial jurisdiction of the Learned Magistrate. While considering an application for quashing of a criminal proceedings the court is not required to consider the defence version particularly when the defence version has not been admitted by the opposite party/de-facto complainant.

General rule of jurisdiction of the criminal court is contained in Section 177 of the Code of Criminal Procedure. This general rule is subject to some exceptions mentioned in subsequent sections of the Code of Criminal Procedure. As per general rule contained in section 177 of the code of criminal procedure every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction the offence was committed. The word 'ordinarily' used in Section 177 of the code of criminal procedure indicates that the provisions of section 177 are subject to the provisions of Sections 178,179,180,181,182,184,185,186 and 188 of the Code of Criminal Procedure.

In this connection a decision of the Apex Curt in Trisuns Chemical Industry Vs. Rajesh Agarwal & Ors. reported in (1999) 8 SCC 686 may be mentioned.

The Apex Court observed that it is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. The provision of Sections 177 and 179 of the Code of Criminal Procedure do not trammel the power of any court to take the cognizance of the offence.

I do not find much force in the submission made by the Learned Counsel for the petitioners regarding quashing of the criminal proceeding on the ground of lack of territorial jurisdiction of the Magistrate.

In the instant case the specific submission of the Learned Counsel appearing for the petitioner Nos. 2 to 4 is that the petition of complaint was filed by the complainant by suppressing material facts. According to his contention the alleged non-payment of price of the goods and the other allegations contained in the FIR are purely commercial and contractual in nature. The failure on the part of the petitioners to make payments for the goods supplied to them may be termed as breach of contract and does not come within the purview of an offence of cheating. He has further contented that the petition of complaint did not mention the specific role played by the petitioner nos. 2 to 4 at the time of commission of the alleged offences. He has further submitted that nowhere in the petition of complaint, the complainant described that the petitioners 2 to 4 had fraudulent and dishonest intention at the time of making the representation and in the absence of such averment in the petitioner of complaint, the petitioners cannot be prosecuted for the commission of the alleged offences. He has vigorously argued that the petitioners no. 2 to 4 were the officials of the petitioner no.1 company and in the absence of specific averments regarding their personal involvement in commission of the alleged offences, the continuance of the proceedings against them would be an abuse of the process of the Court. According to his contention if one goes through the entire petition of complaint then it would be clear to him that the alleged dispute arose out of commercial transaction regarding non-payment of the price of the goods supplied to the petitioners.

On the other hand the Learned Advocate for the opposite party/de- facto complainant has contended that there are sufficient averments in the petition of complaint and the petition of complaint disclosed all the ingredients of the alleged offences.

Before proceeding further in the matter, it would be better to deal with the offence alleged in the written complaint. The offences alleged are cheating and criminal breach of trust.

Section 415 of the Indian Penal Code advance cheating is under:

"415.Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Section 405 of the Indian Penal Code advance criminal breach of trust as under:

"405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"."

All the Learned Advocates appearing for the parties took much pain and advanced their eloquent arguments. They have cited a series of decisions.

I have carefully examined submission and counter submission advanced by the Learned Counsel for the parties both on the legal and factual aspects.

Before proceeding further, I intend to cite the celebrated judgment of our Apex Court in State of Haryana & Ors. Vs. Bhajan Lal & Ors. reported in 1992 Supp(1) SCC 335: 1992 SCC (Cri) 426. In the said judgment our Apex Court laid down the parameters when the power under Section 482 of the Code of Criminal Procedure and under Article 226 of the Constitution of India can be exercised. Paragraph 102 of the said judgment is mentioned below:-

"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 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 noncognizable 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."

Before delving deep into the matter, it would be better to have a look at the petitioner of complaint on the basis of which the present criminal proceedings have been initiated.

In the petitioner of complaint the complainant company described how the accused company and the accused persons induced the complainant company to supply goods/Bitumen Tape from time to time by making false representation that the payment would be made within a short period.

The Learned Counsel appearing for the petitioners has specifically contended that alleged transaction between the parties regarding supplied of goods as revealed from the averments of the petition of complaint was nothing but purely a sale and commercial transaction. It is his specific contention that failure to make payment for the goods can never be treated as cheating.

In the petition of the complaint the de-facto complainant mentioned that the goods were supplied on the basis of the misrepresentation and false assurance given by the accused persons.

The contention of the Learned Advocate for the petitioner Nos. 2 to 4 is that the petitioner nos.2 to 4 are the officials of the company and admittedly goods were supplied to the company. In absence of the specific averments against the petitioner nos. 2 to 4 they cannot be prosecuted for the commission of the alleged offences for cheating and criminal breach of trust. In support of the above contention the Learned Counsel for the petitioner nos. 2 to 4 has submitted that the Indian Penal Code does not contain any provision for attaching of vicarious liability.

In view of the provision of Section 415 of the Indian Penal Code the intention of the offender who induces the complainant is decisive in discerning whether the offence of cheating was committed or not. It cannot be denied that many a cheatings are being committed in course of commercial or also money transactions.

In the present case the allegations in the petition of complaint elaborately described the role played by the petitioner nos. 2 to 4 of the accused company and how they induced the complainant to supply Bitumen Tape and other goods on different occasions. The petitioner nos. 2 to 4 claimed that the payment of the goods were made from time to time. It is settled principle of law that the court while exercising its power under Section 482 of code of Criminal Procedure should not adjudicate on disputed facts. Averments made in the petition of complaint prima facie disclosed the commission of alleged offences of cheating and criminal breach of trust as the averments of the petition of complaint disclose that that the complainant company was induced to deliver goods to the accused company on the basis of false representation made by the accused persons.

A plea was taken by the petitioner no.1 company that on 4th June, 2018 Steering Committee handed over the management of the accused company to the management M/s Vedanta Limited and pursuant to the order of National Company Law Tribunal dated 17th April, 2018. In its affidavit dated 27th August, 2019 in connection with the application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure. The petitioner No.1 Company stated that the opposite party complainant had a continuous business relation with petitioner no.1 and the company had made payment to the tune of Rs.10,000,000/- (rupees One Crore) and more and as such it cannot be said that the accused company had motive to cause wrongful loss to the opposite party/de-facto complainant.

Previously I, observed that while considering the prayer for quashing of the proceedings the court should not assume the jurisdiction of the Trial Court by delving deep into the factual aspect in the petition of complaint. There are specific averments in the petition of complaint to the effect that no payment was made towards the price of the goods supplied by the complainant company to the accused company. It has been alleged that the complainant company was induced by false representation to supply the goods. The question whether the accused company made any payment or not is a disputed fact and only the Trial Court can decide this issue at the time of trial. This court should not assume the jurisdiction of the Trial Court to adjudicate upon disputed facts.

I have carefully gone through the petition of complaint. The allegations contained in the said petition of complaint clearly disclosed that the petitioners induced the complainant to supply goods by making false representation. The averments in the petition of complaint prima facie reveal the commission of cognizable offence. When the petition of complaint discloses that the commercial transaction between the parties involves criminal offence, then the question of quashing the complaint cannot be allowed.

In order to exercise the power under Section 482 of the Code of Criminal Procedure the only requirement is to see whether continuance of the criminal proceedings would be a total abuse of the process of the Court. Having regard to the materials placed on record and the rival submissions made by the parties, I am of the opinion that continuance of the criminal proceedings against the petitioners/the accused would not be an abuse of the process of the Court.

In view of above I am of the view that continuance of the criminal proceedings against the present petitioner/accused would not be an abuse of the process of the Court. Hence the prayer for quashing for proceeding stands dismissed.

Before parting with the case, I would like to clarify that the observations made in this judgment should not be taken as an expression of any opinion regarding the merit of the criminal proceedings pending before the Learned Magistrate. The Learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with law.

Urgent photostate certified copy of this order if applied, be supplied to the parties on compliance of necessary formalities.

