(2015) 02 CAL CK 0094

In the Calcutta High Court

Case No : C.R.R. No. 2296 of 2014

Manoj Rathi and Others — APPELLANT

Vs

The State of West Bengal and Others — RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(3), 161, 482
Penal Code, 1860 (IPC) — Section 120B, 34, 403, 405, 406

Citation : (2015) 02 CAL CK 0094

Hon'ble Judges : Shib Sadhan Sadhu, J

Bench : Single Bench

Advocate : Debasish Roy, Sandipan Ganguly and Ranabir Roy Chowdhury, for the Appellant; Imran Ali, Advocates for the Respondent

Final Decision : Allowed

Judgement

Shib Sadhan Sadhu, J.—This petition under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioners praying for quashment of the proceedings and order dated 26.08.2013 passed in G.R.Case No. 381 of 2013 under Section 406/34 of the Indian Penal Code pending before the Court of the Learned Additional Chief Judicial Magistrate, Bidhannagar, District: North 24 Parganas.

2. The factual backdrop of the event giving rise to this petition is that the O.P. No. 2 had placed orders for supplying 100 numbers of DELL Desktop Computers on 19.01.2013 on the quotation amounting to Rs. 27,95,208/- (Rupees Twenty Seven Lakh Ninety Five Thousand Two Hundred Eight only) with the said company as total costs for 100 Desktop for delivery to the O.P. No. 2 on the terms and conditions that all payments to be made in favour of the petitioners, 10% advance along with P.O. and that delivery will be within one month from the date of release of P.O. and payment. In course of discussion with the petitioners it was settled that payment be made 10% in advance and balance 90% be made

after delivery within 21 days in 3 cheques and on 19.01.2013 the O.P. No. 2 submitted the work orders for a total price of Rs. 27,95,208/-. Since no objection was received from the petitioner/accused in respect of varied terms and conditions in quotation, the O.P. No. 2 made contact with the petitioners over phone and requested them to collect the cheque of Rs. 2,80,000/- as advance. Accordingly the petitioner No. 2 came to the office of the O.P. No. 2 and he handed over the quotation along with the cheque to the petitioner No. 2. The accused/petitioner agreed to make delivery within 10 days from that date and accordingly, the terms and conditions of the order were resettled and re-written by them. They made commitment to supply the materials as per quotation and work orders on or before 29.01.2013. On 28.01.2013 the O.P. No. 2 contacted with the accused for immediate supply of the materials and reminded them that in case of failure he will not be able to supply the materials to Aliah University within 30.01.2013 and he will incur huge financial loss. But on 29.01.2013 the accused/petitioners changed their attitude and began to avoid the O.P. No. 2 and they did not supply the materials within 29.01.2013 as committed earlier. As a result he failed to supply the materials to the Aliah University on 30.01.2013. On 05.02.2013 he got a letter from the said University Authority cancelling the order. Thereafter, on taking information from the bank he came to know that the cheque of Rs. 2,80,000/- issued to the accused/petitioners remained unpresented. So he issued instruction to the bank to stop payment by means of a letter dated 05.02.2013. On 06.02.2013 he received a letter from the accused through mail stating some new facts and grounds for withholding the contract and further declaring that the purchase order dated 19.01.2013 could not be validated from their end for the reasons that the cheque was faulty as it was not issued in favour of "Diamond Infotech Private Limited" and since the cheque which was issued against advance payment could not be realised the delivery order could not be executed. The accused persons had ill and dishonest intention since inception to withhold the purchase order without supplying the materials as ordered on 19.01.2013 and they have cheated him. The O.P. No. 2 reposed trust upon accused persons but he was deceived. He then sent a legal notice to the accused persons asking them to return the cheque of Rs. 2,80,000/- but they did not do so. For such dishonest intention and criminal motive of the accused persons, he had incurred a huge loss. Thereafter, he filed a written complaint in the Court of Learned Additional Chief Judicial Magistrate at Bidhannagar which was sent for investigation under Section 156(3) Cr.P.C. Investigation was conducted and charge sheet was submitted under Section 406/34 IPC.

3. Mr. Debasish Roy, Learned Counsel appearing on behalf of the petitioners, argued that the facts, stated in the written complaint, FIR and statements recorded under Section 161 Cr.P.C., even if accepted as it is, do not constitute offence under Section 406 of the IPC. He further contended that the terms and conditions of the quotation were that (i) 100% advance along with purchase orders; (ii) deliveries will be one month from the date of release of P.O. and payment and (iii) all payments to be made in favour of "Diamond Infotech

Private Limited" payable at Kolkata. But the O.P. No. 2 did not follow such terms and conditions and he forwarded a quotation stating varied terms and conditions and he sent a cheque of Rs. 2,80,000/- being 10% payment in advance which again was faulty. That is why such cheque was not presented in the bank and he was duly intimated and the cheque was returned. He contended yet further that the alleged facts and circumstances and the allegation made in the complaint and the case diary statements make out no offence at all far to speak of establishing an offence under Section 406 IPC. Even the worst view of the matter is taken it might give rise to a case of breach of contract. There is nothing to show that there was at all any relation of trust or entrustment or criminal breach of trust. Therefore, according to him, the essential ingredients of the offence of criminal breach of trust as defined under Section 406 of the IPC are not made out and the institution of the criminal proceedings is an abuse of process of law and an attempt to use the police machinery to pressurize and harass the innocent petitioners by twisting arms.

4. On the other hand, Learned Counsel appearing on behalf of the State, argued that from the contents of the written complaint, FIR and the case diary statement, a prima facie case of criminal breach of trust is made out. Therefore, no interference is warranted and the petitioners would be at liberty to raise defences available to them under the law in the Trial Court. Their defence cannot be considered at this stage.

5. Despite service of notice the O.P. No. 2 has not appeared.

6. I have considered the rival submissions made by the Learned Counsel for the parties and perused the entire materials available on record.

7. In its well-known decision in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , The Hon''ble Supreme Court stated categories of cases by way of illustration wherein extraordinary power under Article 226 of the Constitution of India or inherent power under Section 482 of the Cr.P.C. could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice, as below:

"102.......(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 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"

8. The Hon''ble Supreme Court again considered the scope and ambit of power under Section 482 of the Code in the case of Hira Lal and Others Vs. State of U.P. and Others, AIR 2009 SC 2380 : (2009) CriLJ 2849 : (2009) 5 JT 327 : (2009) 5 SCALE 418 : (2009) 11 SCC 89 : (2009) 5 SCR 567 in the following words:

"The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 of the Code are well-known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is mala fide."

9. Let me now examine the contentions raised by the Learned Counsel for the parties in the light of principles enumerated in the aforesaid decisions, in order to find out whether a case of quashing criminal proceedings constituted upon FIR is made out so as to warrant interference by this Court invoking inherent power under Section 482 of the Code.

10. On the basis of the written complaint a case under Sections 403/406/418/420/423/120B of the IPC was registered by the police against the petitioners. However, on conclusion of investigation, the charge-sheet was submitted under Section 406/34 IPC only.

11. Section 406 of the IPC provides for punishment for criminal breach of trust. Criminal breach of trust has been defined in Section 405 of the IPC which is reproduced below:

"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 wilfully suffers any other person so to do, commits "Criminal breach of trust".

12. On a reading of the aforesaid Section, it is manifest that an offence of criminal breach of trust necessarily involves the facts of (a) entrustment of the property; (b) a dishonest misappropriation or conversion of the property by the agent to his own use; or (c) dishonest use or disposal of the property in violation of mandate of the law prescribing the mode in which the entrustment is to be discharged; or (d) dishonest use or disposal of the property in violation of the terms of any legal contract either express or implied regarding the discharge of the entrustment or wilfully allowing some other person to do so. To establish a charge under the Section, the fact of entrustment of the property as well as any or more of the other alternative as aforesaid have to be established by the prosecution, the gist being a dishonest intention on the part of the agent.

13. The entire allegations against the petitioners as stated in the written complaint, FIR and the case diary statements placed on record, revealed that the allegations against the petitioners is that they entered into an agreement to supply 100 DELL Desktop Computers for a total price of Rs. 27,95,208/- and they received a cheque of Rs. 2,80,000/- as 10% payment in advance and they were to receive the balance 90% after delivery being made within 21 days. But the petitioners did not at all supply the computers nor did they return the said cheque. However, from the written complaint and the case diary statements, it reveals that at the time of entering into the agreement to supply the computers, the petitioners gave a quotation to the O.P. No. 2 making it clear that all payments are to be made in favour of "Diamond Infotech Private Limited" payable at Kolkata, that 100% advance along with purchase orders and that deliveries will be made after one month from the date of release of P.O. and payment. The quotation dated 19.01.2013 (Annexure P-1 in the case diary at Page 24) clearly spells out such terms and conditions. The terms and conditions alleged by the O.P. No. 2 is his own creation which was not approved or agreed to by the petitioners and there is nothing to establish such varied terms and conditions. Therefore, it is needless to mention that there was no express or implied legal contract between the parties. That being so, no question of violation of a contract amounting to criminal breach of trust does not arise at all. Such fact was clearly stated by the petitioners in their reply letter dated 14.02.2013 mentioning that the offer made by the petitioners never reached to the stage of acceptance and so it never became a concluded contract. Moreover, the alleged entrusted property that is the advance cheque of Rs. 2,80,000/- was defective as it was drawn in favour of wrong person and so it was returned. Such fact is not disputed and it is admitted position that the petitioners never presented the

cheque before the bank for encashment. Therefore, in the absence of there being any material, much less the allegation that there was a legal contract, that there was an entrustment of property or that there was dishonest misappropriation of such property, the entire allegation of fact even if taken on their face value at best amounts to, if at all, allegation of breach of contract and nothing more. But curiously enough, the O.P. No. 2 did not take recourse to any Civil remedy and instead he lodged a complaint under Section 156(3) Cr.P.C. as a short cut measure with mala fide intention that the police would twist the arms of the petitioners.

14. In the result, the entire criminal proceedings initiated against the petitioners are held to be abuse of the process of law. Accordingly, the entire criminal proceedings including the impugned order dated 26.08.2013 passed in G.R. Case No. 381 of 2013 pending before the Court of Learned Additional Chief Judicial Magistrate, Bidhannagar, District: North 24 Parganas are therefore quashed.

15. The petition is thus allowed. No order as to costs.

16. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.