

(2011) 03 CAL CK 0155
In the Calcutta High Court
Case No : C.R.R. No. 3295 of 2010

Mittal Agro Food Pvt. Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 120(B), 192, 199, 34, 465

Citation : (2011) 4 CHN 618

Hon'ble Judges : Kanchan Chakraborty, J

Bench : Single Bench

Advocate : Joymalya Bag chi, Ayan Bhattacharjee, Anjan Dutta Milon Mukherjee and Saibal Mondal for the O.P. No. 2, for the Appellant; Pushpal Satpati for the state of W.B., for the Respondent

Judgement

Kanchan Chakraborty, J.—This petition u/s 482 of the Code of Criminal Procedure filed by M/s. Mittal Agro Food Pvt. Ltd. and three others praying for quashing of the M.P. Case No. 119 of 2010 on the ground that the petitioner Nos. 2, 3 and 4 are not connected in any manner with the alleged offences and continuation of the proceeding against them would be amounting to abuse of the process of Court and gross miscarriage of justice.

2. Smt. Joyasree Dutta, Chairman, Punnya Bhumi Cooperative Housing Society Limited, filed a petition of complaint in the Court of learned Additional Chief Judicial Magistrate at Bidhannagar, which was registered as M.P. Case No. 119 of 2010 and prayed for referring the same to the police station concerned to treat the same as First Information Report and start investigation and report. It was alleged therein that M/s. Mittal Agro Food Pvt. Ltd. (hereinafter referred to as "the petitioner No. 1"), filed one dispute case, being Dispute Case No. 657 KMAH of 2009, before the learned Arbitrator, Office of the Deputy Registrar of Co-operative Societies, Kolkata Metropolitan Area Housing for recovery of Rs. 4,80,00,000/- together with interest at the rate of 18% p.a. with effect from 31.12.2007 till recovery against Punnya Bhumi Cooperative Housing Society

Ltd. In that case the petitioner No. 1 herein was represented by accused No. 1, Anup Chatterjee, the Managing Director and filed an "affidavit of evidence of plaintiff's witness" along with photo copies of documents, to be marked as exhibits, in a separate "list of documents filed on behalf of the plaintiff". Upon perusal of the said affidavit along with documents filed, the office bearers of the Punnaya Bhumi Co-operative Housing Society found that two documents, i.e., (1) letter dated 25.12.2006 issued by the defendant society for additional work along with notice dated 13.1.2007 and (2) letter dated 10.12.2008 issued by the defendant society with an undertaking to pay a sum of Rs.4,80,00,000/-are manufactured, forged and prepared in order to convert the same for their wrongful gain and causing wrongful loss to the co-operative society. Since the accused persons, i.e., Managing Director Mr. Anup Chatterjee, Directors Mrs. Mitali Chatterjee and Mr. Pranab Chatterjee, conjointly prepared and manufactured those documents with dishonest intention for wrongful gain, they violated offences u/s 465/467/468/471/120B of the Indian Penal Code. The learned Additional Judicial Magistrate, Bidhannagar, referred the said petition of complaint to the concerned police station for treating the same as First Information Report and investigate into the matter. The investigation into the case is going on the basis of the said First Information Report, which has been registered as Bidhannagar South Police Station Case No. 66 dated 13.5.2010 against (1) Mr. Anup Chatterjee, (2) Mrs. Mitali Chatterjee, (3) Mr. Pranab Chatterjee and (4) M/s. Mittal Agro Food Pvt. Ltd., the petitioners herein.

3. This petition has been filed by Mr. Anup Chatterjee, Mrs. Mitali Chatterjee, Mr. Pranab Chatterjee and M/s. Mittal Agro Food Pvt. Ltd. for quashing of the entire proceeding on the ground that no offence, prima facie, is made out within the four corners of the petition of complaint against them under the offences alleged. Even if the face value of all the above aspersions, so made out in the petition of complaint, are accepted in their entirety, does not, prima facie, constitute any offence or make out a case against them. Therefore, this proceeding should not be allowed to be continued, otherwise it would be amounting to abuse of the process of Court.

4. Mr. Joymalya Bag chi, learned Advocate appearing for the petitioners, takes me to the petition of complaint and submits that not a single word has been spared by the de facto complainant against the petitioner Nos. 3 and 4 in the matter of alleged preparation and manufacturing of forged letters, which are subject matter of the petition of complaint and used by the petitioner No.1 as piece of evidence in the dispute case before the learned Arbitrator. In support of his contention Mr. Bag chi refers to a decision in Maharashtra State Electricity Distribution Co. Ltd. and Another Vs. Datar Switchgear Ltd. and Others,

5. Mr. Milon Mukherjee, learned Counsel appearing on behalf of the opposite party No. 2, submits that simply because a civil dispute is going on, the criminal profile of the matter cannot be ignored. He submits further that the petitioner No. 2, Anup Chatterjee, is the Managing Director of the M/s. Mittal Agro Food

Pvt. Ltd. He had sworn the affidavit before the learned Arbitrator in the Dispute Case. He is the Managing Director and the other petitioners are the Directors of the petitioner No. 1. Therefore, they together hatched conspiracy in the matter of preparing and manufacturing documents in question for their wrongful gain. Therefore, the prayer of the petitioners should not be allowed.

6. Having heard the learned Advocates for both the parties as well as having considered their rival contentions, I find that there is substance in the submission of Mr. Bag chi. On careful perusal of the petition of complaint I find that the de facto complainant is not mentioned anywhere in the written complaint demonstrating the role of Mrs. Mitali Chatterjee and Mr. Pranab Chatterjee, Directors of the petitioner No.1, in the matter of preparing the documents in question. Neither of them has actually sworn the affidavit before the learned arbitrator in the dispute case nor in that affidavit it has been stated that these two directors are connected with those two documents. They are simply directors of the company, which is managed by Mr. Anup Chatterjee, the Managing Director. No doubt, there is specific case of tampered documents specifically averred in the petition of complaint. Mr. Anup Chatterjee, being the Managing Director, who used those two documents in a legal proceeding, is supposed to be prosecuted for that. But, none other. The Hon''ble Apex Court in Maharashtra State Electricity Distribution Company Limited's case (supra), while giving caution to the Courts that power u/s 482 of the Code is very wide in amplitude, yet not limited and not an absolute rule, but powers to be exercised sparingly and with caution, held that no prima facie case was made out against the appellant No. 2 in respect of the offences under sections 192 and 199 of the Indian Penal Code even with aid of section 34 of the Indian Penal Code and quashed the complaint against him.

7. The facts of the present case is somewhat similar. The petitioners Nos.3 and 4 herein had done nothing in the matter of manufacturing the questioned documents, which were used in the dispute case before the learned Arbitrator by the Managing Director, Anup Chatterjee and there is no specific averment in the petition of complaint demonstrating their role in committing such an offence. Therefore, the principle taken by the Hon''ble Apex Court squarely applies in this case also. I accept the submission of Mr. Bag chi,

8. Accordingly, the proceeding in South Bidhannagar Police Station Case No. 66 of 2010 dated 13.05.2010 corresponding to G.R. Case No. 302 of 2010 against Mitali Chatterjee, petitioner No. 3 herein and Pranab Chatterjee, petitioner No.4 herein, stands quashed. But, the proceeding will continue against M/s Mittal Agro Food Pvt. Ltd., petitioner No. 1 herein and Anup Chatterjee, the Managing Director of the petitioner No.1.

9. With the above observation, this petition stands disposed of.

10. There will, however, be no order as to costs.

11. Let urgent photostat certified copy of this order, if applied for, be given to the

learned Advocates of the parties upon compliance of necessary formalities.