(2019) 10 CAL CK 0020

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 861 Of 2014

M/s. Amrit Feeds Limited & Ors APPELLANT

Vs

M/s. Jai Lakshmi Solvents Private Limited RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 120B, 415, 417, 418, 420

Citation : (2019) 10 CAL CK 0020

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Vivel Jhunjhunwala, Abhijit Chowdhury

Final Decision : Dismissed

Judgement

Madhumati Mitra, J

This is an application under Section 482 of the Code of Criminal Procedure filed by the petitioner praying for quashing of the criminal proceedings being complaint Case No. CS/126654/2016 under Sections 417/418/420/120B of the Indian Penal Code and the orders passed in connection with that proceedings pending before the Learned Chief Metropolitan Magistrate, Calcutta.

The petitioner No. 1 is a company within the meaning of the Companies Act, 2013 and a part of Amrit Group of Companies. The petitioner No. 2 is the wife of petitioner No. 3 and is a Director of petitioner No. 1. The petitioner No. 3 is also another Managing Director of the said company. The opposite party is also a company within the meaning of Companies Act, 2013. The petitioner No. 1 company is engaged in the field of manufacture of animal feed and has been in the business for last 23 years.

On the other hand, the opposite party had engaged in the business of supplying raw materials which was required for the manufacture of the said animal feed. The petitioner No. 1 and the opposite party started their business relationship for more than five years. On 30th September, 2012, the opposite party supplied certain materials to the petitioner and the said payment was made on 12.10.2012. The petitioners had been in continuous business transaction with the opposite party for the period of four years. There was running course of business between the petitioners and the opposite party from 1st October, 2012 and 31st March, 2016 and payment of Rs.7,19,88,825.12/- (Rupees Seven crores Nineteen lacs Eighty Eight thousand Eight hundred Twenty Five and Twelve Paisa only) was made to the opposite party by the petitioners in connection with that business transaction. It has been alleged by the petitioners that the petitioners found that the material supplied by the opposite party were not up to the standard quality and materials were defective for which the petitioner No. 1 had to suffer both financially as well as loss of business reputation. This issue was discussed with the management of the opposite party and they decided not to make payment for supply of defective materials.

From the letter dated 17th June, 2016 and 21st June, 2016 issued by the opposite party, the petitioners came to know that the opposite party made undue claims. The petitioners gave reply to the said letter on 26th June, 2016.

On 9th January, 2017, the petitioners received summons from the Court of the learned Chief Metropolitan Magistrate, Calcutta in connection with complaint Case No. CS/126654/2016 under Sections 417/418/420/120B of the Indian Penal Code.

Annexure 'P/4' is the petition of complaint filed by the opposite party before the learned Magistrate.

In the said petition of complaint the opposite party/complainant alleged that in furtherance of the intention, the petitioner committed the alleged offence for wrongful gain. The petitioners/accused induced the complainant to part with valuable goods amounting to Rs.42,45,926/- (Rupees Forty Two lakc Forty Five thousand Nine Hundred Twenty Six only). In the said petition of complaint the complainant alleged that he was induced and deceived to execute the deliveries of the goods and the accused dishonestly and fraudulently represented that they had never defaulted to make payment to any supplier and also if there were any defects in goods supplied to the accused no. 1 then the accused no. 1 had never extracted any discount from the supplier and would have sent back the defective goods to the supplier. On the assurance of the accused the complainant supplied goods valued at Rs. 42,45,926/- (Rupees forty two lakc forty five thousand nine hundred twenty six only). It was specifically averred in the petition of complaint that as per the working arrangement between the complainant and the accused every transaction was a fresh contract and both parties were free to negotiate fresh terms on every invoice, which was raised by the complainant. In the beginning of April 2015 the accused negotiated a thirty days payment term with the complainant and, thereafter, through accused No. 4 had raised the purchase order dated 22.04.2015/23.04.2015/02.05.2015/20.05.2015. The complainant subsequently alleged that acting upon the assurance of the representation made by the accused no.1 it supplied goods valued at Rs.42,45,926/- vide invoice dated 25th April, 2015 amounting to Rs.4,81,286/- 27th April, 2015 amounting to Rs.4,36,667/- 16th May, 2015 amounting to Rs.4,56,837/- on 23rd May 2015 amounting to Rs.4,55,475/- 9th May, 2015 amounting to Rs.4,84,320/- 12th May, 2015 amounting to Rs.4,80,480/- 13th May, 2015 amounting to Rs. 4,85,160/-14th May, 2015 amounting to Rs.4,79,880/- and 18.05.2015 amounting to Rs.4,85,640/-. The accused No. 4 was a middleman and an introducer of the complainant with the accused no. 1 and its Director. The complainant company served a letter to the accused as failed to meet the Directors of the accused company. Getting no other alternative the complainant company sent a letter to the accused company demanding the payment of the dues. The accused company informed the complainant vide their letter dated 21st June, 2016 that good supplied were of inferior quality. It has been specifically alleged in the petition of complaint that the accused cheated the complainant by conspiracy with themselves and falsely representing rosy picture that the firm was well-established and had an excellent reputation in the market and never defaulted any payment.

On the basis of the said petition of complaint, summons were issued upon all the accused persons to face trial for a commission of the alleged offences punishable under Section 417/420/120B of the Indian Penal Code.

Before considering the submission and rival submission, it would be better to deal with the offences alleged in the petition of complaint.

Alleged offences relate to cheating.

Section 415 of the Indian Penal Code which defines cheating requires:-

1) Deception of any person;

2) (a) Fraudulently or dishonestly inducing that person;

i) To deliver any property to any person, or

ii) To consent that any person shall retain any property; or

(b) Intentionally inducing that person to do or omit to do anything which 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.

In Hridaya Ranjan Prasad Verma and Others. Versus State of Bihar and Another reported in (2000) 4 Supreme Court Cases 168 our Hon'ble Apex Court was pleased to hold as under:-

"On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or 8 omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent of dishonest."

(In Paragraph 14 of the judgment)

In paragraph 15 of the said judgment Hon'ble Apex Court was pleased to observe as under:-

"In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of 9 making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

The factual matrix would be relevant in the matter of assessment of the situation as to whether the allegations as made by the complainant come within the purview of civil dispute. It has been alleged that the petitioners did not make payment of the goods after receiving the same. It has been submitted by the Learned Counsel for the petitioners that the allegations made in the complaint do not disclose a criminal offence. He has contended that there was a running business transaction between the parties and the alleged dispute is nothing but a commercial or contractual dispute. Mere fact that the alleged facts relate to a commercial transactions or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

In the petition of complaint it was specifically stated that every transaction was a fresh contract and the parties there free to negotiable fresh terms and conditions. It was also specifically averred in the complaint, that the petitioner gave rosy picture that they never defaulted in making payment and induced the complainant to supply goods and they cheated the complaint company by conspiring with each other.

Learned Counsel appearing for the petitioners has submitted that the allegations contained in the petition of complaint does not come within the purview of the offences alleged. He has contended that there was a running business transaction between the parties for a long period. Non-payment of dues to the complainant as alleged is due to the supply of inferior quality of goods and the offences as alleged may be at best termed as civil dispute.

According to his contention that the allegations made by the complainant is purely civil in nature arising out of commercial transaction and the criminal proceeding is not maintainable for recovery of the dues if any between the parties.

In support of his contention learned Counsel shows the several documents annexed with the present application and submitted that the commercial transaction of the business between the parties was continuing for several years.

It has been specifically contended on behalf of the petitioners that the essential elements of the offence of 420 of the Indian Penal Code and other offences are lacking in the instant case.

I have carefully gone through the complaint. It is true that the complaint discloses that there was a commercial transaction between the parties, but at the same time it cannot be overlooked that the averments made in the complaint prima facie reveal the commission of cognizable offence. Allegations contained in the FIR involve appreciation of evidence. Moreover, when the averments of the complaint disclose that the commercial transaction between the parties involves the commission of alleged criminal offence, then the question of quashing the complaint cannot be allowed only because the transaction was commercial in nature.

On the contrary, learned Counsel appearing for the opposite party/complainant has contended that though there was business transaction between the parties but there was a specific agreement between the parties that each transaction was a fresh contract.

He has further submitted that the accused person did not inform the complainant that the goods supplied to the accused No. 1/company were of the inferior quality and this plea was taken falsely to avoid payment.

It is his specific submission that the petition of complaint clearly discloses the essential ingredients of the alleged offences and the criminal proceedings before the Learned Magistrate are well maintainable.

Learned Counsel for the complainant/opposite party has laid stress on the averments made in the petition of complaint and vigorously argued that at the stage of quashing of the criminal proceedings, Court should not delve deep regarding the disputed facts and should not assume the jurisdiction of Trial Court.

According to his contention the present case is not a fit case to exercise discretion in favour of the petitioners.

In Paragraph 10 of the petition of complaint it has been specifically averred that as per the working arrangement between the complainant and the accused the every transaction would be a fresh contract and both the parties were free to negotiate to fix terms, of every invoice which was raised by the complainant to the accused.

Moreover, in several paragraphs of the petition of complaint, the complainant specifically averred that the accused company had deceived and cheated the complainant fraudulently and dishonestly to deliver the goods.

The averments made in the petition of complaint clearly indicated the existence of prima facie case for proceedings for commission of alleged offences against the present petitioners.

In order to exercise the power under Section 482 of the Code of Criminal Procedure, the only requirement is to see whether continuation of the criminal proceeding would be a total abuse of the process of Court.

In view of above, I am of the opinion that continuation of criminal proceeding against the petitioners/accused would not be an abuse of the process of the Court. Hence, the prayers for quashing of the proceeding and setting aside the impugned orders are hereby dismissed.

Moreover, quashing of the prosecution by the High Court by appreciating evidence is not proper when the allegations made in the petition of complaint and the materials referred to prima facie make out the commission alleged offences.

The instant case does not come within the parameters as laid down by the Hon'ble Supreme Court in State of Haryana and Others Vs. Bhajan Lal and Others reported in AIR 1992 SC 604 and other subsequent cases, regarding exercise of inherent power under Section 482 of the Code of Criminal Procedure.

In my opinion, it is not a fit case to exercise discretion under Section 482 of the Code of Criminal Procedure.

Before parting with the case, I would like to clarify that the observations as 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 the law with utmost expedition

As a result, the present application is devoid of merits and stands dismissed.

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