

(2024) 02 CAL CK 0037
In the Calcutta High Court
Case No : Criminal Revision No. 2859 Of 2018

R. K. Sekhri & Anr.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 08-02-2024

Acts Referred:

Indian Penal Code, 1860 — Section 406, 409, 420
Code Of Criminal Procedure, 1973 — Section 161, 482, 483

Citation : (2024) 02 CAL CK 0037

Hon'ble Judges : Subhendu Samanta, J

Bench : Single Bench

Advocate : Satadra Lahiri, Vikash Singh, S. Azam, Piyush Kumar, Ranabir Roychowdhury, Narayan Prasad Agarwala, Pratick Bose, Niloy Sengupta, Ankit Agarwal

Final Decision : Disposed Of

Judgement

Subhendu Samanta, J

This is an application under Section 482 of the Code of Criminal procedure for quashing of charge-sheet being charge sheet no.27 of 2015 dated March 31, 2015 under Sections 406, 409, 420 of IPC pending before the Court of learned Chief Judicial Magistrate Purulia.

The brief fact of the case is that the present opposite party no.2 lodged a FIR on January 21, 2013 with the Officer-in-Charge, Jhalda P. S. therein alleged commission of offences punishable under Sections 406/409/420 of IPC against the present petitioner on the allegation of cheating and mis-appropriation of money to the tune of Rs.25,25,700/-by the present petitioner carrying on business under the name and style of M/s. Sarada Foundaries and Engineering Works. On the basis of the said FIR Jhalda P.S. case no.06 of 2013 dated January 25, 2013 was registered under Sections 406/409/420 IPC. After investigation police has submitted charge-sheet on March 31, 2015 vide charge sheet no.27 of 2015 under Sections 406/409/420 of IPC before the Court of Chief Judicial

Magistrate, Purulia. Against the said charge-sheet, the instant criminal revisional has been preferred for quashing.

Learned advocate for the petitioners submits that there was a long standing business transaction between the parties and the several agreements were entered into between the parties to conduct such business. There was some dispute in such business in relating to terms of the agreement and/or, for the payment of money but such dispute has been colourably framed as a criminal case by the present opposite party no.2. The main business transaction between the parties were, the present petitioner has to supply or delivery the machineries to the opposite party according to their quotation. There are some delay payment, and/or, such payments were subsequently done in full; the disputes were also settled between the parties by intervention of common friends and business personals, in spite of that the present opposite party no.2 has lodged the following complaint. He further argued that the opposite party no.2 has also file money suit no.23 of 2017 before the learned Court of Civil Judge, Senior Division of Howrah for realization of money amounting to Rs.21,36,58,918/-. He argued that the entire fact of the FIR would show that the allegation is relating to purely commercial transaction. The police have not conduct the investigation fact properly and submitted perfunctory charge sheet, so the charge-sheet need be quashed. He further argued that the ingredients of offence under Sections 420 IPC, that is, cheating and dishonest delivery of property is missing in this case. There are no instances to prove the fact that there were "initial deception" on the part of the present petitioner at the time of entering into alleged business contract. There is no agreement of entrustment in favour of the petitioner and mis-appropriation thereof. Thus, the offence punishable under Section 406 of IPC is not at all maintainable. As the charge under Section 406 of IPC is not made out, the charge under Section 409 of IPC, which is aggravated version of Section 406 of IPC, is not applicable in this case.

In support of his contention, the learned advocate for the petitioner cited some decisions reported in *Murari Lal Gupta Vs. Gopi Singh* reported in (2005) 12 SCC 699, *All Cargo Movers(India) Pvt. Ltd. & Ors. Vs. Dhanesh Badarmal Jain & Anr* reported in (2007) 14 SCC 776, *Sanat Karar & ors. Vs. Statae of W. B. & Anr* reported in (2013) 3 Cal LJ 367, *Dilip Kaur & Ors. Vs. Jagnar Singh & Anr.* reported in (2009) 14 SCC 696, *V. P. Shrivastava Vs. Indian Explosives Ltd. & Ors.* reported in (2010) 10 SCC 361, *Y. V. Jose & Anr. Vs. State of Gujarat & Anr.* reported in (2009) 3 SCC 78. By citing those judgment laws laid down by the Hon'ble Supreme Court learned advocate for the petitioner submits that the charge-sheet submitted by the police against the present petitioner is not made out any case punishable under Sections 406/409 and 420 IPC, so the charge-sheet is liable to be quashed.

Learned advocate for the opposite party submits that the petitioner before this Court is not come to the Court with a clean hands. Initially he preferred for quashing application before the Hon'ble High Court Punjab and Haryana,

Chandigarh wherein the Hon'ble High Court of Punjab and Haryana has rejected prayer and imposed exemplary cost upon the present petitioner which was not mentioned in the present revision. He argued that the present Criminal Revision is not at all maintainable. On the basis of specific complaint, the police has started investigation; after completion of investigation police has submitted charge-sheet. The charge-sheet contains several materials including the statement of available witnesses. The High Court under Section 482 of the Code of Criminal Procedure cannot deny the evidences collected by the I.O. by conducting a miny trial at this stage. He further argued that conduct of the present petitioner goes to show that he never been appeared before the learned Magistrate and the charge-sheet has been submitted citing the present petitioner as absconder. Since filing of the FIR in the year 2013, the present petitioner is evading process of Court by filing mala fide applications before the Hon'ble High Court. Thus, the instant application for quashing is liable to be dismissed with exemplary cost.

In support of his submission he cited some decisions as follows:

Central Bureau of Investigation vs. Aryan Singh, reported in (2023) SCC OnLine SC 379, K. Jayaram & Ors. Vs. Bangalore Development Authority & Ors. reported in (2022)12 SCC 815, Kapan Singh Vs. State of Uttar Pradesh & Ors. reported in (2021)9 SCC 35, Jitul Jential Kotecha Vs. State of Gujarat & ors. reported in 2021 SCC OnLine SC 1045.

Heard the learned advocates and perused the materials on record and also perused the CD placed by the State before this Court.

It appears from the argument advanced by the present petitioner that by virtue of several decisions of Hon'ble Supreme Court when there is no prima facie criminal charge under Sections 420/406/409 IPC the criminal proceeding has to be quashed for ends of justice. It has also been observed by the Hon'ble Supreme Court in Murari Lal Gupta(Supra), that in absence of any averments in the complaint so as to infer fraudulent or dishonest inducement having been made by the petitioner, pursuant to which the respondent parted with his money, it cannot be said that the petitioner had cheated the respondent.

In Sanat Karar & Ors(Supra) the Hon'ble Supreme Court has held that when there is no convincing materials a dispute which is highly portrays as an alleged breach of contract and does not disclose the existence of either "initial deception" or "dishonest misappropriation" which are the sine qua non for the offence of cheating and criminal breach of trust respectively, every High Court has inherent power under Section 482 of the Code of Criminal Procedure to act ex debito justitiae to do real and substantial justice to prevent the abuse of process of court and to otherwise secure the ends of justice.

In V.Y Jose and Anr.(supra) the Hon'ble Supreme Court has held that a matter which thereunder involves dispute of a civil nature should not be allowed to be the subject matter of a criminal offences, the latter being not a short cut of an

executing a degree which is non-existent. The superior courts, with a view to maintain purity in the administrative of justice, should not allow abuse of the process of court. High Court has a duty in terms of Section 483 of the Code of Criminal Procedure to supervise the functioning of the trial Courts.

Where as the Hon'ble Supreme Court in Kaptan singh(supra) has held that when proceedings are at stage when statement are recorded, evidence is collected and charge-sheet is filed being conclusion of investigation/enquiry, the high Court must restrained in exercising the inherent jurisdiction under Section 482 of the Code of Criminal Procedure. In CBI Vs. Aran Singh(Supra) the Hon'ble Supreme Court also held that at the stage of hearing under Section 482 of the Code of Criminal Procedure, High Court has no power to conduct the miny trial at the stage of discharge or quashing of criminal proceeding.

In observing the ratio of law laid down by the Hon'ble Supreme Court it appears to me that to find out the applicable ratio in this case the charge-sheet submitted by the investigating agency has to be looked into.

On perusing the Case Diary, it appears to me that during the investigation the police has seized several documents including bills, work order etc. Police also recorded the statement of available witnesses and recorded their statement under Section 161 of the Code of Criminal Procedure. From the entire materials, it appears that there are direct allegation against the present petitioner in the charge-sheet. Prima facie offences under Sections 406/420/409 IPC has been made out. At this stage, Court cannot not evaluate the merit of the evidences so collected by the investigating agency by virtue of decision of Hon'ble Supreme Court in Central Bureau of Investigation(Supra). Thus, I find no merit to entertain the instant criminal revision for quashing the charge sheet in this question.

The criminal revisional application appears to be devoid of merit and the same is rejected.

Accordingly, CRR 2859 of 2018 is disposed of.

Any order of stay passed by this Court during the pendency of the instant criminal revision is also vacated.

The learned Magistrate is directed to proceed with the criminal case and dispose of the same as early as possible according to law.

Connected CRAN applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.