

(2022) 12 CAL CK 0025
In the Calcutta High Court
Case No : Criminal Revision No. 2055 Of 2018

SRMB Srijan Ltd.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 08-12-2022

Acts Referred:

Indian Penal Code, 1860 — Section 114, 465, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 91, 156(3), 173, 173(8), 200, 482

Citation : (2022) 12 CAL CK 0025

Hon'ble Judges : Tirthankar Ghosh, J

Bench : Single Bench

Advocate : Sekhar Basu, Sourav Chatterjee, Arnab Das, Sushant Biswakarma, Debasish Roy, Kaushik Gupta, Debduitta Roychowdhury, Swapan Banerjee, Suman De

Judgement

Tirthankar Ghosh, J

The present revisional application has been preferred by SRMB Srijan Limited (hereinafter referred to as the "accused company/petitioner") challenging the order dated 08.05.2018 passed by the learned Chief Judicial Magistrate, Alipore in C.G.R. Case No. 1344 of 2016, arising out of Ballygunge Police Station case no. 42 of 2016 dated 23.03.2016 under Section 465/467/468/471/114 of the Indian Penal Code, wherein the learned Magistrate was pleased to allow the application under Section 173(8) of the Code of Criminal Procedure/Narazi Petition filed at the instance of Great Eastern Energy Corporation Limited (hereinafter referred to as the 'complainant company').

The genesis of the case relates to an application under Section 156(3) of the Code of Criminal Procedure filed at the instance of the complainant company being case no. Sl. No. 40/16 dated 11.03.2016 wherein the prayer for police investigation of the complainant company was allowed by the learned CJM, Alipore and pursuant to which Ballygunge Police Station Case no. 42 dated 23.03.2016 was registered for investigation under Section 465/467/468/471/114

of the Indian Penal Code.

The allegations made in the application under Section 156(3) of the Code of Criminal Procedure were to the effect that the complainant company was engaged in the business of CBM (Coal Bed Methane) gas exploration and distribution at various places including Asansol, Raniganj and Durgapur for which the complainant company signed a production sharing contract with the Ministry of Petroleum & Natural Gas, Government of India. The accused company is one of the customer of the complainant company which is engaged in the business of manufacture and sale of mild steel materials. The accused company operated its manufacturing units at Durgapur, West Bengal. Pursuant to discussion and negotiations between the representatives of the accused company (being represented by Mr. Nikunj Beriwal and Mr. Nikhil Goyal) with the complainant company (represented by Mr. S. Suriyanarayanan) and after the representation of the accused company expressed their interest for using CBM Gas in the steel plants situated at Durgapur, an agreement for sale and contract was entered on May 11, 2011. The said agreement was duly signed by Mr. S. Suriyanarayanan (Chief Financial Officer) in presence of Mr. Monik Parmar [Assistant General Manager (Marketing)] and Mr. Sridhar Vishwanath (Assistant Manager) on behalf of the complainant company and Mr. Ashish Beriwal (Director) in presence of Mr. Rajib Ghosh (G.M. Project) and Mr. Nikhil Goyal (Project Coordinator) on behalf of the accused company. From time to time the said agreement was amended which would be reflected in the addendum and was subsequently executed by the complainant company and the accused company. It has been contended that any change to the agreement were counter signed by both the parties and there was unilateral change made in page 5 clause 5.2 of the said agreement by the accused company, thereby reducing the number of days from 78 to 75 per quarter and which was not approved by the complainant company nor did it contain the signature and/or initial of the authorized signatory on behalf of the complainant company. The accused company intended to reduce number of days from 78 to 75 per quarter and which was not approved by the complainant company. The fact that such change did not have the approval of the complainant company is abundantly clear from the reply dated February 13, 2012 of the complainant company to the letter issued by the accused company regarding the second addendum to the said agreement. As the differential amount was negligible in the context of the entire business turnover between the parties such error was not immediately detected. However, as soon as the complainant company under cover of letter dated July 14, 2014, brought the same to the notice of the accused persons and raised bill for the differential Minimum Guaranteed Offtake (hereinafter referred to as 'MGO'), a dispute arose by and between the parties on or about April, 2014 and the accused persons with an oblique and malafide intention withdrew from their obligation to make payment of MGO as provided in the agreement and started raising false and frivolous disputes and one of such frivolous dispute related to their failure to renew the Bank Guarantee for a sum of Rs.93,18,728/- which was due to expire

on May 31, 2014. The accused company immediately filed a civil suit in the Hon'ble High Court at Calcutta wherein direction was passed to approach the proper forum. It was during this period when such Civil Suit was pending that the deficit billing came to the notice of the complainant and appropriate steps were taken according to bills raised for dues in MGO. The complainant company thereafter initiated arbitration proceeding against the accused company for claiming their dues and damages under the agreement and the accused company by way of filing of additional documents produced the purported agreement dated May 11, 2011 which prima facie appeared to be same as the said agreement with the approval of the learned Counsel of the parties was admitted in the arbitration proceedings. Such agreement was forwarded to the complainant company and received by the complainant company at their office within the jurisdiction of Ballygunge police station. Mr. Monik Parmar, the Assistant General Manager (marketing) of the complainant company brought to the notice, that the agreement in original form which is in their possession, contained in the bunch of disclosure of additional documents contained the purported initial of Mr. S. Suriyanarayanan and it was noticed by him that the original agreement in the possession of the complainant company did not have any counter signature by Mr. S. Suriyanarayanan in clause 5.2 of the original agreement. The complainant company alleges that prior to production of the document (agreement) which was filed by the accused company in their counter statement, in all the legal proceedings prior to such disclosure of said (agreement) initial of Mr. S. Suriyanarayanan was absent on page 5 clause 5.2. After internal enquiries made by the complainant company the agreement containing 100 rupees stamp paper numbered as K184879 and the same agreement printed on a stamp paper of Rs.100/-numbered as K184878 which were in their possession were sent to a forensic expert for opinion, by their report dated February 5, 2016. Dr. V.C. Misra and Mr. Manas Mishra being the forensic handwriting and fingerprint expert confirmed that the said signature on page 5 of clause 5.2 of the alleged agreement was not the signature of Mr. S. Suriyanarayanan. Such forensic report with the opinion of the expert left no doubt whatsoever that the accused company being aided and abetted by their men, agents and associates committed the offence of forgery with the intent to commit fraud and used the forged document i.e. the agreement as genuine which is valuable security for the purpose of cheating. The accused company and its men and agents by forging the agreement and reducing the number of days from 78 to 75 per quarter, committed forgery with the purpose of causing wrongful loss to the tune of Rs.61,07,922.28/- only for the period ranging from 11.05.2011 to 14.07.2014. The same is in addition to a huge amount of claim which was outstanding. The accused company are having in their custody the original agreement in which the forgery was committed and certain other original documents which were required to be recovered and are to be seized for proper and impartial investigation and which if not done, the complainant company apprehended the same would be otherwise misused and affect the claim of the complainant company. The complainant company lodged the incident by way of

written complaint to Ballygunge police Station and also to the Deputy Commissioner of Police, South East Division, however, police authorities did not take any steps, accordingly it was prayed before the Learned CJM, Alipore for directing the investigating agency to treat the complaint as FIR and direct the Officer-in-charge, Ballygunge Police Station to investigate relating to the commission of offence as complained of.

As earlier stated that pursuant to such direction passed by the learned CJM, the investigation in relation to Ballygunge Police Station case no. 42 dated 23.03.2016 was registered for investigation and the Investigating Agency on conclusion of investigation submitted a report under Section 173 of the Code of Criminal Procedure with the following observations:

"During investigation, collected expert opinion from QDEB and opined that "the writing characteristics as found in the disputed initial marked as are not sufficient in quantity to draw final conclusion regarding fixing authorship of the same". Since Arbitration in this case is pending before the Hon'ble Justice IP Mukherjee of Calcutta High Court. In view of above, the investigation is closed and declaring the case as "Civil" by A.C.-II-SED dated 31.10.2016. None was arrested into this case."

The said report was filed on 12th December, 2016 and the learned Magistrate fixed 26.12.2016 for filing Narazi Petition and hearing the de facto complainant. On 26th December, 2016 the application for further investigation /Narazi Petition was filed before the learned CJM, Alipore, accordingly dates were fixed and finally by an order dated 08.05.2018 learned CJM, Alipore was pleased to allow the Narazi Petition filed by the de facto complainant/complainant company thereby directing the Officer-in-charge, Ballygunge police to conduct further investigation of the case by any police officer other than the Investigation Officer who submitted the report under Section 173 of Cr.P.C. The reasons which weighed with the learned Magistrate in allowing the prayer under Section 173 (8) of the Code of Criminal Procedure was that there existed reasonable suspicion for the investigation not being conducted in a proper manner and also did not inspire confidence of the Court, as there should have been more initiatives at the instance of the Investigating Officer to investigate the case properly so that there could have been a logical conclusion.

The contentions advanced in the application under Section 173(8) of the Code of Criminal Procedure were to the effect that the complainant company earlier obtained a report from Forensic Experts who were able to come to a conclusion regarding the signature being forged. There were fault of the investigating Officer in the process of collection of specimen handwriting and the opinion of the handwriting expert cannot be conclusive as the other attending circumstances are also to be weighed before exonerating the accused persons. The witnesses whose names appeared on behalf of the complainant company were also not examined by the investigating officer and as such further Investigation must be directed for unearthing the truth.

Mr. Sekhar Basu, learned Senior Advocate appearing for the petitioner/accused company submitted that the crux of the allegations is that a unilateral change was made in page 5 clause 5.2 of the Gas Sale and Purchase Agreement dated 11.05.2011 to the extent that number of days per quarter was allegedly reduced from 78 to 75 per quarter by way of forgery, which was without the approval of complainant company/Great Eastern Energy Corporation Limited and did not bear the signature and/or initials of the authorized signatory of complainant company. It has been submitted that pursuant to the notice issued under Section 91 of the Code of Criminal Procedure, the accused company under a covering letter dated 02.08.2016 replied to the Investigating Agency and enclosed various documents. Attention of the Court was drawn to different interactions made between the parties and it has been emphasized that the authorized signatory Mr. S. Suriyanarayanan of the complainant company in its e-mail was constantly interacting for amending/changing the number of days from 75 days to 78 days. It was contended that the e-mail dated 07.03.2012 would reflect that the complainant company and the accused company mutually agreed to the amending clauses 10.1 and 10.2 which makes it clear that despite repeated persuasion from the end of the complainant company no consensus could be arrived in respect of amending clause 5.2 which remained un-changed and other clauses were amended. On the other hand, according to the learned Advocate the documents also reflected that the complainant company was pursuing the issue of enhancement of day per quarter from the existing 75 days to 78 days which was not agreed by the accused company. The petitioner has also tried to rely upon various documents which may not be worthy for consideration in an application under Section 482 of the Code of Criminal Procedure in support of its contention but the fact remains that the investigating agency on conclusion filed their report under Section 173 of the Code of Criminal Procedure declaring the case as Civil in nature.

Mr. Debasish Roy, learned Advocate appearing on behalf of the de facto complainant/opposite party no.2/ complainant company reiterated his contentions as alleged in the application under Section 156(3) of the Code of Criminal Procedure and disputed the final report submitted by the Investigating Officer of the case. Learned Advocate drew the attention of the Court to the expert opinion of the Examiner of questioned documents wherein it was quoted "writing characteristic as found in the disputed initial marked as are not sufficient in quantity to draw final conclusion regarding fixing authorship of the same." In course of hearing of the present revisional application also a report was called for from QDEB, CID, West Bengal wherein the opinion and reasons have been expressed.

It has been emphasized that there is a forgery in the instant case and the Investigating Officer could not have concluded that the dispute is Civil in nature. The finding of the investigating officer is perverse according to the complainant/opposite party no.2.

Mr. Swapan Banerjee, learned Advocate appearing for the State has produced the Case Diary as well as the Report of the handwriting expert in course of hearing. This Court felt that the opinion of the handwriting expert should be freshly obtained, accordingly the document was sent again to QDEB, CID and a fresh opinion was also obtained which was not conclusive in nature.

I have considered the submissions advanced by the learned Advocate appearing for the petitioner, opposite party no.2 and the State. Dispute in this case purely relates to a signature/initial of Mr. S. Suriyanarayanan an authorized signatory of the complainant company, where the complainant company claims that the same is not the signature of its representative while the accused company claims that the same is the signature of the authorised signatory of the complainant company and the same would be reflected from the attending circumstances i.e. e-mails, letters. The flash point of dispute relates to the period of minimum guarantee offtake which is 78 day per quarter as claimed by the complainant company while the accused company claims the same to be 75 days per quarter. The accused company claims that by exerting its dominance the complainant company tried to extort money as it had monopoly in the trade in the region where the business was carried out which resulted in wrongful loss, making the business of the complainant company wholly unviable.

The Investigating Authorities while submitting the final report took assistance of the examiner of question documents however, they failed to draw conclusion regarding the authorship of the signature/initials, as such the Investigating Agency arrived at its opinion as arbitration proceedings in the case is pending before the Hon'ble High Court at Calcutta the Investigation should be closed as the dispute is civil in nature.

In course of the revisional application this Court also called for a report from the QDEB, CID, West Bengal wherein the following documents were placed before the Expert.

- (i) Specimen handwriting and signature in English of Mr. S. Suriyanarayanan of the complainant company.
- (ii) Gas Sale Purchase Agreement for sale of CBM Gas prepared in non-judicial stamp paper of Rs.100/- being no. K184878 dated 11.05.2011.
- (iii) Gas Sale Purchase Agreement for sale of CBM Gas prepared in non-judicial stamp paper of Rs.100/- being no. K184879 dated 11.05.2011.
- (iv) Gas Sale Purchase Agreement for sale of CBM Gas prepared in non-judicial stamp paper of Rs.100/- being no. 533196 dated 16.05.2011.
- (v) One disputed signature in English which is initial in nature appearing in the Gas Sale Purchase Agreement for sale of Coal Bed Methane in non-judicial stamp paper of Rs.100/- being numbered 184878 dated 11.05.2011.

The expert on assessment of the same arrived at its opinion that it was not

possible to express any opinion regarding the disputed initial on the basis of comparable data i.e. signatures/specimen signatures. To that effect the reasons assigned by the expert were:

"Reasons for the opinion in para no.1

The specimen signatures marked S/5, S/6 which are initial in nature are freely written with smooth and uniform in line quality. The other sets of signatures marked A/4 to A/14, A/16 to A/18, B/2 to B/4, B/6 to B/15, B/17 to B/20 and C/2 to C/13, C/15 to C/19 are also free from any suspicious defects in the quality of writing strokes.

The only one disputed signature under consideration marked B/5 is also initial in nature and the illegibility of its character leaves no scope to identify its distinctive writing identifying features. Moreover it does not have the sufficient individuality, direction of the writing strokes, pen lifts, hesitation, pen pause, pen point, etc. unless proper ascertaining of those writing characteristics it is not possible to express any opinion regarding the authenticity of the disputed initial marked B/5 be categorized as genuine or not genuine.

Collective considerations of all the above observations lead me to the aforesaid opinion in para no.I. Reasons for the opinion in para no.II

The specimen writings and signatures marked S/1 to S/7 are freely written and without having any suspicious defects in the quality of writings strokes. The specimen signatures in exhibits marked S/1 to S/5 are full signatures.

The signatures marked A/1 to A/3 A/15, A/19, A/20, B/1, B/16 and C/1, C/14 all are also full signatures and they are consistent in interse examination.

During examination it is also observed that the disputed signature under consideration marked B/5 is initial in nature and the illegibility of its character leaves no scope to identify its distinctive writing identifying features. While the specimen signatures in exhibits marked S/1 to S/5 and the signatures marked A/1 to A/3, A/15, A/19, A/20, B/1, B/16 and C/1, C/14 compared side by side with the disputed initial marked B/5, it is also noticed that the model and text of the signatures are entirely different.

Such types of comparable data as mentioned above are not suitable for comparison works. Hence no opinion is possible."

The complainant company in its application under Section 173(8) of the Code of Criminal Procedure expressed its dissatisfaction for exonerating the accused persons from the charges as it was of the opinion that when they had carried out a preliminary enquiry regarding the subject matter of forgery relating to the agreement in their own capacity the expert opined the signature to be forged. Another issue which was canvassed is that the investigating officer did not bother to examine Mr. Sridhar Vishwanath who was the witness to the agreement which was entered into between the complainant and the accused company.

On an assessment of the issue relating to the dispute as to whether further investigation is required, I find that such an investigation can never come to a definite finding until and unless the signatures of Mr. S. Suriyanarayanan is assessed. The Investigating Authority has twice repeated the procedure and on both the occasion the experts available to them opined regarding their incapacity to come to a final conclusion as to whether the signature appearing in the clause/agreement of Mr. S. Suriyanarayanan was forged or not.

In view of the aforesaid, I am of the opinion that no useful purpose would be served by allowing the further investigation to continue. Accordingly all further proceedings which were carried out pursuant to the order dated 08.05.2018 passed by the Learned CJM in connection with Ballygunge police Station case no 42/16 is hereby quashed.

However, I find that the complainant in its own capacity conducted a preliminary enquiry taking aid of forensic expert for assessing the signature of Mr. S. Suriyanarayanan in the relevant clause of the Gas Sale and Purchase Agreement. The parties are contesting the litigations in other forum also. Now if the loss has been incurred by a company pursuant to a signature being forged the same cannot be said to be civil in nature. The majority of the documents are in custody of either the complainant or the accused company or they were seized in connection with Ballygunge Police Station case no. 42 of 2016. Accordingly, the complainant company is granted liberty to file a petition of complaint under Section 200 of the Code of Criminal Procedure before the learned CJM, Alipore and adduce their evidence in support of their case, if required the police/ investigating authority would supply the documents in their custody on directions passed by the learned Magistrate.

Thus, the order dated 08.05.2018 passed by the learned CJM, Alipore in connection with Ballygunge Police Station case no. 42/16 is hereby set aside.

Accordingly, Criminal Revision being CRR No. 2055 of 2018 is partly allowed with the liberty to the complainant company/opposite party no.2 to file complaint under Section 200 of the Code of Criminal Procedure before the learned Chief Judicial Magistrate, Alipore.

Pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby made absolute.

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

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.