

(2018) 01 CAL CK 0176
In the Calcutta High Court
Case No : 3428 of 2014

Sudhir Jalan & Anr

APPELLANT

Vs

State of West Bengal & Anr

RESPONDENT

Date of Decision : 25-01-2018

Acts Referred:

Code of Criminal Procedure, 1973, Section 482, Section 156(3) - Saving of inherent powers of High Court - Police officers power to Investigate cognizable case
Indian Penal

Citation : (2018) 01 CAL CK 0176

Hon'ble Judges : Debi Prosad Dey

Bench : Single Bench

Advocate : Sandipan Ganguly, Ayan Bhattacharya, V.V. Sastry, Deepabali Datta, Sabyasachi Banerjee, Abhijit Chowdhury, Ayan Basu

Judgement

1. This petition under Section 482 of the Code of Criminal Procedure is directed against the proceedings of Hare Street Police Station Case No. 169 dated 28th March 2010 under Section 120B/420 of the Indian Penal Code, pending before the Court of the Learned Chief Metropolitan Magistrate at Calcutta.

2. The petitioners have filed this application under Section 482 of the Code of Criminal Procedure for quashing of the aforesaid proceedings on the ground that the business transaction in between the companies has been converted into criminal proceeding in order to rope in the present petitioners in the alleged offence and that the dispute between the parties being civil in nature, the instant proceeding is not maintainable in law and is required to be quashed to prevent abuse of the process of law and for the interest of justice.

3. The facts of the case in brief is that the opposite party No. 2 being M/s. Festino Marketing Company Private Limited had filed a complaint before the Court of the learned Chief Metropolitan Magistrate at Calcutta against one Anoop Hoon and S.D. Mukherjee as Directors of M/s. Bells Control Limited having its

registered office at "Bells House", 21, Camac Street, Police Station- Shakespeare Sarani, Kolkata-700 016, on the allegation that Anoop Hoon and S.D. Mukherjee made them acquainted with the opposite party No. 2 and introduced themselves as Directors of the said company and thereafter entered into business transactions. The opposite party No. 2 supplied materials worth Rs. 20,98,602.36 to Anoop Hoon and S.D. Mukherjee and ultimately the said Anoop Hoon and S.D. Mukherjee had paid Rs. 2,48,789.56 towards satisfaction of that amount but could not pay Rs. 18,49,812.80. Anoop Hoon and S.D. Mukherjee however issued cheques of Rs. 1,00,089.85 and Rs. 1,00,000.00 in favour of the opposite party No. 2 but the said cheques were dishonoured. Accordingly, on the basis of an application under Section 156 (3) of the Code of Criminal Procedure the matter was reported to the Police and after completion of investigation the investigating agency submitted report in final form, praying for closure of the case against Anoop Hoon and S.D. Mukherjee and M/s. Bells Control Limited on the ground that the dispute was purely civil in nature.

4. Being aggrieved by and dissatisfied with the said report in final form the opposite party No. 2 submitted prayer for reinvestigation and the said prayer was duly allowed by the learned Chief Metropolitan Magistrate, Calcutta. Thereafter the charge sheet under Section 120-B/ 420 of the Indian Penal Code was submitted against the aforesaid persons including the present petitioners. It appears from the materials on record that such transaction between the parties took place prior to 2000 and thereafter in the year 2002 one Anoop Hoon and S.D. Mukherjee issued cheques of Rs. 1,00,089.85 and 1,00,000.00. The investigating agency submitted charge sheet against the present petitioners holding them liable for the offence under Section 420 of the Indian Penal Code. It is therefore crystal clear from the petition of compliant that the petition of compliant does not disclose any offence against the present petitioners. There is absolutely no whisper in the petition of compliant that the present petitioners being partners of Bells Control Limited entered into a criminal conspiracy to cheat the company of opposite party No. 2. It may safely be said that there is absolutely no allegation against the present petitioners in the petition of compliant so as to ascertain that these petitioners were in any way involved in the alleged business transaction in between two companies. Secondly, it is also evident that the opposite party No. 2 supplied some articles to the company named after M/s. Bells Control Limited and such transaction was purely commercial transaction. Thirdly, M/s. Bells Control Limited has made part payment of the goods supplied to that company and thereafter one Anoop Hoon and Mr. S.D. Mukherjee issued cheques on behalf of the company in favour of the opposite party No. 2. It is, therefore, apparent from such averment made in the petition of compliant that the present petitioners had no role to play in such commercial transaction between the two companies and they were never in the picture of alleged commercial transaction between the two companies. It is also apparent from the investigation at the outset that the investigating agency submitted the report in final form stating inter alia that the dispute between the

parties is purely civil in nature.

5. Hon"ble Supreme Court in the decision reported in (2007) 7 SCC 373 Vir Prakash Sharma v. Anil Kumar Agarwal & Anr. held that in absence of any allegation as to act of inducement on the part of the accused and intention to cheat the complainant from the very inception, the complaint is liable to be quashed.

6. Our High Court in a decision reported in (2008) 1 C. Cr. LR (Cal) 509 Krishna Kumar Bangur v. State of West Bengal has specifically held that in the petition of complaint though it is stated that the accused intended to deceive from the very beginning there is no material indicating that such was the case. There were long standing transactions and the dispute was of civil in nature. It has further been held that allowing the proceedings to continue would result in abusing the process of Court and accordingly the proceedings under Section 420 of the Indian Penal Code was quashed.

7. The co-ordinate Bench of this High Court in the decision reported in (2008) 1 C. Cr. LR (Cal) 789 Kingshuk Neogi v. State of West Bengal & Anr. has observed that the dispute being civil in nature the proceedings ought not to be allowed to continue. In the case under reference opposite party No.2 supplied pesticides to the company since 1999. An amount of Rs. 3,65,000/- is said to be due from the company. The petitioners being one of the directors of the company was roped in a case under Section 420/120-B of the Indian Penal Code but the said case was quashed on the ground that the dispute between the parties is purely civil in nature and ought not be continued.

8. Learned Advocate appearing on behalf of the petitioners contended that in view of the settled principle of law and having regard to the facts of this case, the case under reference ought to be quashed in respect of the present petitioners who are directors of M/s. Bells Control Limited and had no connection with the alleged transaction.

9. Learned Advocate for the opposite party/company however, contended that the inherent powers under Section 482 of the Code of Criminal Procedure Code should not be invoked in quashment of proceeding of economic offence/ commercial transactions/breach of trust/ cheat. etc. and in support of his contention the decision reported in (2011) 1 SCC 74 Iridium India Telecom Limited. V. Motorola Incorporated & Ors. has been referred to or relied on. The decision of the Hon"ble Supreme Court has given a rider upon the High Courts at the time of invoking jurisdiction under Section 482 of the Code of Criminal Procedure but the said decision never enunciated any principle of law to the effect that in case of any such commercial transaction the High Courts would be debarred from invoking the provisions under Section 482 of the Code of Criminal Procedure. On the contrary the decision referred to hereinabove clearly enunciated the principle of law that when the first information report has not stated any offence against the petitioner and when the transaction is purely civil

in nature, continuance of the proceedings amounts to abuse of process and it is necessary to quash such proceedings for the interest of justice. I have no hesitation to say that there is absolutely no averment against the present petitioners and the result of investigation also does not reveal the participation of the present petitioners in the alleged offence of cheating.

10. It may be recorded that the learned Advocate for the State has, however, supported the case of the opposite party No. 2 since the investigation culminated into charge sheet against the present petitioners. In the premise set forth above the Hare Street Police Station Case No. 169 dated 28.03.2010 under Section 120B/420 of the Indian Penal Code pending in the Court of learned Chief Metropolitan Magistrate, Calcutta in respect of the present petitioners only is quashed. However, the said case shall continue against rest of the accused persons charge sheeted in connection with this case.

11. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.