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Mansoor Raza & Ors vs.state & Anr

Mansoor Raza & Ors vs.state & Anr

SooperKanoon Citation : sooperkanoon.com/1221101

Court : Delhi

Decided On : Feb-01-2019

Appellant : Mansoor Raza & Ors

Respondent : State & Anr

Advocate for Pet/Ap. : Mr. N. Hariharan, Mr. M.A. Niyazi, Ms. Anamika Niyazi, Mr. Aditya, Mr. Vaibhav Singh, Mr. Prateek Bhalla, Mr. Varun Dewal, Ms. Mallika Chadha, Mr. Sanjeev Sabharwal, Mr. D. Anil Kumar

Judgement :

$~8, 9, 10, 12 IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

01. February, 2019 + CRL.M.C. 315/2016 and Crl. M.A. 1392/2016 ASHISH MITTAL & ORS .....

... Petitioner
s Through: Mr. N. Hariharan, Sr. Advocate with Mr. M.A. Niyazi, Ms. Anamika Niyazi, Mr. Aditya, Mr. Vaibhav Singh, Mr. Prateek Bhalla, Mr. Varun Dewal and Ms. Mallika Chadha, Advocates versus STATE & ANR ..... Respondent Through: Mr. Sanjeev Sabharwal, APP for State with SI Ravi Saini Mr. D. Anil Kumar, Advocate for R-2 + CRL.M.C. 1520/2016 and Crl. M.A. 6521/2016 SHOBIT KRISHNA .....

... Petitioner

Through: Mr. N. Hariharan, Sr. Advocate with Mr. M.A. Niyazi, Ms. Anamika Niyazi, Mr. Aditya, Mr. Vaibhav Singh, Mr. Prateek Bhalla, Mr. Varun Dewal and Ms. Mallika Chadha, Advocates versus STATE & ANR. .....

... RESPONDENTS
Through: Mr. Sanjeev Sabharwal, APP for State with SI Ravi Saini Mr. D. Anil Kumar, Advocate for R-2 + CRL.M.C. 317/2016 and Crl. M.A. 1403/2016 Crl. M.C. No.315/2016 & conn. Page 1 of 6 MANSOOR RAZA & ORS .....

... Petitioner
s Through: Mr. N. Hariharan, Sr. Advocate with Mr. M.A. Niyazi, Ms. Anamika Niyazi, Mr. Aditya, Mr. Vaibhav Singh, Mr. Prateek Bhalla, Mr. Varun Dewal and Ms. Mallika Chadha, Advocates versus STATE & ANR .....

... RESPONDENTS
Through: Mr. Sanjeev Sabharwal, APP for State with SI Ravi Saini Mr. D. Anil Kumar, Advocate for R-2 + CRL.M.C. 321/2016 and Crl. M.A. 1411/2016 EDUCOMP SOLUTIONS LIMITED & ORS .....

... Petitioner
s Through: Mr. N. Hariharan, Sr. Advocate with Mr. M.A. Niyazi, Ms. Anamika Niyazi, Mr. Aditya, Mr. Vaibhav Singh, Mr. Prateek Bhalla, Mr. Varun Dewal and Ms. Mallika Chadha, Advocates versus STATE & ANR .....

... RESPONDENTS
Through: Mr. Sanjeev Sabharwal, APP for State with SI Ravi Saini Mr. D. Anil Kumar, Advocate for R-2 CORAM: HON'BLE MR. JUSTICE R.K.GAUBA ORDER (ORAL) Crl. M.C. No.315/2016 & conn. Page 2 of 6 1. On the criminal complaint (CC no.29/1/2015) of the second respondent (complainant), the petitioners in this batch of matters were summoned to appear as accused by the Metropolitan Magistrate, by her order dated 04.11.2015, to answer the accusations for offences allegedly committed under Sections 420, 120 B of Indian Penal Code, 1860.

2. The petitioners, feeling aggrieved, have come up with this petition invoking the inherent power and jurisdiction of this court under Section 482 of the Code of

Criminal Procedure, 1973 to seek quashing of the said criminal case on the ground that it is an abuse of the process of law.

3. The petition has been resisted by the respondent (complainant) on the ground that the impugned order suffers from no error and that there is no case made out for this court to intervene, it having been clearly shown that the petitioner company, and other petitioners, they being directors or other persons connected with its business or day-to- day affairs, had indulged in mis-representation leading to the offence of cheating being committed.

4. The background facts are more or less commonly stated by both sides. The Directorate of Public Instruction of the Government of the State of Chhatisgarh had awarded a contract to the petitioner M/s. Educomp Solutions Ltd. (company accused) on 27.08.2011 for implementation of computer education programme in 582 schools of the Government of the said State in third Zone, Sarguja under ICT @ School Scheme for 1900 schools in Chattisgarh, the total value of the Crl. M.C. No.315/2016 & conn. Page 3 of 6 contract being Rs.60,72,00,600/-. The company accused had submitted a bank guarantee for a sum of Rs.3,03,60,030/-, which was valid upto 15.12.2016, to the Directorate of Public Instruction, the contract being valid for a period of 5 years with effect from the date of the acceptance.

5. To carry out the work thus assigned, the company accused had entered into a contract with the complainant company on 02.08.2013, it resulting in purchase / work order for purposes of the assigned project in 332 schools to be completed in 63 days, the work being in the nature of electrification, earthing, networking, civil work including supply of electrical and civil work material, etc. The complainant company started acting upon the said work order. Some disputes arose between the company accused on one hand and the Government of Chhatisgarh on the other. It has been the case of the complainant company that it had raised certain invoices against the company accused for the work done under the said sub-contract, the total amount due being to the extent of Rs.1,05,61,500/- but the company accused only paid Rs.32,00,000/- failing to make the payment of the remainder, inspite of various representations.

6. It is the case of the complainant that on 08.07.2014 on the basis of information received pursuant to an application under Right to Information Act, 2005, it was brought to light that the Directorate of Public Instruction, Chhatisgarh had issued a communication on 09.07.2013, refusing to grant further time to the company accused for completion of the project and, in the wake of the said Crl. M.C. No.315/2016 & conn. Page 4 of 6 communications, the bank guarantee furnished by the company accused had been invoked by subsequent communication of the Government of Chhatisgarh on 08.07.2014. The core ground on which the complainant would allege cheating is the purchase order which was issued on 02.08.2013 by the company accused to the complainant company inspite of knowledge that the Government of Chhatisgarh had refused to grant extension of time for completion of the project. At the preliminary inquiry, the complainant company examined in support of the criminal complaint two witnesses, namely V.N. Srinivas (as CW1) and Ms. V. Anuradha Sriniwas (CW-2).

7. To say the least, the complaint alleging offence of cheating is wholly misconceived. The contract between the petitioners and the Government of State of Chhatisgarh is distinct from the contract between the petitioners and the complainant. Though the need to enter into the latter contract would have arisen from the work allocated to the petitioners by the Government of Chhatisgarh, performances under one were not contingent upon the other contract. The period for performance of contract by company accused may have lapsed and the Government of Chhatisgarh may have at some stage issued the above mentioned communication refusing to accede to the request for extension of time. But, this would not mean, ipso facto, that the said contract had come to an end and the petitioner was obliged to freeze all work.

8. As has been pointed out by the petitioners, the complainant has not been fair and honest in sharing the material available to it under Crl. M.C. No.315/2016 & conn. Page 5 of 6 the Right to Information Act in entirety with the criminal court. A notice for show cause as to why the contract be not cancelled was issued as late as on 07.05.2014, copy whereof was part of the material which was gathered by the complainant in exercise of the right to information. For reasons not explained, no reference was made to the effect and import of the said communication, the

existence whereof negates the entire theory of the complainant that the petitioners had forfeited the right under their contract with the said party to place orders rendering the purchase order dated 02.08.2013 an act of deceit actuated by dishonest intention.

9. In the above facts and circumstances, mere issuance of the purchase order on 02.08.2013 cannot be a ground to infer commission of the offence of cheating. The dispute between the petitioners and the complainant is essentially civil in nature which has been given the colour of criminality. Continuation of the proceedings in the criminal complaint case of such nature would undoubtedly be an abuse of the process of law.

10. For the above reasons, the petitions are allowed. The proceedings against the petitioners in the aforementioned criminal complaint case (CC no.29/1/2015), at the instance of the second respondent, are hereby quashed. This disposes of the pending applications as well. FEBRUARY01 2019 yg Crl. M.C. No.315/2016 & conn. R.K.GAUBA, J.

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