

Krishnan Ananth and ors. Vs. State of West Bengal and anr.

Krishnan Ananth and ors. Vs. State of West Bengal and anr.

SooperKanoon Citation : sooperkanoon.com/881588

Court : Kolkata

Decided On : May-16-2006

Reported in : 2007(1)CHN112

Judge : S.P. Talukdar, J.

Acts : [Companies Act, 1956](#); ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 157 and 482; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 24, 120B, 420 and 506

Appeal No. : C.R.R. No. 1325 of 2006

Appellant : Krishnan Ananth and ors.

Respondent : State of West Bengal and anr.

Advocate for Def. : R.S. Chattopadhyaya, Adv.

Advocate for Pet/Ap. : S.K. Kapoor, ;Y.J. Dastoor, ;Chanchal Kr. Jain, ;Surender Mann, ;R. Konnar, ;M. Mitra, ;Debol Banerjee, ;Trithankar Ghosh, ;N. Pyne and ;P. Edulji, Advs.

Disposition : Application dismissed

Judgement :

S.P. Talukdar, J.

1. The petitioners by filing an application under Section 482 of the Code of Criminal Procedure, 1973 sought for quashing of investigation being Hare Street Police Station Case No. 30/2006 dated 27th January, 2006 under Section 420/506/120B of the Indian Penal Code, corresponding to G.R. Case No. 221 of 2006, now pending before the learned Court of Chief Metropolitan Magistrate, Kolkata.

2. The grievances of the petitioners, as ventilated in the application, may briefly be stated as follows:

The petitioners were duly authorised by letter dated.4.2.1976 by the Reserve Bank of India to carry out business activities as mentioned therein on certain terms and conditions. Such conditions included that

(i) The entire expenses of the offices in India will be met exclusively out of the remittance received from abroad through normal banking channels. (ii) No commission/fee will be charged or any other remuneration received for the liaison activities to be rendered by the Indian offices, (iii) Excepting the said liaison work, the Indian offices will not undertake any activity of a trading, commercial or industrial nature, without the prior permission of the Reserve Bank of India, (iv) The liaison offices will furnish to the Reserve Bank, on a yearly basis, details of the remittance received from abroad to meet the expenses in India.

As per the Reserve Bank of India's guidelines, the permitted activities for a liaison office in India of a person residing outside India are as follows:

(i) represent in India the parent company/group companies.

(ii) promoting export/import from/to India.

(iii) promoting technical/financial collaborations between parent/group companies and companies in India.

(iv) acting as a communication channel between parent company and Indian companies.

The petitioner Nos. 1, 2 and 3 are working in the liaison offices of the petitioner corporation in India. The petitioner corporation had set up a 100% owned subsidiary company in India on and from April 1, 2006, which carries on business under the name and style ITOCHU India Private Limited. The petitioner No. 2 had nothing to do with the running of the petitioner corporation prior to his joining the said liaison office in India in or about April, 2004. The petitioner No. 3 is the Chief Regional Officer posted at the Kolkata Branch of the Corporation. He joined as the head of the Kolkata liaison office of the petitioner corporation in November, 2003. The petitioner No. 1 joined the petitioner corporation in or about May, 1983. He was in charge of the Food Division in the Kolkata liaison office of the petitioner corporation. One Indian national, Mr. T. K. Das, was appointed as a clerk by the petitioner corporation of Kolkata liaison office in December, 1980. He was promoted to the post of Deputy General Manager in April, 1988 and continued to remain in that post till his premature retirement with effect from September, 2001.

Since the liaison office is not permitted to carry out any trading or business activities and is only permitted to represent the parent/group companies in India, promoting export/import from/to India, promoting channel/financial collaborations, acting as a communication channel between parent company and Indian companies, officers of the liaison office are not authorised to enter into any agreement or business deals on behalf of the corporation.

The opposite party No. 2, Kanodia Overseas Pvt. Ltd., is a company incorporated under the provisions of the [Companies Act, 1956](#). In May, 2000, one Mr. Kogumasaka of the Goa liaison office of the petitioner corporation while visiting Eastern India in relation to exploring the possibilities of exporting iron ore from the Orissa Mining Corporation Limited, had been introduced to one Mr. Nand Lal Kanodia of Kanodia Overseas Private Limited by T. K. Das of the Kolkata liaison office of the petitioner corporation. Mr. Kanodia verbally represented to Mr. Kogumasaka that he could act on behalf of the petitioner corporation and obtain iron ore on favourable terms from the Orissa Mining Corporation Limited if appointed the official agent of the petitioner corporation. However, Mr. Kanodia was informed that only the head office of the petitioner corporation could appoint agents and the liaison offices have no such powers. In July, 2000, Mr.

Kogumasaka informed Mr. Kanodia that the petitioner corporation would carry out its own negotiations with Orissa Mining Corporation and did not require the services of any other person. After several rounds of negotiations between the officials of the petitioner corporation and the Orissa Mining Corporation Limited, the latter signed a contract with ITOCHU Corporation for the export of 49095 MT of iron ore. The petitioner corporation was surprised to receive a letter dated January 14, 2002 from the opposite party No. 2 wherein the said opposite party No. 2 stated that they had undertaken the responsibility on behalf of the petitioner corporation to assist it in exporting iron ore from the DAITARI mines of Orissa Mining Corporation Limited and demanded the payment of commission of US\$ 23362. The opposite party No. 2 once again made a demand by his letter dated 27th November, 2002 for payment of commission with regard to the alleged assistance in exporting iron ore from Orissa Mining Corporation Limited. Along with the said letter dated 27th November, 2002, the opposite party No. 2 enclosed a letter dated 18th February, 2000 allegedly written by the petitioner corporation, Kolkata liaison offices Deputy General Manager, Mr. T.K. Das, wherein it was stated as follows:

We hereby appoint you as our agent for procurement of different types of mineral which are exported from Orissa Mining Corporation Ltd. The petitioner corporation replied to the letter dated 27th November, 2002 of the opposite party No. 2 vide its letter dated 13th December, 2002. In the said letter it was stated on behalf of the petitioner corporation that its liaison office at Kolkata was neither authorized nor competent to appoint any agent or pay any commission. It was further stated that the corporation's agents in India were appointed directly by its head office at Tokyo. In regard to the appointment of the opposite party No. 2, it was stated that the letter of appointment issued by Mr. T.K. Das could not have had any validity as Mr. Das himself had no authority to issue such letter of appointment. The said letter dated 18th February, 2002 did not even contain any terms of appointment or the responsibilities, the appointee was required to discharge or anything regarding duration and fees. The said Mr. T.K. Das prematurely required from the services of the petitioner corporation with effect from 30th September, 2001. The Counsel for the petitioner corporation issued a letter dated 20th February, 2003 to opposite party No. 2 wherein it was emphatically denied that the said opposite party No. 2

was ever appointed as an agent of the petitioner corporation. It was further stated that the concerned business was finalised between ITOCHU Corporation and Orissa Mining Corporation regardless of any assistance of the opposite party No. 2. The opposite party No. 2 did not respond to the said communication dated 20th February, 2003. By letter dated 2nd April, 2003 the Counsel for the petitioner corporation reminded the said opposite party No. 2 of the communication dated 20th February, 2003 and stated that the petitioner corporation was still awaiting a reply to the same. This was followed by another letter dated 30th April, 2003 after the opposite party No. 2 failed to respond to the letter dated 2nd April, 2003.

The opposite party No. 2 responded to the letters of the petitioner corporation by letter dated 10th July, 2003 issued by its counsels, M/s. Khaitan & Co. In the said letter the opposite party No. 2 alleged that it had raised bills dated 14th March, 2001 and 14th April, 2001 for US\$ 23362 and US\$ 150000 respectively for the services rendered by them to the petitioner corporation. The opposite party No. 2 called upon the petitioner corporation to make payment of US\$ 173362 and interest @ 18% thereon. It was also stated that the opposite party No. 2 reserves its right to claim damages/compensation etc. caused by the petitioner corporation's unwarranted and arbitrary behaviour and action. It is significant to mention that in the said letter there was no allegation of any intention on the part of the petitioner corporation and its officials to deceive/cheat the complainant/opposite party No. 2. The said letter merely specified a dispute of a civil nature. The petitioner corporation by its letter dated 22nd July, 2003 replied to the letter dated 10th July, 2003 issued on behalf of the opposite party No. 2. It was specifically denied that opposite party No. 2 was ever appointed an agent of the petitioner corporation. It was once again reiterated that while the petitioner corporation had liaison offices in India, a business agent could only be appointed by the petitioner corporation's head office in Japan and none there. By letter dated 19th March, 2004 the petitioner corporation sought for an explanation from the said T. K. Das as to under what authority he allegedly issued the letter dated 18th February, 2000. No reply was received to the same. Mr. T. K. Das, an ex-employee of the petitioner corporation, acted in hand and glove with the opposite party No. 2 and the said letter of appointment dated 18th February, 2000 was, thus, manufactured. The opposite party No. 2 by letter dated 17th June, 2005 threatened action in

accordance with law for recovery of the claimed amount at corporation's cost and risk. Interestingly enough, even as late as June 17, 2005 (almost 4 years from the date of the shipment) the opposite party No. 2 never alleged any intention of cheating and the dispute regarding the demand of the alleged remuneration to the opposite party No. 2 was nothing but a civil dispute. The criminal complaint filed thereafter is clearly an afterthought with the sole intention to harass and coerce the petitioner corporation to give into the unlawful demands of the opposite party No. 2.

The opposite party No. 2 as complainant filed a petition of complaint before the learned Court of Chief Metropolitan Magistrate, Kolkata, which was referred to the police for investigation under Section 156(3) of the Code of Criminal Procedure. Here Street Police Station Case No. 30 of 2006 dated 27th January, 2006 under Section 420/506/120B of the Indian Penal Code was, thus, started.

In the said petition of complaint it was alleged that the complainant was approached by one of the representatives of the accused company with a request to get associated with the complainant company so that it could obtain various tenders in respect of iron ore and chrome in Eastern India on behalf of the accused company. The complainant company was induced by the representatives of the accused company and in order to implement the nature of work wanted by them, the complainant company sent a team of officers to carry out necessary investigation and enquiry at the Orissa Mining Corporation Limited (hereinafter referred to as 'OMC'), a Government of Orissa Undertaking. The complainant company on verbal representation carried out the work assigned to them by the accused company and wanted to be appointed as agents on behalf of the said accused company as, otherwise, it would not be possible for them to proceed with the work assigned to them. Over the issue of appointment as an agent, the complainant on different occasions visited the office of the accused company at Kolkata when their representative categorically stated that until or unless he was instructed by the accused Nos. 2 to 7, he cannot proceed with the same. For the said purpose the representative of the accused company at Kolkata contacted Chief Executive Officer, South-West Asia, ITOCHU Corporation at Delhi and Deputy Chief Executive Officer, ITOCHU Corporation at Mumbai. The accused

company, on various pretexts, deferred such authority and after much persuasion, at the instance of accused Nos. 3, 6 and 7, Mr. T.K. Das issued a letter appointing the complainant company as its agent for procuring various types of minerals from OMC. The complainant company expressed its dissatisfaction since the said letter of appointment/authority dated 18th February, 2000 did not mention anything about the remuneration. Mr. Nand Lal Kanodia, the representative of the complainant company, took up the matter of the accused company and with the instructions of accused Nos. 3, 6 and 7 it was represented that the complainant company would receive US\$ 150000 as remuneration irrespective of the fact that whether or not the contract between the accused No. 1 and the OMC materialised. Mr. T.K. Das categorically conveyed the complainant company on the specific instructions of the accused Nos. 3, 6 and 7 that the expenses incurred by the complainant would be reimbursed fully. On 18th February, 2000 the accused company conferred the necessary authority upon the complainant company so as to act for and on behalf of the accused company in respect of and/or related to the said tender floated by OMC. OMC by letter dated 1st March, 2000 expressed offer for exporting iron ore lumps to Japan through the accused company. In April, 2000 the complainant company was invited by OMC through its General Manager to give their offer for export of chrome concentrate from Paradeep in Orissa. Pursuance to the work done by the complainant company, the accused company carried on its negotiations and discussions with OMC and Nand Lal Kanodia was authorised to attend such meetings. All correspondences of the accused company addressed to OMC were duly marked to the complainant company. The offer of the complainant company was duly accepted and the complainant company provided all necessary services and executed the deal with OMC on behalf of the accused company. The complainant company gave all its efforts for more than one year as per the instructions of the accused company to co-ordinate with OMC in respect of crystallization of accused company's contracts with OMC and, accordingly, raised its bills dated 14th March, 2001 and 14th April, 2001 for US\$ 23362 and US\$ 150000 respectively, which were sent to the office of the accused company. The accused No. 3 expressed its surprise over the issue and advised the complainant company to contact its office in Delhi.

The accused company, thus, accepted services rendered by the complainant company but refused to make payment in spite of repeated demands. On 13th December, 2002 it refused to accept the complainant company either as its agent or to clear its bills. From the tenor of the said letter dated 13th December, 2002, it would appear that the accused company since the inception did not have the intention to pay/reimburse the bills raised for the purpose of services rendered by the complainant company and in order to utilise the goodwill and efficiency of the complainant company fraudulently and dishonestly induced the complainant company to act on misrepresentations knowing fully well that once the service of the complainant company was exhausted, they would never clear bills. Such action on the part of the accused persons revealed their intention to exploit the services and goodwill of the complainant company, which, thus, was induced by the fraudulent and dishonest representations of the accused persons and being so induced agreed to extend its services. The complainant company, thus, suffered wrongful loss of Rs. 1,47,61,260/- (equivalent to US\$ 328,028). On 22nd November, 2005 miscreants owing allegiance to the accused company threatened the officers of the complainant company with dire consequences if any demands with regard to the bills raised were made. The accused Nos. 2 to 7 are responsible for the criminal acts. The accused Nos. 2, 4 and 5 deliberately connived with the other accused persons and in the process sought to cause wrongful gain to themselves and wrongful loss to the complainant. The accused Nos. 3, 6 and 7 were involved in person at all material times and thus, were engaged in their acts of cheating.

The petitioners in this case stated the said T.K. Das, who was the only person who dealt with the opposite party No. 2, have not been arraigned as an accused in the complaint. The petitioners alleged that in the petition of complaint, which was treated as First Information Report in the instant proceeding, the opposite party No. 2 did not claim that any remuneration was agreed to be paid by the petitioner corporation. It was only claimed that a letter of appointment was given for acting as an agent for procurement of different types of minerals. The said letter of appointment dated 18th February, 2000 was obtained by the opposite party No. 2 in collusion and conspiracy with the said Mr. T.K. Das, though no such authority was given to the said T.K. Das by the petitioner corporation. The petitioners further

alleged that the opposite party No. 2 did not have any authority or power to act as an agent on behalf of the petitioner corporation and had no part to play in procuring the contract with OMC for export of iron ore out of India on behalf of the petitioner corporation. The dispute as raised in the First Information Report related to alleged non-payment of commission though there was no such understanding to pay any commission to the said opposite party No. 2. Allegations made in the First Information Report could at best constitute a civil cause of action and there could not be any mens rea so as to implicate the present petitioners with the alleged offences including offences under Section 420 of the Indian Penal Code.

It was further claimed by the petitioners that the amount of claim of the opposite party No. 2 had been raised to US\$ 328028 (equivalent to Rs. 1,47,260/-), though no explanation had been offered as to how the alleged amount was so reached.

In the circumstances the petitioners by filing the instant application under Section 482 of the Code of Criminal Procedure sought for quashing of the entire proceeding.

3. The learned Counsel Mr. Kapoor appearing on behalf of the petitioners while referring to the backdrop of the present case expressed his wonder as to how the learned Court could act upon such application and refer the same to the police authority for investigation after treating the said application as First Information Report under Section 156(3) of the Code of Criminal Procedure. Mr. Kapoor submitted that the allegations made in the First Information Report even if taken at their face value and accepted in their entirety do not constitute any cognizable offence and as such, the entire investigation is liable to be quashed. Mr. Kapoor submitted that the police cannot have unfettered discretion to commence investigation under Section 157 of the Code of Criminal Procedure. The right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence. Question of such suspicion could hardly arise in absence of any reflection of alleged commission of cognizable offence. Mr. Kapoor further contended that the allegations made in the written complaint, which was directed to be treated as a FIR are so absurd and inherently improbable that any prudent person can even prima facie find any sufficient ground for proceeding against the

accused persons. According to him, the entire case was instituted with a mala fide intention and with the ulterior motive of wreaking of vengeance on the accused and with a view to spite them due to private and personal grudge. It was then submitted that the allegations could at best reflect a civil cause of action. In absence of 'mens rea', which is an essential ingredient of the offence punishable under Section 420 of the Indian Penal Code, there can be no scope for any investigation.

4. Mr. Kapoor relying upon the decision in the case of Madhavrao Jiwaji Rao Scindia reported in AIR 1988 SC 709, submitted that the uncontroverted allegations in the present case do not prima facie establish any offence.

5. It was submitted on behalf of the petitioners that the entire claim of the complainant rests on the letter dated 18th February, 2000. It was reportedly written by one Mr. T.K. Das, who was not implicated as an accused in the complaint. Thus, existence of Mr. Das and his role was kept in a mystery. The categorical stand of the petitioners is that the said Mr. Das had no authority whatsoever to issue any letter of appointment. It was mentioned that no such letter of appointment could be issued in the ordinary course of business because of the restriction imposed by the Reserve Bank of India. Referring to the said letter dated 18th February, 2000, it was submitted that it suffers from inherent hollowness. It does not mention any period of appointment, not does it specify any scope of work. It is significantly silent in regard to the remuneration, which is required to be paid. The claim that the remuneration would be US\$ 1,50,000 irrespective of whether any contract between the accused No. 1 and the OMC would fructify or not, is palpably absurd and unbelievable, as contended by Mr. Kapoor. Attention of the Court was drawn to the letter dated 14th January, 2002 while sending the bill for the first time after about 10 months after raising of the said bill. Mr. Kapoor submitted that in paragraph 17 of the petition of complaint, the amount of money claimed has suddenly been increased to US\$ 3,28,028.00. The said amount was significantly higher than what was referred to earlier by letter dated 17th June, 2005. No satisfactory explanation could be given for such sudden escalation. According to Mr. Kapoor the entire claim, as made by the complainant in the case under reference, is based on inconsistencies and contradictions. There had been

suppression of materials before the learned Court as the correspondence exchanged between the parties was not placed before the learned Court while prayer was made for investigation under Section 156(3) of the Code of Criminal Procedure.

6. Mr. Kapoor submitted that the petition of complaint, which was referred to police for investigation did not disclose any material so as to constitute an offence under Section 420 of the Indian Penal Code. It was further submitted that the allegations made so as to attract under Section 506 of the Indian Penal Code are hollow and suffer from latent weakness.

7. Relying upon the decision in the case of *Uma Shankar Gopilaka v. State of Bihar and Anr.* reported in 2005 (10) SCC 336, it was submitted that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there is any deception played at the very inception. If the intention to cheat develops later on, the act cannot amount to cheating. It was categorically asserted on behalf of the petitioners that the allegations made in the petition of complaint could at best constitute a civil dispute. But, having regard to the claim, as made in the application, even a civil suit would not be maintainable as the claim would be barred by limitation. Attention of the Court was invited to the decision of the Apex Court in the case of *Hotline Teletubes and Components Ltd. and Anr. v. State of Bihar and Anr.* reported in 2005 (10) SCC 261, wherein it was held that in absence of any intention to cheat at the very inception of the contract between the parties, no criminal offence could be said to have been committed. In the case of *Uma Shankar Gopilaka (supra)* the Apex Court quashed the proceeding as there was no allegation in the complaint that at the very inception there was any intention on behalf on the accused to cheat. The Apex Court took the view that continuation of the proceeding on the basis of such allegation would amount to an abuse of the process of Court. In the case of *Minakshi Bala v. Sudhir Kumar and Ors.* reported in 1994 SCC (Cri) 1181, the Apex Court observed that in exceptional cases the High Court can look into the documents, which are unimpeachable and can be legally translated into relevant evidence. It is, however, not disputed that ordinarily the Court is not expected to rely upon the documents, which are sought to be relied upon by the accused

persons while approaching the High Court with an application under Section 482 of the Code of Criminal Procedure with the prayer for quashing of the proceeding.

8. In the case of N.C. Nag Pal and Ors. v. State and Anr. reported in 1979 (2) CHN 198, it was held by a learned Single Bench of this Court that in exercise of inherent power, the scope is much more expansive in that this Court can quash a proceeding for ends of justice or to prevent abuse of the process of the Court. It was also observed 'that necessarily means that while exercising inherent power the Court need not confine itself to the propriety, legality or correctness of the order of the Magistrate and for that matter the materials on which such order was passed.' This Court, however, is not to embark upon an enquiry in which an apprehension of the materials may be necessary to support or discharge the accusation. The Apex Court in the case of Dr. Sharma's Nursing Home v. Delhi Admn. and Ors. reported in 1998 (8) SCC 745, held that dishonesty has been defined in Section 24 of the Indian Penal Code to mean deliberate intention to cause wrongful gain or wrongful loss and when with such intention deception is practised and delivery of property is induced then the offence under Section 420 of the Indian Penal Code can be said to have been committed. In such backdrop, it was emphatically submitted by the learned Counsel for the petitioners that the allegations in the present case did not and could not constitute an offence under Section 420 of the Indian Penal Code.

9. Mr. Kapoor was perfectly justified in referring to the case of Bhajanlal v. State of Haryana reported in : 1992 CriLJ527 , while submitting that when the allegations made in the FIR are so absurd and absolutely improbable, there cannot be any sufficient reason for proceeding against the accused person. Mr. Kapoor then contended that while the criminal proceeding is manifestly attended with mala fide and/or proceeding manifestly instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to profit and personal grudge, this Court is not helpless. In such a situation, the interest of justice demands that this Court in exercise of its power under Section 482 of the Code of Criminal Procedure quashes the entire proceeding and this is to prevent abuse of the process of Court.

10. On the other hand it was strongly contended by the learned Counsel, Mr. Debol Banerjee, appearing on behalf of the opposite party/de facto-complainant that the petitioners cannot be allowed to raise grievances, which are not based on materials on record. In the case of *Rajesh Bajaj v. State of NCT of Delhi and Ors.* reported in : 1999 CriLJ1833 , it was held that complainant is not required to reproduce verbatim all ingredients of offence alleged in the body of the complaint. What is required to be looked into is whether averments in complaint prima facie make out case for investigation. No doubt, as rightly pointed out by Mr. Kapoor, the crux is intention of the accused person. But, just because facts narrated in complaint reveal commercial transaction, it cannot be held that offence of cheating would elude from such transaction. It is well-settled that where First Information Report or complaint prima facie does not disclose commission of any cognizable offence against the accused, the same would be liable to be quashed. In order to constitute an offence of the cheating, it is essential that there is mens rea at the time of inducing the person deceived to deliver and property to any person. This legal position deserves support from the decision in the case of *Ajay Mitra v. State of M.P. and Ors.* reported in : 2003 CriLJ1249 .

11. Question naturally arises as to how far this Court is permitted to proceed in order to explore the existence of a cognizable offence. In search for it, the Court cannot look into the documents and materials annexed to the application under Section 482 of the Code of Criminal Procedure praying for quashing of the proceeding. In case of *State of M.P. v. Awadh Kishore Gupta and Ors.* reported in : 2004 CriLJ598 , it was held that it is not permissible for High Court to look into the materials, the acceptability of which was essentially a matter for trial. Annexure to the petition cannot be termed as evidence without being tested and proved.

12. According to the learned Counsel for the petitioners, the allegation made in the complaint at best reflect breach of contract. Such breach of contract would amount to cheating only if intention to cheat was existing at the every inception. If such intention developed later on, this would not amount to cheating. This was precisely observed by the Apex Court in the case of *Uma Shankar Gopalika (supra)*.

13. In the present case, the complainant repeatedly claimed in the petition of complaint, sometimes even referring to the conduct as reflected from the correspondences like letter dated 13th December, 2002 that the accused persons from the inception did not have the intention to pay/reimburse the bills raised for the purpose of service rendered by the complainant company. It had been specifically alleged that the complainant was induced by the fraudulent and dishonest representation of the accused persons and being so induced agreed to extend its services.

14. On behalf of the petitioners reference was made to the allegations against the accused persons in the petition of complaint in order to explore the alleged inherent hollowness. It was contended with reference to the accused persons, one after another, that the entire case was falsely cooked up. May be, extent of involvement in the alleged act of cheating and criminal intimidation of the accused persons was not same or identical. But, the Court cannot at this stage measure out the same with coffee spoon, nor any attempt can be made to read something more than what meets the eyes.

15. Moreover, the manner in which Mr. T.K. Das had been sought to be projected does not find support from the documents and materials annexed to the First Information Report. By no stretch of imagination it can be said that there was no functional existence of the said Mr. T.K. Das in the running of the petitioners' business, nor can it be denied that the said Mr. T.K. Das was quite directly involved in the functioning of the business.

16. After careful consideration of all relevant materials, I find it difficult to hold that the allegations made in the complaint suffer from such inherent absurdity or antagonistic contradictions or even latent inconsistencies. It cannot be said that the allegations made in the complaint if taken at their face value do not constitute an offence of cheating or criminal intimidation. It may be, as stated earlier, that the extent of involvement of the accused persons was not same or identical. But there is no such reason, nor any rational justification for the Court to hold that proceeding with the investigation of the case will amount to an abuse of the process of Court.

17. In the circumstances, the present application being C.R.R. No. 1325 of 2006 be dismissed. Interim order, if any, be vacated.

18. Sent a copy of this order to the learned Court of Chief Metropolitan Magistrate, Calcutta, for information and necessary action.

19. Criminal department is hereby directed to supply xerox certified copy of this judgment, if applied for, after due compliance with the procedural formalities.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com