

(2012) 10 CAL CK 0038

Calcutta High Court

Case No: CRR No. 4008 of 2011

Ma Kreeng Construction Pvt. and
Others

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Oct. 17, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 200, 202, 401, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 141
- Penal Code, 1860 (IPC) - Section 34, 384

Hon'ble Judges: Dipak Saha Ray, J

Bench: Single Bench

Advocate: Chama Mukherji, Mr. Anupan Mukherji, Mr. Surojit Roy Chowdhury, Mr. Shikha P. Chowdhury and Mr. Kalyan Kr. Chakraborty, for the Appellant; Sudipta Moitra, Sabyasachi Mukherjee, M.S. Tiwari and Mr. P.K. Tiwari, for the Respondent

Final Decision: Dismissed

Judgement

Dipak Saha Ray, J.

The present case arises out of an application u/s 401 read with Section 482 of the Code of Criminal Procedure, 1973 for setting aside the orders dated 10.8.2011 and 4.11.11 passed by the Learned Metropolitan Magistrate, 3rd Court Calcutta, in C. Case No. 4027 of 2009 u/s 138 read with Section 141 of the Negotiable Instruments Act, 1881. The relevant facts of the present case are, in a nutshell, as follows:

The Opposite Party No. 2 as petitioner filed an application u/s 138 read with Section 141 of the Negotiable Instruments Act, 1881 which was registered as C. Case No. 4027 of 2009. In the said application it is alleged that the accused persons issued cheque for Rs. 18 lakh in respect of part refund of consideration money of the agreement which was not fulfilled by the accused persons; but the said cheque was

dishonored. Accordingly, after observing all formalities under the provisions of the Negotiable Instruments Act, 1881, the petitioner filed the said application which was registered as C. Case No. 4027 of 2009. It is also the case of the present petitioner that before initiation of the said case by Opposite Party No. 2, the petitioner herein filed a petition of complaint u/s 156(3) of the Criminal Procedure Code for sending the same to the concerned Police Station for investigation after treating the same as F.I.R. But the Learned Additional Chief Judicial Magistrate treated the said petition of complaint as complaint and examined the witnesses u/s 200 of the Code of Criminal Procedure. Being not satisfied with the solemn affirmation of the witnesses, the Learned Magistrate directed the Officer-in-Charge of the concerned Police Station to investigate the matter and to submit report as per the provision of Section 202 of the Code of Criminal Procedure. Subsequently, after receiving the report of the concerned Police Station, the learned Magistrate issued process u/s 384/34 of the Indian Penal Code. In the said case it has been alleged that the Accused Persons/Opposite Party Nos. 2 to 5 after trespassing into the office of the petitioners herein forced the petitioners under coercion and threat to issue post dated cheques. Subsequently, those cheques were dishonoured and in respect of one of the said cheques, C. Case No. 4027 of 2009 has been initiated. It is the further case of the petitioners that until and unless the said complaint case u/s 384/34 of the Indian Penal Code is disposed of the instant case is required to be stayed and/or dropped.

2. The Learned Counsel for the Opposite Party has submitted that on the self-same ground one application was filed u/s 401 read with Section 482 of the Code of Criminal Procedure for stay of the proceedings of some cases u/s 138 of the Negotiable Instruments Act, 1881 including C. Case No. 4027 of 2009 and the said Revisional Application was rejected by the Hon"ble Justice Kalidas Mukherjee. The said Judgment was not challenged. Accordingly, the petitioners are debarred from re-agitating the matter on the self-same ground before the Hon"ble High Court at Calcutta.

3. Now, on perusal of the Judgment (at Page No. 64 of the application) passed on 11.4.11 in CRR No. 592/1030/1070/1072/1073/1071 of 2011 it appears that the subject matter and the relief prayed for in both the cases i.e., in CRR Nos. 592/1030/1070/1072/1073/1071 of 2011 and the instant case are same. What is most surprising is that the argument advanced in both the cases is more or less same and identical.

4. Considering the above facts and circumstances, it appears that the present petitioners have no right to pray for the relief as prayed for in this case by re-agitating the matter before this Court as the same has already been decided of by this Court in CRR Nos. 592/1030/1070/1072/1073/1071 of 2011 and the said finding has not yet been challenged.

5. In view of the matter, the instant application u/s 401 read with Section 482 of the Criminal Procedure Code is not maintainable which must be dismissed. Accordingly the instant application fails.
6. CRR No. 4008 of 2011 is dismissed. There is no order as to costs.
7. Let a copy of this judgment be sent to the learned trial court for information and necessary action. Urgent Photostat certified copy of this judgment be supplied to the parties, if applied for, subject to compliance with all necessary formalities.