
(2019) 05 CAL CK 0082

Calcutta High Court

Case No: Criminal Revision (CRR) No. 1296 Of 2019

Autokast Limited And
Others

APPELLANT

Vs

Neo Carbons Pvt. Ltd

RESPONDENT

Date of Decision: May 28, 2019

Acts Referred:

Indian Penal Code, 1860 " Section 120B, 406, 417, 418, 420, 506

Citation: (2019) 05 CAL CK 0082

Hon'ble Judges: Protik Prakash Banerjee, J

Bench: Single Bench

Advocate: Upendra Roy, Roshan George

Judgement

A complaint case was filed by the Opposite Party against the petitioners. Even though an allegation has been made that the acts committed by the

accused persons are criminal in nature, punishable under inter alia Sections 406/417/418/420/506 read with Section 120B of the Indian Penal Code,

after I went through the application and the complaint petitioner which is Annexure P/1 to the petition from page 26 onwards I have not found any

allegation that there was any deceitful intention on the part of the petitioners alleged therein.

The law is well settled that while a complaint does not have to be an encyclopaedia at least the basic ingredients of intending to cause with a dishonest

intention wrongful loss to another or wrongful to gain to oneself is to be alleged with at least some basis mentioned in the complaint for such an

allegation.

The complaint merely however shows that certain orders were placed by the accused persons on the complainant which the complainant duly supplied

but thereafter, despite repeated demands no payments were made and in fact the accused persons did not respond to the demands at all. In the

complaint petition nothing has been said why the failure and/or neglect to pay the outstanding amount should be deemed to be according to any

premeditated design and/or mala fide intention to cause wrongful and/or illegal personal gain to themselves and/or wrongful loss to the complainant

company. The allegation of dishonesty is conspicuously absent.

Prima facie it does not appear to me that mere failure to pay would convert that which is a civil dispute into something which would result in coercive

criminal process. It is not a case that merely because there is an arbitration clause where the seat of arbitration was elsewhere than in Kolkata that

the complaint is without jurisdiction as attempted to be argued by the learned Advocate for the appellant. If I had found, prima facie, any ingredient of

a case of cheating or the other allegations on which the complaint was based, the said jurisdictional challenge would have failed, only on the basis of

the finding that cause of a action of a criminal case and thus jurisdiction of a criminal case cannot be ousted by consent of parties about the forum for

deciding a civil dispute between them. So far as this Court is concerned a civil dispute is a civil dispute and a criminal case is a criminal case and

never the twain shall meet, unless it be that the pleadings in both cases ex facie disclose the ingredients of each in the respective case. Until then, a

consensual forum for determining a civil dispute will never determine the jurisdiction of a criminal court into allegations of the crime.

Hence, in view of what I have held above, prima facie the petitioners have made out a case which requires to be heard on notice to the other side.

Accordingly there shall be an order of stay of all further proceedings arising out of and/or in connection with case No. CNS/77/2019 against the

petitioners no. 1 to 7 under sections 406/417/420/506/120B of the Indian Penal Code, 1860 for a period of six months from the date of or till the

disposal of the application whichever is earlier.

The petitioners shall be at liberty to apply for extension of interim order on the self-same application without needing to take out any further process by

mentioning before the appropriate bench before expiry of the time granted hereinabove.

Service shall be effected on the opposite party within a period of three weeks from reopening and affidavit-of-service shall be filed before the

appropriate bench on the next date that the matter appears showing such service.

The copies of this order shall be communicated to the learned Public Prosecutor as also the opposite party.

The learned Court below shall act on the communication made by the learned Advocate on record without insisting on certified copy.

Let a photostat plain copy of this order duly countersigned by the Assistant Registrar (Court) be handed over to the learned advocates for the parties

on their usual undertakings.