

26.04.2023

Sl. No.18.

D/L.

Mithun.

Ct.No.42.

CRR/17/2023

Aditya Bahl & Anr.

Vs.

The State of West Bengal & Anr.

Mr. Sourav Chatterjee, Adv.

Mr. Soumya Nag, Adv.

Mr. Debanjan Ghosh, Adv.

Mr. Ritoban Sarkar, Adv.

...for the petitioners.

The petitioners have prayed for quashing of CGR No.837 of 2019 pending before the learned Additional Chief Judicial Magistrate, Alipore arising out of Taratala P.S Case No.18 of 2019 date 11th March, 2019 under Sections 420/120B of the IPC. The petitioners are the directors of a company under the name and style M/s Ava Spa Holidays Private Limited. The said company is engaged in the business of providing and facilitating charter flight service sometimes in the month of July 2018. The opposite party No.2/company approached the petitioners' company for booking charter flight with private charter limited for travelling of officials of the opposite party No.2 company within India. The petitioners provided discounted quotation to the opposite party No.2 on specific condition receiving full payment in advance. Accordingly, the petitioners company sent four separate contracts dated 12th September, 2018, 11th August, 2018 and 13th August, 2018 to the opposite party No.2 for execution. The contract was duly executed.

It was specifically agreed by and between the parties in the said contract that no refund shall be made to the opposite party No.2 in the event charter flight are cancelled or cannot operate for unforeseen reasons such as bad weather, poor visibility, non-availability of clearance or any technical reasons. As per the agreement the company of the petitioners were also exempted from any criminal liability.

Further case of the petitioners is that due to bad weather and for other reasons flight dated 26th September, 2018 could not be operated. Subsequently, on 6th October, 2018, the petitioner No.1 received an e-mail from the opposite party No.2 to attend a meeting on 9th October, 2018 in Kolkata for discussing the confirmation on other flights. Subsequently, on 9th October, 2018 the opposite party No.2 unilaterally cancelled other contracts. Thereafter, on 5th November, 2018, the opposite party No.2 through its learned Advocate demanded refund of charges paid for booking charter flights. The said letter was followed by a complaint before the Taratala P.S. The Officer-in-Charge, Taratala P.S without considering the fact that the petitioners are residents of Saket, New Delhi registered specific case against the petitioners under Sections 420/120B of the IPC and issued notice under Section 41A of the Cr.P.C. The investigating agency also submitted charge-sheet against the petitioners under the above-mentioned

penal provision before the learned Additional Chief Judicial Magistrate, Alipore.

It is contended on behalf of the petitioners that the dispute between the parties arose out of contractual obligation and there is no element of criminal liability under Sections 420/120B of the IPC. Therefore, the criminal proceeding against the petitioner cannot lie.

The instant revision be admitted.

The petitioner is directed to serve notice upon the private opposite party by registered speed post with AD and file affidavit of service within three weeks from the date of this order.

In the meantime, further proceeding in connection with CGR No.837 of 2019 pending before the learned Additional Chief Judicial Magistrate, Alipore be stayed till 30th June, 2023.

(Bibek Chaudhuri, J.)