

20.12.2022

Sl. No. 15.

Mithun.

Ct.No.42.

CRR/3649/2022

M/S. T.K.Engineering Consortium Pvt. Ltd. & Ors.

Vs.

State of West Bengal & Anr.

Mr. Abhratosh Majumdar, Sr. Adv.

Mr. Sabir Ahmed, Adv.

Mr. Avra Mazumdar, Adv.

Mr. Vinayak Gupta, Adv.

Mr. Sumon Bhowmik, Adv.

Sk. Md. Bilwal, Adv.

Mr. Dhiman Banerjee, Adv.

...for the petitioners.

It is submitted on behalf of the petitioners as follows:

Petitioner No.1 is a Private Limited Company specially engaged in construction of National Highways. The remaining petitioners are the Directors, Chief Executive Officer and other Officers having their respective designations in the said Company. The petitioner Company got a work order for construction of Highways in Arunachal Pradesh. In order to carry out the said job, the petitioner No.1 Company executed an agreement at Arunachal Pradesh with the opposite party No.2 for hiring of equipments. The agreement is, therefore, termed as Equipment Hiring Agreement. It is not denied that the opposite party No.2 delivered certain equipments for carrying out the said project to the petitioners. Subsequently dispute arose with regard to the amount of bill raised by the opposite party No.2 Company to be paid by the petitioners. In Paragraph 13 of the application under

Section 156(3) of the Code of Criminal Procedure, the opposite party No.2 has alleged as follows:-

“13.The Accused in their letter dated 7.8.2020 and letter dated 17.8.2020 (copy of both annexed hereto collectively as Annexure-“C”) under reply have wrongly shown that –

- a) the total bill of the Complainant for the Palin Section for February 2019 to July, 2020 to be Rs.5,67,95,198/- whereas the true and correct bill of the Complainant for such period for Palin Section is Rs.11,25,95,353.38p. (=Rs.9,54,19,791/- Principal Amount + 18% GST).
- b) the total bill of the Complainant for the Sangram Section for February 2019 to July, 2020 to be Rs.2,55,62,861/- whereas the true and correct bill of the Complainant for such period for Sangram Section is Rs.6,43,52,442.14p. (=Rs.5,45,35,973/- Principal Amount + GST 18 %).”

It is submitted on behalf of the petitioners that the petitioners have already paid the considerable amount to the opposite party No.2. It is also submitted that raising such dispute the opposite party No.2 has already filed a civil suit for recovery of money in the competent Civil Court at Kamrup, Guwahati. The said civil suit is pending. Thus the dispute between the parties arises out of a commercial transaction involving payment and recovery of dues. Thus it is submitted on behalf of the petitioners that no criminal liability is attributed to the petitioners. Secondly, it is submitted on behalf of the petitioners that the opposite party No.2 by filing civil suit has

already admitted by their conduct that the dispute between the parties are purely civil in nature. Thirdly, the learned Magistrate directed the jurisdictional police station at Calcutta to register a specific case against the petitioners without making any inquiry when the alleged offence is committed beyond the territorial jurisdiction of the learned Magistrate.

The instant revision is admitted.

The petitioners are directed to serve notice upon the opposite party under registered speed post with acknowledgment due and to file affidavit of service within 3 weeks from the date of this order.

The State of West Bengal be served through the learned Public Prosecutor, High Court, Calcutta.

In the meantime, further proceedings in connection with G.R. Case No.874 of 2020 be stayed for a period of six weeks.

Liberty to mention.

(Bibek Chaudhuri, J.)