

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 15.12.2023
Pronounced on : 28.12.2023

CRMC No. 819/2018

Harjit Singh Slathia, Age 54
years, S/o Sh. Harish Chander
Singh R/o Sheela Niwas Ward
No. 8, Tehsil Vijaypur District
Samba. Presently posted as
Branch Manager, Prem Nagar,
Doda Branch of Jammu and
Kashmir Bank Ltd.

.....Petitioners/Appellants

Through: Mr. Ajay K. Gandotra, Advocate
Vs

Inder Singh S/o Sh. Baldev Chand, R/o
Village Pernote, Prem Nagar, Tehsil
Thattri, District Doda.

..... Respondent(s)

Through: Mr. Priyanshu Sharma, Advocate

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) This petition under Section 561-A Cr. P.C. now, 482 Cr. P.C has been filed by the petitioner for quashing the proceedings of the criminal complaint, titled, "Inder Singh vs. Harjeet Singh and another", pending before the court of learned Additional Special Mobile Magistrate, Doda (hereinafter to be referred as "the trial court") and also for quashing the order dated 28.11.2017 by virtue of which the learned trial court has issued the process against the petitioner for commission of offence under Section 409 RPC.

2) It is averred in the petition that one Smt. Rakshu Devi W/o Sh. Munish Kumar had availed Working Capital Term Loan of Rs. 3.00 lacs from Prem Nagar Branch of Jammu and Kashmir Bank Ltd. on 06.06.2014 and an

instalment of Rs. 7,000/- per month was fixed towards the repayment of loan. The respondent had stood as a guarantor for the borrower mentioned above and had also executed Deed of Guarantee on 06.06.2014 in favour of the Bank, which provided that the Bank shall have right of set off/appropriation of any money, claims or sale proceeds of the properties of the guarantors in the hands of the Bank towards adjustment of the loan facility. The borrower committed default in repayment of the loan and her loan account No. 0605265650000003 was declared as Non Performing Asset (NPA) on 30.06.2016. In terms of the contractual obligations as accepted by the respondent through the medium of the Deed of Guarantee and in view of the Bank having the general lien upon the security of the guarantor as per Section 171 of Contract Act, an amount of Rs. 10,000/- was deducted from the salary account No. 0449040120025500 of the respondent maintained with the extension counter of Jammu and Kashmir Bank Ltd. Doda on 08.12.2015, when the loan account of the borrower was declared as irregular. On 30.03.2016, an amount of Rs. 8,000/- was debited from the account of the respondent and credited towards the loan account of Smt. Rakshu Devi. The respondent on both the occasions did not raise any objection.

3) The petitioner being In-charge of the branch of the Bank vide communications dated 22.02.2017 and dated 01.03.2017 after informing the respondent debited a sum of Rs. 2,65,295/- from the account of the respondent on 06.03.2017 and adjusted the said amount in the loan account of said barrower.

4) The respondent filed the complaint against the petitioner and one more accused before the court of learned Chief Judicial Magistrate, Doda, and the said complaint was assigned to the trial court. The learned trial court directed an inquiry into the complaint through Chief Prosecutor Officer, Doda for the purpose of ascertaining the truth or falsehood of the case. The Chief Prosecutor Officer, Doda after recording the statements of complainant/ respondent herein, Sh. Mohan Lal, Cashier of Extension Branch of J&K Bank Ltd. Doda and SPO Mukhtyar Singh submitted the report before the learned trial court and the learned trial court after placing reliance upon the report submitted by the CPO, Doda, issued the process against the petitioner only for commission of offence under Section 409 RPC vide order dated 28.11.2017.

5) The petitioner has impugned the criminal proceedings arising out of the complaint and also the order dated 28.11.2017 on the grounds that complaint preferred by the respondent was required to be dismissed at the threshold and even after receipt of the inquiry report, no sufficient ground was existing so as to necessitate the issuance of the process against the petitioner as the petitioner had exercised his power as vested in him being the official of the Bank under Section 171 of the Contract Act and the Deed of Guarantee authorised the petitioner to affect recovery from the deposit and security of the guarantor, whereas the Inquiry Officer was not made aware of the factum of execution of the Deed of Guarantee in favour of the Bank. The alleged act of the petitioner was performed by him in exercise of his official duty and could neither be construed as misappropriation of funds entrusted to the Bank by the respondent nor as an act of criminal breach of trust. There was no sufficient ground for proceeding against the petitioner as the complaint was

manifestly attended with *mala fide* and proceedings have been maliciously instituted so as to bring bad name to the petitioner's Bank.

6) Notice was issued to the respondent, which was duly served. Mr. Priyanshu Sharma, Advocate caused appearance on behalf of the respondent. He did not choose to file reply.

7) Mr. Ajay Kumar Gandotra, learned counsel for the petitioner vehemently argued that the respondent had stood as a Guarantor in respect of the credit facility availed by one Rakshu Devi and the petitioner had debited the amount only in performance of his official duties and pursuant to the Deed of Guarantee executed by the respondent himself. He further submitted that the petitioner had not misappropriated any amount for his own benefit as the same was used for the purpose of settling the loan facility availed by the barrower.

8) Mr. Priyanshu Sharma, learned counsel for the respondent argued that the inquiry conducted by the Chief Prosecutor Officer, Doda clearly demonstrates that an amount of Rs. 2,83,298/- of the respondent was misappropriated by the petitioner. He further submitted that as per the Deed of Guarantee, notice was required to be issued to the respondent.

9) Heard learned counsel for the parties and perused the record.

10) From the perusal of the record, it is evident that the respondent filed a complaint against the petitioner and one more accused on the ground that he was an employee of Power Development Department and used to receive his salary from the salary counter of the Bank at Doda and in his account No.

0449040120025500, an amount of Rs. 2,65,295/- was lying. The petitioner and co-accused without any reason and authorization of the respondent transferred the amount from his aforementioned account number to the account of the borrower bearing No. 0605265650000003. It is further stated that by debiting the amount, the petitioner and co-accused committed the breach of trust.

11) The learned trial court postponed the issue of process and directed the Chief Prosecutor Officer, Doda to conduct an inquiry in terms of Section 202 Cr.PC. The inquiry was conducted by the CPO, Doda and during the course of inquiry, he recorded the statements of the complainant and Mohan Lal, Cashier, J&K Bank, Salary Ext. Branch, Doda and one SPO Mukhtiyar Singh. In his statement, the respondent admitted that in the year 2014, he stood as a guarantor to his neighbour, namely, Smt. Raksho Devi, who had obtained a loan of Rs. 3.00 lacs from J&K Bank, Branch Prem Nagar, Doda. He also admitted that Rs. 7,000/- was fixed as monthly instalment and in the year, 2015 an amount of Rs. 10,000/- was debited by the petitioner from his salary account and credited the same in the loan account of Smt. Raksho Devi maintained by her at J&K Bank Branch Prem Nagar without any prior notice and without seeking his consent. Thereafter, again in the month of March 2016, the petitioner deducted an amount of Rs. 8,000/- from the account of the petitioner and credited the same in the loan account of Smt. Raksho Devi. After deduction, the accused No. 2 freezed his account so that no withdrawal could be affected from this account, though the money could be deposited. On 06.03.2017, the petitioner again debited an amount of Rs. 2,65,295/- from the account of the respondent without prior notice or permission and credited

the same to the loan account of Smt. Raksho Devi, thereby causing huge loss and mental harassment to him. Mohan Lal, Cashier also deposed about deduction of the amount made from the account of the petitioner and deposit of the same in the loan account of Smt. Raksho Devi.

12) A perusal of the inquiry report reveals that despite notice, the petitioner did not participate in the inquiry proceedings and Inquiry Officer, CPO, Doda by virtue of enquiry report dated 30.06.2017 recorded that the petitioner did not associate himself in the enquiry proceedings despite being informed many times, as such, it could not be ascertained as to whether loanee had committed any default in re-paying the loan or not. Simultaneously, it was observed by the Inquiry Officer that only in the eventuality of the non-payment of the loan by the loanee, Raksho Devi, the guarantor could be made liable. After noting the non-participation of the petitioner in the enquiry proceedings and drawing adverse inference against the petitioner, the Inquiry Officer opined that the amount has been debited illegally from the account of the respondent without prior notice to him. The learned trial court vide order dated 28.11.2017 after placing reliance upon the inquiry report submitted by the CPO, Doda, issued the process against the petitioner. The following admitted facts emerge from the inquiry report submitted by the CPO Doda:

- i) That the petitioner stood as a guarantor in respect of the loan availed by Smt. Raksho Devi for an amount of Rs. 3.00 lacs for opening a readymade garments shop at Prem Nagar, Doda and Rs. 7000/- was fixed as monthly instalment.

- ii) That in the year, 2015 an amount of Rs. 10,000/- was deducted from the salary account of the respondent and credited the same to the loan account of Smt. Raksho Devi. In the month of March, 2016 again the petitioner deducted an amount of Rs. 8,000/- without his permission and credited the same in the above mentioned loan account of Smt. Raksho Devi.
- iii) That the account of the respondent was freezed by the accused No. 2 and no withdrawal could be made from the account of the respondent though the money could be deposited.
- iv) On 6th March, 2017, the petitioner debited an amount of Rs. 2,65,295/- from the account of the respondent and credited the same in the loan account of Smt. Raksho Devi.

13) The respondent has not at all disputed the Deed of Guarantee executed by him. Now, the issue that is required to be considered by this Court is as to whether the petitioner has committed the criminal breach of trust or has acted in performance of his official duty. It would be appropriate to take note of Section 171 of the Contract Act, which is extracted as under:

“171. General lien of bankers, factors, wharfingers, attorneys and policy brokers-

Bankers, factors, wharfingers, attorney of a High Court and policy brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them, but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.”

14) The aforesaid section provides for general lien of bankers and this right of the bank was specifically incorporated in the Deed of Guarantee. The relevant part of the Deed of Guarantee is extracted as under:

“The Guarantors agree that during the Borrower’s indebtedness the Bank shall have the right of general lien over all goods/ securities/ negotiable instruments, documents of title etc, of the Guarantors and shall also have the right of set off/appropriation of any moneys, claims or sale proceeds of the properties of the Guarantors in hands of the Bank towards adjustment of the Loan facility. The appropriation shall be made by Bank towards discharge of the debts in order of time whether they are not time barred under the law of limitation for the time being in force. Amongst the debts of same standing the expenses, costs, charges etc. shall be adjusted first, the interest shall be adjusted next and the loan facility or any other principal sum shall be adjusted at last. Bank may also consolidate and combine any to or more loan accounts of the borrower by transferring the balance of one account into the other as the Bank in its absolute discretion deems fit, at anytime-regardless of the status of those two accounts at such time. And in addition to the statutory right of general lien or other similar right of the bank as a banker, the Bank may at any time and without any notice to the Guarantors combine or consolidate all or any of their accounts with, and liabilities to, the Bank and set off or transfer any credit balance/s of these account/s in satisfaction of the liabilities of the Borrower/Guarantors towards the Bank in any respect, whether such liabilities be actual, contingent, several or joint, and pending any such action, to the extent necessary, may hold such amounts as collateral to secure such obligations and liabilities of the Borrower/Guarantors and to return as unpaid for insufficient funds any and all checks and other items drawn against any such credits/ deposits so held as the Bank in its sole discretion may elect.”

(Emphasis added)

15) A perusal of the above covenant demonstrates that during the currency of borrower’s indebtedness, the Bank shall have the right of general lien over all the goods/securities/negotiable instruments, documents of title etc. of the Guarantor and shall also have the right of set-off/appropriation of any money’s claims or sale proceeds of the properties of the guarantors in hands of the Bank towards adjustment of the loan facility.

16) The respondent has not been able to demonstrate that the amount was debited by the petitioner when the borrower was not indebted to the Bank. Though Mr. Priyanshu Sharma tried to persuade this Court that it was obligatory on the part of the Bank to issue notice to the respondent and then only the amount could have been debited. The argument though appears to be attractive but is without any substance, as covenant No. 7 of the Deed of Guarantee specifically provides that Bank can exercise this right without notice to the guarantor. More so, it is not the case of the respondent that the petitioner misappropriated the money for his personal use. The petitioner had debited the money and credited the amount in the loan account of the borrower. If criminal prosecution is allowed on such accusations then it would have devastating effect on the functioning of Banks, as they are in fact the custodian of the public money. No Bank Officer would be able to work freely so as to recover loan amount from the borrower. This Court has no hesitation to hold that the criminal proceedings have been instituted against the petitioner maliciously. Even it is assumed for the sake of arguments that the petitioner being the employee of the Bank had wrongly debited the amount, the respondent could have initiated appropriate civil proceedings against the Bank but in no manner could have resorted to initiation of criminal proceedings against the petitioner and that too without impleading the Bank as party to the complaint as the amount debited from the account of the respondent was not used by the petitioner for his benefit but for safeguarding the financial interest of the Bank.

17) In **M.N. Ojha v. Alok Kumar Srivastav, (2009) 9 SCC 682**, the Hon'ble Supreme Court of India quashed the criminal proceedings against the Bank employees initiated by the guarantor, with following observations:

“33. This is one case where the averments and allegations made in the complaint do not disclose the commission of any offence by the appellants or any one of them. They were merely discharging their duties to realise and recover the amounts due to the Bank from the borrower as well as the guarantors. The complaint obviously has been filed as a counterblast to the proceedings already initiated by the Bank including the first information report lodged by the first appellant against the complainant and the borrower for the offences of cheating and misappropriation.

34. Sequence of events undoubtedly suggests that the criminal proceedings have been maliciously instituted with an ulterior motive of wreaking vengeance on the appellants and with a view to spite them due to personal grudge. It was clearly intended to prevent the public servants from discharging their duties. The criminal law has been set in motion by the learned SDJM on mere asking to do so by the complainant.”

(emphasis added)

18) In **“Mahmood Ali v. State of U.P.”, 2023 SCC OnLine SC 950**, while examining the scope of interference under section 482 Cr.P.C with the criminal proceedings initiated against the accused, the Hon'ble Supreme Court of India has held as under:

“13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under [Section 482](#) of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under [Article 226](#) of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. **Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious**

proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines.

The Court while exercising its jurisdiction under [Section 482](#) of the CrPC or [Article 226](#) of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

(emphasis added)

19. In view of the above, this Court is of the considered view that the continuance of the proceedings against the petitioner would be nothing but an abuse of process of law, as he has only discharged his official duties and the alleged act, which is being termed by the respondent as an offence, was in fact committed by him on the basis of Deed of Guarantee in the interest of the Bank and not for his personal benefit, therefore no criminality is involved in such act of the petitioner.

20. For what has been said and discussed above, the present petition is **allowed** and the complaint, titled, “Inder Singh vs. Harjeet Singh and another”, pending before the Court of learned Additional Special Mobile Magistrate, Doda” as well as process issued vide order 28.11.2017, are quashed.

(RAJNESH OSWAL)
JUDGE

Jammu
28.12.2023
Karam Chand/Secy

Whether the order is speaking:
Whether the order is reportable:

Yes/No
Yes/No