HIGH COURT OF TRIPURA
AGARTALA

Crl. Petn.06/2019

Sri Rajinder Singh and others

.....Petitioner(s)

Versus

The State of Tripura and another

.....Respondent(s)

For Petitioner(s) : Mr. C.S. Sinha, Advocate.

For Respondent No.1 : Mr. S. Ghosh, Addl. P.P.

For Respondent No.2 : Mr. Prabir Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment : 02.12.2020.

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

This petition is filed by the original accused. They seek quashing of a complaint filed by the respondent No.2, Assistant General Manager of State Bank of India on 14.11.2018 before the West Agartala Police Station. In the said complaint, the complainant had alleged that the petitioners herein are the Managing Director and Directors of one M/S. Priya Motors Private Limited. Priya Motors had obtained a loan of Rs.9.50 crores, which

was sanctioned by the bank on 20.04.2017. The borrowers had agreed to all terms and conditions of the bank and also executed a letter of guarantee and hypothecation agreement. One of the conditions imposed by the bank at that time was that none of the accused without the prior permission of the bank would open or maintain any account in any other bank. According to the complainant, the accused had willfully breached this condition and it was noticed by the bank that the accused were maintaining the current account with HDFC bank, Agartala and the transactions were being routed through the said account instead of the cash credit account of the State Bank of India. On 07.08.2018, the account of the accused became non-performing account. The complainant alleged that all the accused persons after availing the loan from the State Bank had diverted the funds to the HDFC bank and they had also routed the sale proceeds of the company to the said account in HDFC bank. Thus, the accused had diverted the funds to other bank and not utilized the same for the purpose for which the finance was availed nor funds are available in the form of any other assets. The vehicles hypothecated with the bank were also not available with the borrower company. Thus according to the complainant, the company was unable to pay its debts and the accused had defrauded and cheated the bank and thus diverted the public money.

2. The petitioners in the present Criminal Petition seek quashing of the said complaint. At one stage, the petition was disposed of by an order dated 17.05.2019. The petitioners and the bank had given consent terms for repayment of the bank's dues. With the consent of the parties, the FIR was quashed. However, subsequently, the bank filed a Cont. Case (Crl.) No.1 of 2020 and alleged that the accused failed to abide by the terms based on which the FIR was quashed. No amount was repaid contrary to the assurance is given to the Court and which found the basis for quashing the FIR. Such Contempt Petition was disposed of by an order dated 05.03.2020. After recording to the background of the case, the Court expressed an opinion that no usual purpose would be served in taking out contempt proceedings against the petitioners. However, having breached the terms of the agreement on which the FIR was quashed, they would not be allowed to enjoy the benefit of the order in their favour. Resultantly, the previous order disposing of this case dated 17.05.2019 was recalled. This Criminal Petition was revived and would be heard afresh. Since this order dated 05.03.2020 gives the full detail of the background leading to revival of this Criminal Petition, entire order may be reproduced:

> "**05/03/2020**
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> This contempt petition arises in peculiar facts. Contempt petition is filed by the State Bank of India (for short, SBI), who was the original respondent No. 2 in Criminal Petition No.06 of 2019 filed by the respondents No.1 to 3 herein, the alleged

contemnors. The petitioners had filed the said Criminal Petition No.6/2019. In such petition they had prayed for quashing of an FIR dated 14.11.2018 registered before the West Agartala Police Station alleging offences punishable under Sections 120B and 420 of Indian Penal Code filed by the Bank. In the FIR the allegations made by the first informant, the Assistant General Manager of the bank, it was alleged that the accused were Managing Director and Directors of one Priya Motors Private Limited having its business operations at Agartala. They had obtained a loan of Rs.9.60 crores which comprised of cash credit facility of Rs. 8 crores and the bank guarantee of Rs.1.50 crores which was sanctioned by the bank on 20.4.2017. At the time of sanctioning the said loan, the accused had agreed to accept and abide by all terms and conditions of the bank and had also executed a letter of guarantee. They had executed hypothecation agreement. They had agreed that during the currency of the credit facilities, the accused would not open or maintain any account with other banks without the written permission of the SBI. Contrary to such undertaking the accused were maintaining current account with HDFC Bank, Agartala and their business transactions were being routed through the said account instead of the cash credit account with the SBI. Consequently, the cash credit account and bank guarantee account turned NPA on 07.08.2018. The accused had diverted the funds received from the SBI to their HDFC Bank account which was in breach of the specific conditions for sanctioning the facility. They defaulted in making payment of a sum of Rs. 9.88 crores plus interest from 29.08.2018 and onwards. Without prior permission from SBI, the accused had opened the bank account with HDFC Bank, Netaji Chowmuhani, Agartala on 01.04.2018 and they had routed sale proceeds of Priya Motors Private Limited to the said account. Thus accused had diverted the funds to other bank. The

funds were not utilized for specific purpose for which the finance was made available. Even the stock of vehicles hypothecated with the bank were not available with the company.

2. On 3.5.2019 the learned Single Judge in said quashing petition recorded the statement of the counsel for the petitioners their entire outstanding amount to the bank would be repaid within a period of six to seven months. In addition to taking such a common undertaking on record, the Court directed each petitioner to file a separate undertaking. Relevant portion of this order reads as under:

> ***"Under instructions from Sri Rajinder Singh, Smt. Meena Chhikara and Sri Nagesh Mehta, petitioners No.1, 2 & 3 respectively, Mr. C.S. Sinha, learned counsel for the petitioners, further states that the entire outstanding amount, as on date, along with interest, shall be deposited by the petitioners and all dues cleared as per the books of accounts maintained by the respondentBank, within a period of 6/7 months from today. Learned counsel for the petitioners states that such undertaking of the petitioners be accepted and taken on record.***
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> ***Accordingly, such undertaking is accepted and taken on record.***
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> ***Petitioners through learned counsel have been made aware of the consequences of breach thereof, including initiation of proceedings for contempt, in the event of violation of any one of the terms of the undertaking.***
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> ***As a matter of abundant caution, let each one of the petitioners also file their personal affidavits to such effect.***
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> ***Needful be positively done within 2(two) days. Also and in any event, each one of the petitioners shall personally remain present in Court on the next date of hearing.***
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> ***Mr. Sinha, learned counsel for the petitioners, states that talks of settlement are also in progress with the respondent-Bank.***
>
> ***Well, petitioners' undertaking stands accepted and if, in the meanwhile, parties endeavour to arrive at some amicable settlement, it is always open for them to do so, but then such exercise on their part, shall not come in the***

way in enforcement of the undertakings so furnished before this Court.

List the matter on 17.05.2019."

3. On 17.05.2019 the said quashing petition was disposed of on the basis of settlement between the petitioners and the bank. This was recorded as under:

"17/05/2019

The petitioner has prayed for the following reliefs:

> ***"(a) Your Lordship would be graciously pleased to quash the FIR No.2018WAG266 dated 14.11.2018, registered at Police Station – West Agartala, U/s. 120(B) and 420 IPC and subsequent proceedings against the Petitioners in the interest of justice;***
>
> ***(b) Your Lordship would be graciously pleased to pass any such further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."***

With the intervention of learned counsel for the parties, matter stands amicably resolved. The terms of settlement has mentioned in order dated 3rd May, 2019, which is reproduced as under:

> ***"03/05/2019.***
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> ***Mr. C.S. Sinha, learned counsel for the petitioners, seeks permission to withdraw the following averment made in paragraph-2 of the affidavit:***
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> ***"2. ……as submitted earlier, the OTS Proposal, with the Respondent No.2, the Petitioners are trying to improve upon the proposal earlier given and for that the petitioners are arranging funds with regard to down payment to be made in the event of acceptance of the OTS Proposal. Once, the OTS Proposal is worked out, and terms of settlement are decided, the Petitioners will liquidate the outstanding of the Respondent No.2 within 6 to 7 months from the date of approval of the OTS Proposal."***
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> ***Prayer is allowed.***
>
> ***Under instructions from Sri Rajinder Singh, Smt. Meena Chhikara and Sri Nagesh Mehta, petitioners No.1, 2 & 3 respectively, Mr. C.S. Sinha, learned counsel for the petitioners, further states that the entire***

outstanding amount, as on date, along with interest, shall be deposited by the petitioners and all dues cleared as per the books of accounts maintained by the respondentBank, within a period of 6/7 months from today. Learned counsel for the petitioners states that such undertaking of the petitioners be accepted and taken on record.

Accordingly, such undertaking is accepted and taken on record.

Petitioners through learned counsel have been made aware of the consequences of breach thereof, including initiation of proceedings for contempt, in the event of violation of any one of the terms of the undertaking.

As a matter of abundant caution, let each one of the petitioners also file their personal affidavits to such effect.

Needful be positively done within 2(two) days. Also and in any event, each one of the petitioners shall personally remain present in Court on the next date of hearing.

Mr. Sinha, learned counsel for the petitioners, states that talks of settlement are also in progress with the respondent-Bank.

Well, petitioners' undertaking stands accepted and if, in the meanwhile, parties endeavour to arrive at some amicable settlement, it is always open for them to do so, but then such exercise on their part, shall not come in the way in enforcement of the undertakings so furnished before this Court.

List the matter on 17.05.2019."

Today, Sri Nagesh Mehta and Sri Rajinder Singh are personally present in Court and have also filed their affidavits

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In view of their affidavits, requirement of filing affidavit by Smt. Meena Chhikara is dispensed with. Petitioners undertake to comply with their undertakings so recorded vide order dated 03.5.2019.

As such, in view of the same, FIR No.2018WAG266 dated 14.11.2018, registered at Police Station – West Agartala, U/s. 120(B) and 420 of IPC and any proceeding arising out of the said FIR are quashed, more so, for the reason that the respondent-bank does not press the same and the petition is being disposed of on mutually agreed terms."

4. The SBI has now filed the present contempt petition alleging that the alleged contemnors have not abided by any conditions of undertaking which formed basis of the settlement between the parties. It is pointed out that since 17.05.2019 i.e. when High Court passed the said order in the quashing petition, the alleged contemnors have not paid a single rupee in respect of the loan dues. They had filed an application for extension of time which was granted by the High Court for three months under order dated 20.11.2019. Within the extended time also no payment has been made. Thus after more than six months of passing of the order by the High Court no payment whatsoever has been made by any of the alleged contemnors. The bank has, therefore, requested the Court to initiate contempt proceeding against the said respondents under the Contempt of Courts Act, 1971.

5. On 16.01.2020 notice was issued to the respondents making it returnable on 12.02.2020. The contempt petition was, thereafter, adjourned to 05.03.2020. So far, the alleged contemnors have not filed any reply. Learned counsel Mr. C. S. Sinha appearing for the alleged contemnors, however, prayed for time stating that they have already applied to the bank on 27.02.2020 to permit them to sale some of the immovable properties from which proceeds they would repay the bank dues. I was not inclined to grant time unconditionally, since in my opinion the alleged contemnors had showed no intention to honour their own commitments given before this Court on more occasions than one. I, therefore, suggested imposition of cost on the said alleged contemnors only subject to payment of which time could be granted to them. Learned counsel Sri Sinha did not accept this formula. He, however, requested that appropriate order may be passed.

6. The facts emerging from the record are glaring and disturbing. The alleged contemnors were facing criminal charges in an FIR lodged by the SBI for commission of offences punishable under Section 120B and Section 420 of Indian Penal Code. According to the bank, the alleged contemnors who were the Managing Director and Directors of a private limited company had on behalf of the company obtained loan of Rs.9.60 crores. This comprised of cash credit facility and bank guarantee. They had agreed not to open or operate any other bank account in any other bank without the written permission of the SBI. In breach of such undertakings they had operated the bank account in HDFC bank where all the sale proceeds of the business were being routed. According to the bank, thus, after obtaining loan from SBI, the alleged contemnors had diverted the funds.

7. Such FIR was quashed by this Court on the settlement between the parties. Such settlement was arrived at between the complainant SBI and the accused, upon all accused individually given an undertaking before the Court of clearing all the bank's dues within stipulated time. Accepting such undertaking and acting on such settlement which was arrived at on the foundation of such undertaking, the Court had quashed the criminal proceedings. This happened on 17.5.2019. Entire dues were to be cleared within six months. Not a pie has been paid so far. In the meantime, one successful and another unsuccessful attempt was made at extension of the time limit.

8. In background of such facts, the Court would have two options either to proceed further and hold up the said respondents in contempt or even recall the order which is the based of their

undertaking and which undertaking they have consciously and willfully flouted. The contention of the counsel that the amount being large, they have not been able to raise funds to repay the same, simply cannot be accepted. Firstly, they had given undertaking consciously and without any pressure. They were duty bound to comply with the conditions of such undertakings. Secondly, their act of not depositing any amount whatsoever so far clearly shows their mala fides. Such mala fides get further highlighted when their advocate argues before me that they have applied to the bank for sale of the immovable properties. Interestingly by his own account such application was filed on 27.02.2020 i.e. barely seven days before the next date of hearing of this contempt petition.

9. No useful purpose would be served in proceeding against these alleged contemnors for gross and willful violation of the order of the Court. However, the fruit of their undertakings which, as it now becomes clear they never intended to comply with, must be taken away. In other words, the order of quashing the FIR passed in favour of the alleged contemnors on the basis of their assurance and undertakings given to the bank as well as to the Court, must be recalled. Under no circumstances the alleged contemnors can continue to enjoy the fruits of quashing of the FIR while at the same time refuse to abide by their assurances to the Court and to the bank, particularly so when the very foundation for quashing the FIR was the settlement which contains these undertakings.

10. Under the circumstances, order dated 17.05.2019 is recalled. Criminal Petition No.6 of 2019 is revived and shall be posted for hearing on merits on 19.03.2020. Contempt Petition is disposed of."

HIGH COURT OF TRIPURA

3. Accordingly, I have heard learned counsel for the parties. Learned counsel Mr. C.S. Sinha for the petitioners vehemently contended that there was no fraudulent intention on part of the petitioners. They could not repay the loan on account of introduction of Good and Service Tax. At best, it was a failed business but at no rate the petitioner had committed any offence punishable under the Indian Penal Code. Ingredients of the offence of cheating are not made out in the FIR. Subsequently, on account of spread of corona virus, the petitioners could not repay the debt to the bank. They had made requests for restructuring the loan but the bank did not consider the request favourably.

4. Counsel for the bank submitted that no case of quashing the FIR is made out. Previously the bank had agreed for quashing the complaint on the petitioners assuring that the entire amount of loan with interest will be repaid within the stipulated time. During such time and long thereafter and in fact, till date, the petitioners have not paid a single rupee to the bank. They had applied for extensions. It was granted once but refused later by this Court. Neither during the original period nor within the extended period nor thereafter the petitioners have repaid any amount to the bank.

5. It is well settled through series of judgments of the Supreme Court that the Court would quash a criminal complaint if it is pointed out that

taking the allegations made in the FIR on the face value, ingredients of a criminal offence are not made out. In the present case, the petition fails this test. Allegations in the FIR against the petitioners are that having taken sizable loan from the bank on a condition that the petitioners will not maintain or open any account in any other bank, the petitioners willfully breached this condition. They not only had opened an account in HDFC bank unknown to the lending bank, but such account was utilized for the purpose of rooting the loan released by the bank and thereafter for parking the sale proceeds of the vehicles by the company. In the process, the company did not repay the loan to the bank and soon the account became NPA. According to the complainant, thus, the petitioners have acted fraudulently and cheated the bank.

6. It cannot be stated that if the allegations made in the FIR are taken on face value, no offence can be said to have been committed by the petitioners. The offence of cheating can be said to have been committed when a person fraudulently or dishonestly induces other person so deceived to deliver any property which he would not have done if not so deceived. No case of quashing is therefore made out.

7. I have dealt with the issue only for the limited purpose of dealing with this quashing petition and obviously not gone into the question of correctness or otherwise of the allegations made by the complainant in the

FIR. The same would be subject matter of investigation and thereafter if charge sheet is filed, of a trial before the competing court.

8. Petition is dismissed. Pending application(s), if any, stands disposed of. Records may be transmitted to the Trial Court.

(AKIL KURESHI), CJ

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HIGH COURT OF TRIPURA
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