

**In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Subhasis Dasgupta.

CRR No. 1623 of 2020

**Satyabrata Pradhan
Vs.
State of West Bengal & Anr.**

For the Petitioner :Mr Sudipta Moitra, Sr. Counsel
Mr. Soumen Dutta, Adv.
Mr. Subhadeep Chatterjee, Adv.

For *de facto* :Mr. Jayanta Kumar Das, Adv.
Complainant/ Mr. Gourav Das, Adv.
Opposite Party No. 2 Mr. Madhumati Das, Adv.

For the State :Mr. Saibal Bapuli, Ld. A.P.P.
Mr. Arijit Ganguly, Adv.
Mr. Arani Bhattacharyya, Adv.

Heard on : 11.01.2021

Judgment on : 19.01.2021

Subhasis Dasgupta, J:-

This court is called upon to address a prayer for quashing of proceedings pending in the court of Learned Judicial Magistrate, Dantan, Paschim Medinipur, in connection with G.R. Case No. 2130 of 2011 under

Sections 406/420 of the Indian Penal Code, in application of the provisions contained in Section 482 of the Code of Criminal Procedure.

Learned senior counsel for the petitioner, Mr. Sudipta Moitra, submitted that further continuance of proceedings in the court below even after commencement of trial would be an abuse of process of the court, keeping in view the money, alleged to have been cheated, had already been liquidated by petitioner to the bank, which was taken as loan by the wife of the opposite party no. 2. It was contended by Mr. Moitra that there could not be any culpability survived against the petitioner with the liquidation of loan amount to bank justifying initiation of a prosecution under Sections 406/420 I.P.C.

Argument was raised by Mr. Moitra that being a beneficiary of loan amount, though sanctioned in favour of the wife of opposite party no. 2, petitioner had already paid entire loan amount to the bank together with interest accrued thereon resulting in no pecuniary loss to the opposite party no. 2/wife of *de facto* complainant, as alleged to have been sustained.

Mr. Moitra, further attacking prosecution case submitted that the entire prosecution case founded upon the assertion of the wife of opposite party no. 2, namely Chhanda Pattanayak, who remained unexamined, though cited in the charge-sheet, as dependable witness, but prosecution story would not stand reaching finality on her absence ultimately. The further attack incidental to the principal thrust was that the bank from which loan was obtained never claimed to have been cheated in this case for the alleged

conduct of petitioner, exposing the bank to go for recovery of loan amount issuing necessary notice and other incidental steps.

As regards the charge framed under Section 406 I.P.C. against the petitioner, Mr. Moitra, learned senior counsel for the petitioner contended that in the instant case there had been no entrustment of property to the petitioner, which he had ultimately converted to his own use for his personal gain, and as such the charge under Section 420 I.P.C. being consequential to 406 I.P.C. would automatically fail.

Upon taking such grounds, Mr. Moitra proposed for quashing of the pending proceedings.

Mr. Bapuli submitted that though the name of Chhanda Pattanayak had been shown, as one of the witnesses of prosecution in the charge-sheet, but her statement admittedly could not be recorded under Section 161 Cr.P.C. It will amount to pre-judge the trial as to whether prosecution case would stand or not in the absence of statement of wife of the opposite party no. 2, ignoring the materials, referred above, already collected during investigation, and mentioned also in the memo of evidence. Therefore, ongoing trial should not be disturbed even on the ground of absence of the statement of wife of the opposite party no. 2 remaining unrecorded under Section 161 Cr.P.C. during investigation.

Mr. Bapuli countered the submissions of Mr. Moitra submitting that at this stage the prayer for quashing of proceedings would not be encouraging one on the simple score that there had been already commencement of trial

with the framing of charge and the next date being fixed on 19th January, 2021 for evidence.

It was challenged by Mr. Baupli that mere liquidation of the loan amount, would not *ipso facto* exonerate the petitioner from the instant criminal prosecution, for the loan amount was unlawfully sanctioned with the active connivance of some people in the bank by showing opposite party no. 2, and his wife as co-borrower against their wishes, after procuring some documents, favourable to the purpose of sanctioning loan amount, behind the back of the wife of opposite party no. 2 and the opposite party no. 2 himself. As regards the criminality on the part of the petitioner, contended to be missing in the instant case, Mr. Bapuli answered that the criminality could be found to exist at the very beginning, when a false sale of land agreement mentioning a fictitious description of land, proposed to be sold to the wife of opposite party no. 2 by petitioner himself, claiming therein petitioner to be the recorded owner of such land, which in course of investigation turned out to be untrue, and it was just sufficient for the present purpose not to frustrate the proposed quashment.

Challenge was further shown by Mr. Bapuli for the State that investigation had already collected sufficient materials, and particularly some documents going against the petitioner, and those documents, if considered together, would reveal that petitioner himself admitted his guilt executing a document that he had realised/obtained the loan amount to himself showing the opposite party no. 2 and his wife as co-borrowers, and accordingly

undertook to repay the same with interest accrued thereon, and thus proposed quashment, if allowed, would stifle the prosecution case.

Learned advocate for the private opposite party no. 2 adopted the submission of Mr. Bapuli contending that for the advancement of trial, the proceedings should not be quashed even after liquidation of the bank money.

Before addressing the points raised by the rival parties mentioning of relevant facts, in precise, would be of some relevance.

The opposite party no. 2 is a headmaster of a school and his wife is an assistant teacher of a different school, while the petitioner is a teacher of another school. Both the opposite parties and petitioner had their previous acquaintance with each other, for they belong to same teachers' association. Previously the petitioner/accused helped the wife of the opposite party no. 2 in obtaining home loan from a co-operative bank to the tune of Rs. 25,000/- (Rupees Twenty Five Thousand) in 2002, wherein the petitioner voluntarily stood as a guarantor. Such loan amount had already been liquidated by the opposite party no. 2. Since, petitioner stood as a guarantor in the loan, sanctioned in the name of wife of the opposite party no. 2 with the collection of some signatures of wife of opposite party no. 2 in some of blank forms of the bank, the petitioner by reason of his previous acquaintance approached the wife of opposite party no. 2 to stand as a guarantor of a loan, to be sanctioned in the name of petitioner threreby requiring the wife of opposite party no. 2 to put her signature on some bank papers, produced by petitioner. The wife of opposite party no. 2 innocently put her signature, as a guarantor to the loan

transaction to be sanctioned from ICICI bank in favour of petitioner. One fine morning the wife of opposite party no. 2 received notice from bank requiring her to pay off the loan, sanctioned in her favour for failure of petitioner to liquidate the loan amount within the scheduled time.

A *salish* was called in the locality, when petitioner admitted his guilt stating that he had realised the loan amount showing the name of the opposite party no. 2 and his wife as co-borrowers. The loan amount even thereafter not being liquidated, a further notice was issued by the bank, addressed to the wife of opposite party no. 2, to take over possession of mortgaged property with some land description, not belonging to the addressee of the notice. Having thus discovered the fraudulent and dishonest intention on the part of petitioner, a case came to be registered under the behest of Section 156(3) Cr.P.C.

Police undertook investigation, collected several documents and submitted charge-sheet thereafter.

Admittedly, there has been commencement of trial with the framing of charge under Sections 406/420 I.P.C. against the accused, and next date is fixed on 19th January, 2021, for collection of evidence.

The simpliciter allegation against the petitioner is that petitioner/accused had cheated the opposite party no. 2 and his wife by showing them as co-borrowers against their wishes behind their back, and subsequently got the bank loan sanctioned and disbursed in his favour under

the guise of selling land to the wife of opposite party no. 2 furnishing fictitious land particulars.

Let me address the issue surfacing over the absence of criminality on the part of petitioner/accused so as to involve him in the instant case, though he had liquidated the entire loan amount with interest accrued thereon being a beneficiary to the sanctioned amount.

Referring a decision reported in **2019 (2) SCC 689** delivered in the case of **C.B.I. New Delhi Vs. B.B. Agarwal & Ors.**, Mr. Moitra learned senior counsel for the petitioner submitted that with the liquidation of loan amount by the petitioner being a beneficiary to the sanctioned loan, there left no live issue survived requiring adjudication any more.

In the case referred above, two Ltd. companies were alleged to have defrauded two Nationalised Banks to the tune of Rs. 15 Crores (approx.) releasing public issues of the companies, and in connection therewith, there was resettlement of accounts, when the parties obtained consent Decree from DRT, and paid the entire sum leaving no live issue survived requiring adjudication anymore.

Mr. Bapuli, learned advocate representing State submitted that the decision referred above would be without any relevance in the given facts and circumstances of this case.

The case in hand is patently distinguishable on the ground that there was no compromise effected between the parties leading to emergence of a consent decree. The judgment referred above by Mr. Moitra is thus

distinguished on facts. Mere liquidation of sanctioned loan amount together with interest accrued thereon would not cause all issues surfaced over the instant case to go away requiring no adjudication anymore.

Reliance was further placed by Mr. Moitra on a decision reported in **1996 (11) SCC 622** rendered in the case of **Guru Bipin Singh Vs. Chongtham Manihar Singh & Anr.**, to establish that when the offence under Section 406 I.P.C. would not stand upon for want of its necessary ingredients, Section 420 I.P.C. being consequential offence would also fail automatically.

Challenge was raised by Mr. Bapuli contending that the judgment referred above would not be applicable in the given context of this case, as the offence under Section 420 I.P.C. is the principle offence in the instant case, and which itself can stand irrespective of 406 I.P.C.

The prime allegation raised against the petitioner is targeted against Section 420 I.P.C., and in that view of the matter, the ongoing trial itself can determine presence or absence of ingredients of both the offences under Section 406 and 420 I.P.C., already charged with. The court is thus not prepared to accept the contention of Mr. Moitra on such score holding 420 to be consequential to 406 I.P.C. in the instant case.

Mr. Moitra proceeded to derive capital by referring judgments reported in **JT 2019 (3) SC 420** delivered in the case of **Prof. R.K. Vijayasathya & Anr. Vs. Sudha Seetharam & Anr.** and **(2019) 2 C Cr LR (SC) 22** rendered in the case of **Satishchandra Ratanlal Shah Vs. State of Gujarat & Anr.**, to

show that ingredients constituting the offence were absolutely missing in the instant case justifying a criminal prosecution for the alleged cheating, and for committing criminal breach of trust, unless fraudulent or dishonest intention was shown to exist right at the beginning of the loan transaction so as to constitute the so called *mens rea* on the part of petitioner, without which continuance of the proceeding is contrary to the provisions of law.

Mr. Bapuli reacted to the decisions referred above and replied that the trial would itself reveal presence or absence of materials required in a case, when charge had already been framed for the collection *prima facie* materials against the petitioner/accused.

Mens rea being the crux of the offence, complained of, would be best determined after holding a full trial with collection of evidence, to be adduced by either of the parties to this case. When there was a document already collected by the Investigating Agency showing admission of guilt, and furnishing an undertaking thereafter to repay the loan amount, for the same having been realised by the petitioner himself, together with bank document revealing disbursement of sanctioned loan amount in favour of the petitioner/accused, pursuant to a sell agreement of land by petitioner to the wife of opposite party no.2 containing mis-particulars of the land involved in the proposed sell of land, being furnished by petitioner himself, which ultimately revealed to be false one, the fraudulent intention since inception, or not would be easily determinable after holding a trial, when such documents could be duly appreciated under the provisions of law.

The judgments so referred by Mr. Moitra on such issue would thus be without any significance.

Citing further decision Mr. Moitra, reported in **2005 SCC (Cri) 1600** delivered in the case of **Vijaya Rao Vs. State of Rajasthan & Anr.** and also taking support of petition under Section 156(3) Cr.P.C. contended that presence of words like **“fraudulently and dishonestly”** without revealing the commencement of the same, so as to reveal the criminal intention, would not itself justify the prosecution for its furtherance, what was alleged to have happened in the instant case.

As before, Mr. Bapuli challenged such decisions opining it to be irrelevant.

Giving a solitary look to some of the words in the complaint petition, without having a look at the entire facts and circumstances of a case incorporated in the petition of complaint, would not be suffice to reveal required criminal intention on the part of the petitioner. The averments of complaint in its entirety together with documents collected after being duly appreciated in evidence would only be determinative of required essence of the offence, irrespective of presence or absence of words like “fraudulently and dishonestly”. There are other materials to be looked into, which are likely to be ascertained with the collection of evidence during trial.

The judgment thus referred on such issue by the petitioner is not acceptable.

Emphasis was supplied by Mr. Moitra for filing instant application for quashment even after commencement of the trial taking resort to a decision reported in **2019 Cri. L. J. 1297** delivered in the case of **Anand Kumar Mohatta & Anr. Vs. State (Govt. of NCT of Delhi) Department of Home & Anr.**, wherein it was held that the abuse of process caused by F.I.R. stood aggravated if F.I.R. had taken form of charge-sheet after investigation for want of necessary ingredients constituting the offence.

Mr. Bapuli, restricted his stand in the similar manner, as before, describing the judgment to be without any relevance.

Mr. Jayanta Kumar Das, learned advocate for the opposite party no. 2 proceeded to reinforce the stand of Mr. Bapuli representing State that mere payment of the loan amount, would not itself be a ground for quashment for a criminal proceeding, because the culpable intention of the petitioner got demonstrated at the very beginning of loan transaction, when loan amount was disbursed in the name of petitioner after furnishing a false sale agreement for a land to wife of opposite party no. 2. and reliance was placed accordingly on the issue referring a decision reported in **2014 4 CHN 535** delivered in the case of **Ajay Prasad Khaitan alias Ajay Khaitan Vs. The State of West Bengal & Ors.**

As regards the scope of Section 482 Cr.P.C. pertaining to the quashment of proceeding, learned advocate for the opposite party no. 2 Mr. Jayanta Kumar Das sought to make reliance upon a decision reported in **2017 SCC Online Cal 7067** delivered in the case of **Ashok Kr. Todi Vs. C.B.I. With**

Pradip Kr. Todi Vs. C.B.I. With Anil Saraogi Vs. C.B.I. With Ajoy Kumar Vs. C.B.I. With C.B.I. Vs. Ajoy Kumar & Ors. With Rukbanur Rahaman Vs. C.B.I. & Ors. With S.M. Mohiuddin @ Pappu Vs. C.B.I. wherein the scope of Section 482 Cr.P.C. was delineated.

After perusal of the materials already collected in the C.D. together with memo of evidence brought forth before court, it appears that undoubtedly there has been liquidation of loan amount with the interest accrued thereon by the petitioner himself, this aspect needs to be appreciated as to what prompted him to get the loan sanctioned in the name of borrowers, though disbursed in the name of petitioner, upon production of a sale agreement, furnishing fictitious particulars of a land, which never belonged to petitioner. This court cannot dispute that prayer for quashing is not entertainable even after submission of charge-sheet. Indisputably, the charge framed against the petitioner so far could not be challenged earlier. But the most significant fact, material to the determination of this case, is the presence or absence of criminality/criminal intention on the part of petitioner needs evaluation in context with documents collected, and such appreciation would be perfectly done in trial.

Since charge under Section 420 I.P.C. can itself stand alone for the fulfilment of its ingredients, it would be without any significance whether charge under Section 406 will stand or not ultimately. More so offence under Section 420 I.P.C. being independent of Section 406 I.P.C. and not a consequential to the offence under Section 406 I.P.C. in the given facts and

circumstances of this case, there lies no justification to frustrate the ongoing trial allowing the proposed quashment.

The power under Section 482 Cr.P.C. without any controversy can only be exercised under extreme circumstances like viz. (a) to give effect to an order under the code, (b) to prevent abuse of the process of the court, (c) to otherwise secure the ends of justice.

Having considered the rival submissions of the parties, it appears that though there had been liquidation of loan amount by the petitioner, but the manner in which the loan was sanctioned in the name of persons other than petitioner and getting thereafter the sanctioned amount disbursed in the name of petitioner, needs to be duly appreciated in the trial.

Since there was sufficient *prima facie* materials, as discussed herein before, the court is not agreeable to the stand of Mr. Moitra, so as to accede to quashment, as proposed.

The prayer for quashing is refused. The revisional application fails and accordingly dismissed.

The trial be held expeditiously, providing sufficient opportunity of hearing to either of the parties to this case.

Learned Prosecutor is directed to co-operate with smooth and expeditious trial of this case, producing witnesses on the date so schedule by the trial court, so that there could be effective utilisation of dates by recording the evidence of witnesses in ensuring expeditious disposal.

With this observation and direction, the revisional application stands disposed of.

Office is directed to communicate this order to Court below without making any delay. The Case Diary be returned forthwith.

Urgent photostat certified copy of this judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.

(Subhasis Dasgupta, J.)