

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

Present:-

The Hon'ble Justice Subhasis Dasgupta.

**CRR No. 1754 of 2020
With
CRAN 1 of 2021
Ramesh Chandra Agarwal
Vs.
The State of West Bengal & Ors.**

For the Petitioner	:Mr. Sabyasachi Banerjee, Adv. Mr. Sanjoy Sengupta, Adv.
For the Opposite Party No. 2	:Mr. Sourav Chatterjee, Adv. Mr. Aditya Tiwari, Adv.
For the State	:Mr. Saswata Gopa Mukherjee, Ld. P.P. Mr. Madhusudan Sur, Adv. Mr. Arijit Ganguly, Adv.
Heard on	:19.02.2021, 08.02.2021, 13.01.2021.
Judgment on	: 09.04.2021.

Subhasis Dasgupta, J:-

This is for quashing of a proceeding in connection with G.R. Case No. 6166 of 2020, pending before the court of learned Additional Chief Judicial Magistrate, Barrackpore relatable to Khardah Police Station Case No. 565 of 2020 dated 15.10.2020, under Sections 420/406/120B of the Indian Penal Code.

The aforementioned case came to be registered at the police station on the strength of an order under Section 156(3) Cr.P.C., passed by

learned ACJM, Barrackpore, following receipt of a complaint for and on behalf of Rashi Merchantiles Pvt. Ltd. (hereinafter referred to as RMPL).

RMPL being engaged in the business of Corporate Depositor, on the presentation of petitioner with other carrying then a trade of auto car dealership of Maruti Suzuki, advanced a loan of Rs. 50,00,000/- (Rupees Fifty Lakh) in the form of inter-corporate deposit, on 18th March, 2020, to the petitioner being one of the Directors of Premier Car World Pvt. Ltd. for a period of 90 days bearing an interest of 10% per annum to overcome the stringent financial condition, faced by the borrower/Premier Car World Pvt. Ltd.

Believing the assurance, the complainant creditor advanced such huge amount as inter-corporate deposit that the such amount taken as loan would be liquidated after the expiry of stipulated period of time.

Such amount of inter-corporate deposit was encashed by the petitioner/accused, who also had issued a post dated cheque of Rs. 50 Lakh to the complainant creditor, as a collateral security.

Since the petitioner being beneficiary of inter-corporate deposit deliberately declined to return the money, taken as loan after the lapse of stipulated period of time of 90 days, on being requested by the petitioner/accused person, the complainant creditor deposited the post dated cheque, given by loanee petitioner/accused person, to its banker on 16th June, 2020, which was dishonoured by the bank upon receiving stop payment instruction from the beneficiary/loanee/petitioner accused person.

The accused person along with other accused persons in connivance with each other induced the complainant creditor by presenting false promises and assurances to part with huge amount of money with a culpable intention of causing wrongful gain to themselves and ultimately embezzled the money to the tune of Rs. 50 Lakh.

Ultimately, the case is at the investigation stage, and upon noticing corporate financial fraud involving high value cheating, the investigation of this case was assumed by the Criminal Investigation Department, West Bengal on 22.10.20. This is all about the crux of contention raised against the petitioner/revisionist.

Mr. Sabyasachi Banerjee, learned advocate representing the petitioner, submitted that it would be very difficult to infer any fraudulent or dishonest intention, since beginning the transaction, from the conduct of petitioner with others that the inter-corporate deposit had been taken with an ulterior purpose and without fraudulent or dishonest intention on the part of petitioner, the alleged offence would be incomplete. Mr. Banerjee never disputed with amount, said to have been advanced to the petitioner/accused, as an inter-corporate deposit.

Referring some of the bank statements annexed with the instant revisional application, Mr. Banerjee frankly submitted that the petitioner had even deposited interest more than once to the creditor/de-facto complainant company against such inter-corporate deposit in his favour. According to Mr. Banerjee, it was due to the onset and impact of COVID-19, the petitioner committed failure without any deliberate intention to

honour the agreement by liquidating the amount within the stipulated period of time. Mr. Banerjee described the pending prosecution to be nothing, but an attempt to pressurize the petitioner for coming to terms with the complainant creditor, so that the money lent out could be quickly recovered upon exercising arms twisting method.

Reliance was placed by Mr. Banerjee on a decision reported in **(2005) 13 SCC 699** delivered in the case of **Murari Lal Gupta Vs. Gopi Singh** to contend that even if all the averments made in the complaint were taken to be correct, yet the case for prosecution under Sections 420, 406 of I.P.C. would not be made out so as to infer any fraudulent or dishonest inducement having been made by the petitioner, since beginning the transaction, pursuant to which the complainant/creditor had parted with the money in the form of inter-corporate deposit.

Mr. Banerjee contended that the very fabrics of prosecution would reveal one and only that it was a simple case of civil dispute between the parties arising out of a loan transaction, for which the instant prosecution would not be permissible, and on the contrary, if the prosecution be allowed to be continued, the same would be an abuse of the process of the court.

Reliance was further placed by Mr. Banerjee on a further decision reported in **(2005) 10 SCC 228** rendered in the case of **Anil Mahajan Vs. Bhor Industries Ltd. & Anr.** to contend that the grievance expressed in the complaint was nothing but a failure to discharge the obligation in consequence of a loan transaction, and the money parted

with in the form of inter-corporate deposit was not a product of fraud or dishonest inducement on the part of the accused/petitioner. It was sought to be established by Mr. Banerjee that mere failure of a person to keep up a promise subsequently, a culpable intention right at the beginning could not be presumed.

Reference was sought to be drawn by Mr. Banerjee from a decision reported in **(2001) 3 SCC 513** delivered in the case of ***Alpic Finance Ltd. Vs. P. Sadasivam & Anr.*** to contend that it is a trite law that an honest man entering into a contract is deemed to represent that he has present intention of carrying it out, but if having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception, or even under the cloak of deception.

According to Mr. Banerjee that since nothing was tangible in the complaint itself that there existed a fraudulent and dishonest intention on the part of petitioner at the time of commission of offence, the continuance of the proceeding would be absolutely illegal.

Reiterating the same stand, as already advocated by Mr. Banerjee, profit was again sought to be derived from a decision reported in **(2019) 9 SCC 148** rendered in the case of ***Satishchandra Ratanlal Shah Vs. State of Gujrat & Anr.*** to contend that mere inability of the petitioner to pay off loan amount cannot give rise to a prosecution for cheating, unless fraudulent or dishonest intention was shown right at the beginning of transaction. More so, mere breach of promise *ipso facto* would not

constitute an offence of criminal breach of trust without there being a clear case of entrustment. The ingredients requiring constitution of offence, according to Mr. Banerjee, was absolutely lacking in the instant case.

Mr. Saswata Gopal Mukherjee, learned Public Prosecutor, representing State challenging the submission of Mr. Banerjee replied that the proposed quashment should not be allowed at this stage bearing in mind that the case was at the investigation stage. Mr. Mukherjee submitted that on 18th March, 2020, inter-corporate deposit was debited from the bank account maintained by the complainant creditor, and ultimately credited to the bank account of Premier Car World Pvt. Ltd., of which petitioner is one of the directors. On the self-same day, according to Mr. Mukherjee, an amount, worth of Rs. 50 Lakh, had been diverted to another bank account, maintained at State Bank of India from HDFC Bank, where the inter-corporate deposit was credited. Though, the petitioner only on couple of occasions had deposited interest component of some insignificant amount against the inter-corporate deposit in favour of the complainant/creditor, but that would not exonerate the petitioner from his liability to face criminal prosecution under Sections 406, 420 I.P.C.

According to Mr. Mukherjee the dishonest intention could be safely visualized by reason of siphoning of Rs. 50 Lakh from the bank account of petitioner to another account of S.B.I. maintained by petitioner. The instant prosecution, according to Mr. Mukherjee, is very much

permissible irrespective of civil dispute, if there be any, together with an independent and separate prosecution, already instituted against the accused person under Section 138 of N.I. Act.

Mr. Sourav Chatterjee representing de-facto complainant/creditor supporting the stand of Mr. Mukherjee, learned Public Prosecutor, High Court, Calcutta, strenuously contended that mere admission of liability to pay off the dues, taken as loan in the form of inter-corporate deposit of huge amount, and subsequent paying off interest on a couple of occasions would not stifle a legitimate prosecution, like the instant one, keeping in view that the dishonest intention at the beginning of the transaction was conspicuously demonstrated by the express conduct of the petitioner, when an amount of Rs.50,00,000/- (Rupees Fifty Lakh) got parked to S.B.I. account maintained by Premier Car World Pvt. Ltd., and it was sufficient for the present purpose to reveal the dishonest intention on the part of the accused petitioner.

Mr. Chatterjee relying on a decision reported in **(2006) 6 SCC 736** delivered in the case of **Indian Oil Corporation Vs. NEPC India Ltd. & Ors.** submitted that nature and scope of a civil proceeding being different from a criminal proceeding, the instant prosecution should not be quashed by reason of availability of civil remedy upon sensing a fact that the complaint submitted by the de-facto complainant, was relatable to a commercial transaction, or breach of obligation or contract even. Mr. Chatterjee was of the view that the tests of such situation is whether the allegations in the complaint disclose a criminal offence or not. Upon

applying such tests, according to Mr. Chatterjee, the instant prosecution should be permitted to be continued.

Mr. Chatterjee while countering the submission of Mr. Banerjee, admitted frankly that there had been an independent prosecution already instituted against the accused petitioner under Section 138 of N.I. Act, but that would not itself refrain the complainant from prosecuting the petitioner in criminal jurisdiction under Sections 406, 420 I.P.C.

Profit was sought to be obtained by Mr. Chatterjee from a decision reported in **(2012) 9 SCC 460** delivered in the case of **Amit Kapoor Vs. Ramesh Chander & Anr.** to contend that the allegations made in the complaint together with documents annexed therewith predominantly constituted a civil wrong with an element of criminality conspicuously, which could be easily identified without embarking upon an inquiry of the materials placed on record.

As regards the authority of the High Court to be exercised in application of the provisions of Section 482 Cr.P.C., Mr. Chatterjee referring a decision reported in **(2002) 2 SCC 89** rendered in the case of **State of Karnataka Vs. M. Devendrappa & Anr.** submitted that the High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case, where the entire facts presented by either of the parties to the case appeared to be incomplete and hazy, more so where the evidence could not be collected and produced before court, and the issues involved, whether factual or legal,

were actually of magnitude and naturally could not be seen in their true perspective without sufficient materials being collected.

The case being at the investigation stage, according to Mr. Chatterjee, proposed quashment should be refused.

Mr. Chatterjee made a further reference to a decision reported in **(2005) 13 SCC 540** delivered in the case of **State of Orissa & Ors. Vs. Saroj Kumar Sahoo** to highlight the scope and exercisability of extraordinary power available under Section 482 Cr.P.C., the relevant provisions, however, may be reproduced hereunderbelow:

“10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Cr.P.C. and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp. 378-79, para 102)

"102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In the backdrop of such decision, Mr. Chatterjee's sincerest effort was to show that the Section 482 Cr.P.C. should not be allowed to be an instrument handed over to accused to short-circuit a prosecution and bring about its sudden death, and further such extraordinary power,

according to Mr. Chatterjee, would be exercisable in the rarest of rare case.

In the conspectus of the above, the undenying position is that an amount worth of Rs.50 Lakh was advanced to petitioner/debtor beneficiary in the form of an inter-corporate deposit, upon certain agreed terms, simply to tide over the financial crisis faced by the RMPL, of which petitioner is one of the directors. Such amount was indisputably credited to the bank account of RMPL, maintained at HDFC bank. On the self-same date of credit of inter-corporate deposit, an amount worth of Rs. 50 Lakh was diverted to a S.B.I. account maintained separately by the petitioner/beneficiary.

Mr. Banjeree never disputed with the amount of inter-corporate deposit, and thus he was honest in his submission as regards the liability of the petitioner, he had with respect to the debt already incurred by petitioner in the form of inter-corporate deposit.

A separate case under Section 138 of Negotiable Instruments Act is also pending against the petitioner. The settled proposition of law is that though there is civil remedy available in connection with a commercial transaction, but there is no legal impediment to launch a separate prosecution under Section 138 of N.I. Act, subject to the fulfilment of the ingredients constituting such offence, which is indeed different from the instant one, where fraudulent and dishonest intention on the part of the accused/petitioner are the essence of offence, complained of. Therefore,

the instant prosecution is very much permissible and with the sanction of law.

A distinction is always perceived to exist between a mere breach of conduct, and the alleged offence of cheating. It is the sole case of the petitioner that the loan amount could not be liquidated because of impact of COVID-19, though attempts were made on couple of occasions to deposit the interest component of the principal amount of debt. The subsequent conduct of petitioner is not always the sole test of offence of cheating. When the investigation is at its initial stage, it is very hard to ascertain the required fraudulent and dishonest intention on the part of the petitioner from the materials placed in the Case Diary together with documents available in the record.

Collection of materials is, therefore necessary, if there be any, which can only be done upon undertaking a vigorous and extensive investigation.

The decisions referred by either of the parties to this case are broad principles of law, to be applied over a particular facts and circumstances of a case at its right and proper stage, but pending collection of the materials during investigation, there is hardly any chance to apply such principles of law over this particular case for the peculiarity of the circumstances involved in this case.

The investigation having assumed by C.I.D., West Bengal, is, however, directed to expedite the same so as to submit the outcome of investigation within a reasonable period of time.

With this discussion and observation, the instant revisional application fails being without any merits.

The revisional application along with its connected application accordingly stands disposed of.

The Case Diary be returned forthwith.

Urgent certified copy of this judgment, if applied for, be made available to the parties upon compliance with requisite formalities.

(Subhasis Dasgupta, J.)