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17-05-2022
debajyoti
(Ct. no.40)

CRR 786 of 2018

In the matter of : **Gopal Chandra Halder & Anr.**
... Petitioners.

Mr. Tapas Kumar Dey,
Mr. Nirupam Sarkar
... For the Petitioners.

Mr. Baidurya Ghosal,
Ms. Avipsha Dutta Roy
... For Opposite Party No.2.

This is an application for quashing of Charge Sheet No.32 of 2018 dated February 28, 2018, arising out of G.R. Case No.2111 of 2017 under Sections 420, 406, and 120B of the Indian Penal Code, pending before the Additional Chief Judicial Magistrate, Serampore, Hooghly.

The defacto complainant/Opposite Party No.2 in this revisional application, who was in-charge of Paschim Banga Gramin Bank, Antpur Branch, lodged a complaint on June 17, 2017, before the Officer-in-Charge, Jangipara Police Station, Hooghly, alleging, *inter alia*, that one Sudip Mukherjee, an assistant teacher of Guti Uday Chand Vidyamandir, Hooghly, obtained a loan of Rs.2,00,000/- (Two Lakh) from the said bank. The monthly instalments against the said loan were to be deducted from the salary of the said school teacher.

The petitioner nos.1 and 2 stood as guarantors of the said loan. The lonee paid a few instalments against the said loan. A criminal conspiracy was hatched against the bank for cheating and criminal breach of trust to siphon Rs.1,03,281/- by the lonee and the petitioner nos. 1 & 2. The said amount of Rs.1,03,281/-, according to the bank, fell due from the lonee.

On the basis of the said complaint, the concerned police station started Jangipara Police Station Case No.193 of 2017 dated September 04, 2017, under Sections 420, 406, 120B of the Indian Penal Code. The investigating agency, on completion of the investigation, filed Charge Sheet No.32 of 2018 dated February 28, 2018, under Sections 420, 406, and 120B of the Indian Penal Code against said Sudip Mukherjee and petitioner nos. 1 & 2.

A plain reading of the FIR and the materials collected during the investigation reveal that the entire dispute relates to the repayment of the loan in connection with a contract.

Mere failure to repay a loan does not constitute the offences punishable under Sections 420, 406 and 120B of the Indian Penal Code. The distinction between mere breach of a contract and cheating depends upon fraudulent inducement and *mens rea*. To sustain a charge under Sections 420, 406, and 120B of the Indian Penal Code, the existence of fraudulent or dishonest intention right at the beginning of the transaction with *mens rea* must be shown.

In the present case, it appears that the lonee, after payment of a few instalments, defaulted. The bank, accordingly, declared the loan as Non-Performing Assets (NPA). Having failed to realise the outstanding loan amount, the bank filed the complaint before the police.

The ingredients necessary to constitute the offences under Sections 420, 406 and 120B of the Indian Penal Code are conspicuously absent in this case as the dishonest intention right at the beginning of the transaction with *mens rea* is not apparent. In view of the law laid down by the Supreme Court in the case reported at **(2019) 9 SCC 148 (Satishchandra Ratanlal Shah Vs. The State of Gujarat)**, I am of the opinion that the present dispute arises out of a loan transaction simpliciter between the parties and for recovery of the same, the bank cannot resort to a criminal prosecution against the present petitioners who are mere guarantors of the said loan. The guarantors in such a financial transaction cannot be saddled with any criminal liability.

In that view of the matter, G.R.2111 of 2017 arising out of Jangipara Police Station Case No.193 of 2017 under Sections 420, 406, and 120B of the Indian Penal Code pending before the Additional Chief Judicial Magistrate, Serampore, Hooghly, stands quashed as against the petitioners. The petitioners shall be discharged from their respective bail bond, if any, furnished before the learned court below.

CRR 786 of 2018 is, thus, allowed.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)