IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 1060 of 2019

Sri Sisir Kumar Ghosh
-vs-
The State of West Bengal & anr.

For the Petitioner	: Mr. Soumik Ganguli Mr. Pawan Kr. Gupta Mr. Sourat Nandy
For the State	: Md. Anwar Hossain Ms. Sreyashee Biswas
Heard on	: 22.6.2022
Judgment on	: 30.06.2022

Ajoy Kumar Mukherjee, J.

1. The subject matter of present revisional application is a prayer made by the petitioner to quash the proceedings being G.R. Case no 270 of 2018 under Section 420/468/471/406 of the Indian Penal Code in connection with Bankura Police Station case no. 92 of 2018 dated 17.4.2018. Inspite of service of notice, none appeared on behalf of opposite party No.2.

2. The case as set out in the complain lodged by opposite party no. 2, that on 18.3.2016, the borrowers namely, Sri Kalyan Mondal and Smt. Champa

Mondal had taken a term loan of Rs. 7,30,000/-(Rupees seven lakhs thirty thousand) only from his employer bank namely, State Bank of India, Bankura Branch for purchasing of a tractor and rotavator and it is further alleged that on enquiry by the bank on or about 17.4.2018, the aforesaid borrower could not show the rotavator rather the borrowers alleged that the same had not been supplied by the petitioner who was authorized to deliver tractor, to them. Further allegation is that since loan account of the borrowers had become NPA bank/respondent no. 2 presumed that the present petitioner being owner of M/S Gita Automobiles had connivance with the borrower in misappropriating the public money. On the basis of the said written complaint, investigation started and after completion of investigation , police has submitted charge-sheet against the said borrowers namely, Sri Kalyan Mondal and Smt. Champa Mondal as well as against the present petitioner in its individual capacity.

3. Learned advocate for the petitioner Mr. Soumik Ganguli submits that the present petitioner had not taken the loan and he has got no contract with respondent no. 2 and he is alien to the contract between the respondent no. 2 and the borrowers. During investigation, nothing could be collected against the petitioner and the police has submitted charge-sheet against the present petitioner on the basis of surmise and conjecture.

4. Learned advocate for the petitioner further submits that the name of the present petitioner is not appearing in the first information report and his name has appeared in the charge-sheet only on the basis of his proprietorship over

M/s. Gita Automobiles, though no specific role has been ascribed in the first information report against the petitioner in his personal capacity. He further contended that since the company allegedly against whom, the first information report has been filed has not been charge-sheeted, there is no question of implicating the petitioner as accused in his individual capacity, allegedly against whom no aspersion has been made in the written complaint. Actually, the respondent, in order to realise his dues from the aforesaid borrowers, has falsely implicated the petitioner. It is curious enough that the respondent had till date, not filed any case against the borrowers showing its intentions for realisation of money, except the present criminal case and the present petitioner has been made scapegoat in the present matter by the respondent no. 2 in order to suppress its fault for inactiveness in enquiry at the time of granting loan. Moreover, the respondent no. 2 remained silent for more than two years in inspecting the possession of the alleged rotavator from the borrowers and the respondent no. 2 responded only when the borrowers failed in repaying the alleged dues to it. The present petitioner is neither a beneficiary to the loan amount nor is responsible for payment of its dues. The petitioner was not even the guarantor for the alleged loan and he never induced the respondent no. 2/bank to disburse the loan amount. The dispute, if any, found to have been cropped up between the said borrowers and the respondent no. 2 and the purported charge-sheet against petitioner is devoid of merit and has been filed only to harass the petitioner. The basic ingredients of the alleged offence charge-sheeted against the petitioner, are missing and no role of the petitioner has shown to have been made or investigated by the Investigating Agency in the purported charge-sheet. Accordingly, Mr. Ganguli contended that continuance of the proceeding being G.R. case no. 270 of 2018 will be an abuse of process of court and prayed for quashing the entire proceeding being G.R. case no. 270 of 2018 arising out of Bankura Police Station case no. 92 of 2018 dated 17.4.2018, in respect of present petitioner.

5. Learned advocate on behalf of the State submits that investigation has already been ended in charge-sheet and sufficient incriminating materials have been collected against the petitioner being the proprietor of M/s. Gita Automobiles and as such the question of abuse of process of court does not arise, if the proceeding against the present petitioner is allowed to be continued, in view of the incriminating materials collected during investigation.

6. In the present context, the complainant bank has specifically alleged that the other accused persons i.e. borrowers were sanctioned a term loan of. Rs. 7,30,000/-(Rupees seven lakhs thirty thousand) for purchase of a tractor and rotavator from supplier, M/s. Gita Automobiles, dealer of Indo Farm Tractor located at Gobindo Nagar, Bankura and furthermore, during official inspection, they did not find the rotavator at the borrower's place and on enquiry, they came to know that M/s. Gita Automobiles has not delivered the rotavator to them till date. However, on enquiring M/s. Gita Automobiles, it is learnt that they have delivered the rotavator to the borrowers and as such the bank/complainant has strong suspicion that there is some connivance between the borrower and the dealer. This reasonable suspicion arose in the mind of Bank as there are allegation and counter allegation in between petitioner and borrowers regarding delivery of tractor.

7. On perusal of the case diary, it appears from the statements recorded by Investigating Officer under Section 161 of the Code of Criminal Procedure that the witnesses who are attached with the Automobile have admitted that the present petitioner is the owner of M/s. Gita Automobiles and they have also stated that M/s. Gita Automobiles received money in the month of March, 2016 but the borrowers did not receive the tractor and rotavator but the margin money was deposited in their bank account and thereby the borrowers have cheated the bank. It has also been stated by the witnesses that the said rotavator was allotted to the borrowers in the month of January, 2016 but the borrowers did not take delivery of the rotavator on the contrary they asked M/s. Gita Automobiles to deposit margin money in their account and accordingly, it was deposited in the borrowers account. Police has also seized quotation of M/s. Gita Automobiles dated 15.1.2016 to State Bank of India, Bankura Branch and also one challan of M/s. Gita Automobiles dated 30.1.2016 to the borrowers in connection with the tractor.

8. It is to be mentioned that such event of not taking delivery by the borrowers and their instruction to deposit margin money in their bank account as stated by witnesses has not been reported to be bank by the petitioner which creates reasonable suspicion against petitioner by the bank/complainant who has specifically alleged collusion in between petitioner and the borrowers.

9. Criminal proceeding cannot be quashed at it's doorstep only because petitioner's name does not find place in the F.I.R. or he was no way connected with the loan transaction that took place in between petitioner and opposite party no.2. Here the allegation of conspiracy in between petitioner and borrowers which causes wrongful loss of public money, constitutes offence. Now whether the allegations of conspiracy in committing offence are true or untrue would have to be decided in the trial. In exercise of power under section 482 of the code, the court does not examine the correctness of the allegation of the complaint unless it patently appears to be frivolous or does not disclose any offence. It is well settled in catena of decisions that while exercising jurisdiction under section 482 of the code, the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise in justified by the specific provisions of section 482 of the code itself.

10. In view of the aforesaid facts and circumstances of the case, it cannot be said that materials available in the case diary, prima facie, does not disclose any offence against the petitioner who is admittedly owner of M/s. Gita Automobiles.

11. Accordingly, it is not a fit case for invoking power under Section 482 of the Code of Criminal Procedure to quash the proceeding. The prayer made by the petitioner for quashing the proceeding against present petitioner, being G.R. Case no 270 of 2018 arising out of Charge sheet no. 149 of 2018 dated

30.6.2018 under Section 420/468/471/406 of the Indian Penal Code in connection with Bankura Police Station case no. 92 of 2018 dated 17.4.2018, is thus dismissed.

12. In view of above, CRR 1060 of 2019 stands dismissed.

However, there will be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)