IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 2008 of 2019

Siddhartha Majumdar
-vs-
Dipayan Dey & Anr.

For the Petitioner	: Mr. Sekhar Kumar Basu, Sr. Adv. Mr. Satyakam Chakraborty Mr. Kusal Kumar Mukherjee Ms. Shreyasi Chatterjee
For the State	: Mr. Madhusudan Sur Mr. Dipankar Paramanick
Heard on	: 11.07.2022
Judgment on	: 25.07.2022

Ajoy Kumar Mukherjee, J.

1. Present revisional application has been directed for quashing the proceeding including charge-sheet No. 354/16 dated 27.10.2016 under Sections 406/409/420 of the Indian Penal Code which has arisen out of Burwan Police Station Case No.282/14 dated 26.06.2014 corresponding to G.R. Case No. 1340/14.

2. The allegation levelled is that opposite party no.1 Dipayan Dey had given loan of Rs.12 lakhs to one Jiaul Rahaman (one of the co-accused persons in the aforesaid proceeding). Jiaul issued a cheque of Rs.6,90,000/- to make part payment out of the aforesaid loan amount Rs.12 lakhs. The cheque was a post dated cheque drawn upon HDFC Bank, Baguihati Branch. The said cheque was handed over to opposite party no. 1 pursuant to a written agreement on 20.03.2014. Two days thereafter, the accused Jiaul lodged a general diary being 1225 dated 22.03.2014 with the Burwan Police Station and intimated about loss of said cheque on 22.03.2014. Dipayan i.e. O.P. No.1 deposited the said cheque to his banker on 17.04.2014 and the cheque was honoured and was intimated by the bank. Jiaul was similarly informed by the bank since both Jiaul and O.P. No.1 maintained their respective accounts in HDFC bank though in different branches. After the deposit of said amount of Rs.6,90,000/- in the account of O.P. No.1, in terms of aforesaid cheque, Jiaul intimated the Baguihati Branch of the bank about the alleged loss of the aforesaid cheque and on enquiry Jiaul produced the said GD entry slip being No.1225 dated 22.03.2014 to the bank and requested the bank to reverse the deducted amount to his account.

3. It is submitted on behalf of the petitioner that the bank asked Jiaul to inform the bank in writing about alleged loss of aforesaid cheque and accordingly Jiaul informed the bank about the alleged loss of cheque, in writing and after getting the said writing from Jiaul, bank reversed the entire amount from the account of the informant/ opposite party no. 1 to the account of accused Jiaul.

4. Mr. Sekhar Bose Learned Senior Advocate appearing on behalf of the petitioner submits that the petitioner was the Branch Manager of Baguihati Branch at the relevant point of time. During investigation the enquiry officer wrote a letter to the bank about the role of Branch Manager in the aforesaid transaction. HDFC Bank Limited replied to the letter of the enquiry officer by a letter dated 20.08.2016 that Branch Manager has no role to play in passing credit and debit entries in the account of customers of the bank.

5. Mr. Bose, learned advocate further submits that O.P. No.1 Dipayan Dey filed an application before the learned District Consumer Disputes Redressal Forum, Berhampore, Murshidabad which was registered as complaint Case No. CC/55/2014 against the Branch Manager of HDFC Bank and in that application, opposite party no. 1 prayed for payment of Rs.6.9 lakhs with compensation of Rs.50,000/- and Rs.25,000/- for harassment. But learned District Consumer Disputes Redressal Forum was pleased to dismiss the claim of the O.P. No.1 by an order dated 24.11.2016.

6. It is submitted on behalf of the petitioner that from the letter dated 02.06.2014 written by Bank to S.I. of Baguihati P.S. as asked for by their letter dated 25.05.2014, Bank immediate after getting auto generated SMS as to debit of the disputed amount with the allegation of misplaced and fraud relating to the impugned cheque and thereafter on verification, Bank got discrepancy in the rubber stamp of the principal accused Jiaul company used on the disputed cheque having a gap in the word "ARINRICE" as "ARIN" with gap "RICE" and seeing this discrepancy the bank reversed the amount to safeguard the financial interest of their account holder and Consumer Forum also satisfied with this explanation given by bank and was pleased to dismiss the proceeding.

7. In the present proceeding after completion of the investigation, charge-sheet has already been submitted under Sections 406/419/420 of the Indian Penal Code against two accused persons including the present petitioner. It is submitted that learned ACJM, Kandi took cognizance of the offence after submission of charge-sheet and after supplying the necessary copies to the petitioner in terms of Section 207 of the Code.

8. Mr. Basu further submits that the petitioner is the victim of circumstances and the principal accused Jiaul played fraud on the petitioner as well as on the bank. Practically, Jiaul arranged the documents with an intention to cheat the O.P. No.1 as well as to defraud the bank. Therefore, the inference under Section 420 of the Indian Penal Code with regard to the intention and knowledge from *ab initio* is conspicuously absent in the case of present petitioner. He further submits that this is evident from the fact, when the cheque was honoured, the bank intimated both Jiaul and O.P. No.1 since both were maintaining their respective accounts in HDFC Bank and confirmed about the said transaction and, therefore, the neutral role on the part of the bank is unquestionable. Accordingly, ingredients of Section 420 of the Indian Penal Code are not applying against the present petitioner and the petitioner is duty bound to the act on the basis of circumstances which was placed before him. In the present case, petitioner who was the Branch Manager at the relevant time was deceived by the presentation of the document by Jiaul and he had no other option but to act upon the same. The bank has followed the formalities for cancelling the transaction by demanding a written request from Jiaul, which Jiaul had placed before the bank. Mr. Bose further submits that Section 409 of the Indian Penal Code is also not applicable in the present context as being Bank Manager petitioner is duty bound to protect the account of his customers and exactly what he did here in good faith. Moreover, bank got discrepancy in the rubber stamp of Jiaul's company's name on the disputed cheque and then the amount was reversed to safeguard the financial interest of their account holder and the Consumer Forum rightly observed that there is no foul play on the part of the bank or the Branch Manager.

9. Mr. Madhusudan Sur, learned advocate appearing on behalf of the State placed the case diary and submits that sufficient incriminating materials have been collected by the I.O. during investigation against both the accused persons which goes to show that there is a deep rooted conspiracy in between the Bank Manager and accused Jiaul in misappropriating the complainant/O.P. No.1's money from the bank account. During investigation, police had collected one acknowledgement where Jiaul has stated that he has handed over the cheque towards part payment against loan of Rs.12 lakhs, mentioning the cheque number on 20.03.2014. Subsequently on 22.03.2014 with criminal intention he lodged general diary to the O/C., Burwan Police Station contending that said cheque has been lost from his custody. So, there is sufficient reason to believe that from the very inception it was in the mind of the accused persons to cheat the de facto complainant. Moreover, the investigation has already been ended and charge-sheet has been submitted and at this stage it would not be proper to quash the entire proceeding against the petitioner at the threshold, when on the basis of material, prima facie offence has been disclosed against the present petitioner.

10. It is also submitted on behalf of the State that under Section 60 of the Negotiable Instrument Act read with Section 23(3) of the Payment and Settlement Act, 2007, a settlement effected under such procedure shall be final and cannot be further negotiable and as such the petitioner has clearly committed offence in violating aforesaid provisions of law.

11. Mr. Sur on behalf of state further submits that conspiracy is apparent from the fact that HDFC Bank did not find any foul play in the cheque and successfully transferred the amount in the account of complainant but after settlement the bank found the discrepancy in rubber stamp about the company's name on the disputed cheque. If discrepancy in the rubber stamp appearing on the cheque is the cause of retransfer then, Bank would not have credited said amount at all in favour of complainant.

12. Needless to say in view of the land mark judgement of Apex Court in ***State of Haryana vs. Bhajan Lal***, reported in **1992 SCC (Cri) 426**. The Apex Court has categorized the cases by way of illustration wherein the power under Article 482 Cr.P.C. could be exercised either to prevent the abuse of the process of the court or otherwise to rescue the ends of justice. In Para 102 & 103 it is observed:-

> ***"102.*** *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
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> *(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.*
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> *(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.*
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> *(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 concerned Act (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 the concerned Act, 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."

***"103.** We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

13. I have carefully perused the materials in the case diary including written complaint and the statements recorded under Section 161 of Cr.P.C., it has been specifically alleged in the written complaint that the complainant is under firm belief that Bank Manager in collusion with Jiaul Rahaman had defrauded the O.P. No.1. It also appears from the statement recorded under Section 161 Cr.P.C. that all the witnesses have specifically alleged that the Bank Manager along with Jiaul had practiced fraud upon O.P. No.1 in retransferring the said amount in the credit of Jiaul. In the aforesaid facts and circumstances of the case whether in committing retransfer of entire amount in the credit of Jiaul the petitioner had acted innocently and / or in terms of banking rules or it was done with criminal intention which existed from the very beinging and whether the petitioner has violated the relevant provisions of Negotiable Instrument Act and /or Payment of Settlement Act, 2007 in making conspiracy with principal accused Jiaul, can only be decided if the parties face the trial to answer the charge likely to be brought against them but High Court is not supposed to conduct mini trial to unearth the truth while disposing petition under section 482 of the code written complaint and materials collected by the investigating agency discloses prima facie cognizable offence against the present petitioner in view of apparent violation of statutory provisions as pointed out by prosecution, stated above and if there was discrepancy in company's name in the rubber stamp, but signature does not differ and amount was cleared then what prompted present petitioner afterwards to retransfer the amount without verifying the cause. So in the absence of any prima facie reason to believe that there was any animosity in between the petitioner and O.P. No.1 for which O.P. No.1 could have lodged false complaint in order to harass the petitioner, I am not of the view following the ratio laid down in **Bhajanlal's case (supra),** that present case is a fit case where proceeding can be quashed invoking power under Section 482 of the Cr.P.C.

14. Accordingly CRR 2008/2019 stands dismissed. Connected applications also accordingly disposed of.

15. However there will be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJOY KUMAR MUKHERJEE, J.)