IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 3243 of 2010

MR. ANIL AHUJA & ORS.
VS.
STATE OF WEST BENGAL & ANR.

For the Petitioners	: Mr. Sandipan Ganguly, Sr. Adv., Mr. Ripanjan Dutt, Adv., Mr. Amitava Mitra, Adv., Ms. Antara Choudhury, adv.
For the Opposite Parties	: Mr. Imran Ali, Adv., Ms. Debjani Sahu, Adv.
Hearing concluded on	: 9th September, 2022
Judgement on	: 14th September, 2022

Siddhartha Roy Chowdhury, J:-

1. This proceeding stems out of an application under Section 482 of the Cr.P.C., 1973, at the instance of the petitioners seeking order to quash the proceeding arising out of Complaint Case No. 940 of 2004 under Section 420/120B of the I.P.C. pending before the learned Judicial Magistrate, 7th Court, Alipore.

2. Briefly stated, the petitioner no. 1 is the Managing Director 3i India Private Limited, petitioner no. 2 is the Managing Director of Bennett, Coleman & Co. Ltd., petitioner no. 3 is the Director of Samanta Organics Private Limited and petitioner no. 4 is the Consultant of

Maharashtra Hybrid Seeds Co. Limited (MAHYCO). The Opposite Party No. 2 wanted to purchase one City Honda Car and he approached the HDFC Bank for car loan to the tune of Rs. 6,50,000/- to be disbursed to M/s Honda. The Opposite Party No. 2 was given to understand that he would require to make down payment of Rs. 76,673/- out of the total price of Rs. 7,26,000/- he would have to issue 24 post dated cheques of Rs. 27,800/- each. Accordingly, the Opposite Party No. 2 singed the car loan application form with the help of accused no. 7 before the learned Judicial Magistrate, 7th Court, Alipore. It is alleged in the petition of complaint that Opposite Party No. 2 entrusted the accused persons with 24 post dated cheques of Rs. 27,800/- each after submission of car loan application on 30th December, 2003 and he was given to understand that car would be delivered on 21st January, 2004. As the Opposite Party No. 2 did not receive any information regarding his obligation to deposit initial payment of Rs. 76,673/-, he did not deposit the money. No car was also delivered by the accused persons and on enquiry from Honda the Opposite Party No. 2 came to know that bank had failed to disburse any amount on his behalf for delivery of Honda car.

3. Thereafter, on 28th January, 2004, the Opposite Party No. 2 informed the accused persons that since no money was disbursed towards purchase of City Honda car, the car was not delivered to him. He had no obligation to pay installment. But the opposite party was surprised to see that cheque bearing no. 137501 for Rs. 27,800/- was encashed by accused persons on 5th February, 2004, ignoring the

instruction of Opposite Party No. 2. It is alleged that the accused persons entered into criminal conspiracy with each other and gave out a false representation that they would arrange Rs. 6,50,000/- in favour of the Opposite Party No. 2 and thereby induced Opposite Party No. 2 to entrust them with 24 undated cheques of Rs. 27,800/- each. But they did not act in terms of agreement, rather they committed offence under Section 409/420/120B of the Indian Penal Code.

4. Learned Sub Divisional Judicial Magistrate, Alipore, after taking cognizance of the offence on 21st February, 2004 was pleased to transfer the petition of complaint to the learned Judicial Magistrate, 7th Court, Alipore for disposal.

5. Learned Transferee Court examined Opposite Party No. 2 and his witness under Section 200 of Cr.P.C. and having found of prima facie case being made out under Section 420/120B of the Indian Penal Code, issued process calling upon the petitioners herein and the accused persons before the learned Judicial Magistrate to surrender to the jurisdiction of the said Court.

6. From the attending facts of the case it is admitted that the petitioners Mr. Anil Ahuja, Mr. Vineet Jain, Dr. (Mrs.) Amla Smanta and Dr. Venkat Rao Gadwal were the Principal Officers of HDFC Bank at the relevant point of time.

7. Mr. Sandipan Ganguly, learned Sr. Advocate for the petitioners submits that the petitioners being the Principal Officers of HDFC Bank are not supposed to look into the day to day affairs of the Company and as such he cannot be saddled with any criminal liability in

absence of any averment in the petition of complaint as to how and in what manner the petitioners were responsible in the matter of granting loan to the opposite party.

8. Mr. Ganguly, learned Sr. Advocate for the petitioners further submits that vicarious liability of the Director of the Company cannot be imputed automatically in the absence of any statutory provision to that effect.

9. Relying upon the decision of Hon'ble Supreme Court pronounced in the case of ***S.K. ALAGH VS. STATE OF U.P. AND ORS.*** reported in (2008) 5 SCC 662, ***SUNIL BHARTI MITTAL VS. CENTRAL BUREAU OF INVESTIGATION*** reported in **(2015) 4 SCC 609** and ***MAKSUD SAIYED VS. STATE OF GUJARAT AND ORS.*** reported in **(2008) 5 SCC 668,** Mr. Ganguly argued and rightly that the Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.

10. It is trite to say that in order to constitute an offence within the meaning of Section 420 of the I.P.C. there has to have dishonest inducement within the meaning of Section 415 of the I.P.C.

11. Here in this case there is nothing to suggest that the petitioners induced and deceived the Opposite Party No. 2. Opposite Party No. 2, the borrower admittedly did not pay the seed money which is a pre condition for offering car loan. Since he failed to discharge all his obligations, he cannot blame the banker and he should not be allowed

to saddle the bank or its employees with any kind of criminal liability whatsoever.

12. Since the Opposite Party No. 2 is not represented by any lawyer before this Court, I have to rely upon the materials on record and from Annexure-P3 I find that earlier while deciding CRR 2152 of 2004, filed at the behest of accused no. 1 Mr. Jagdish, Chairman of HDFC Limited, Hon'ble Justice Ashim Kumar Roy, as My Lord then was, while disposing of the application observed at paragraph 4 "It is an admitted position that the criminal complaint was filed in Court on 21st February, 2004, whereas delivery of car was received by the complainant on 26th February, 2004. It is also admitted position that the initial amount of Rs. 76,673/- has not been paid, only the cheques for monthly installments were made over to the accused persons."

13. Therefore, I have every reason to presume that the Opposite Party No. 2 got delivery of the car for which he approached the bank for loan. In the absence of any averment in the petition of complaint as to how and in what manner the petitioners being the Principal Officers of HDFC Bank were responsible for the transaction that took place between any particular officer of the bank and the Opposite Party No. 2, I am of the view that the criminal proceeding if is allowed to continue before the learned Trial Court against the petitioners, it would be an abuse of process of law resulting into miscarriage of justice.

14. Under such facts and circumstances of the case I am of the view that it is a fit case to invoke the inherent power conferred under

Section 482 of the Cr.P.C. to quash the proceeding as against the petitioner, which I accordingly do.

15. Thus the Revisional Application is disposed of.

16. Let a copy of the judgement be sent down to learned Judicial Magistrate, 7th Court, Alipore, 24th South Parganas for information and necessary action.

17. Parties to act on server copy.

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

(SIDDHARTHA ROY CHOWDHURY, J.)