

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 4123 of 2012

UTTAM KUMAR CHATTERJEE
VS.
STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Mrinal Kanti Mukherjee, Adv.

For the Opposite Parties : Mr. Madhu Sudan Sur, Adv.,
Mr. Manoranjan Mahata, Adv.

Hearing concluded on : 9th September, 2022

Judgement on : 13th September, 2022

Siddhartha Roy Chowdhury, J:-

1. This is an application under Section 482 read with Section 401 of the Code of Criminal Procedure filed by petitioner Uttam Kumar Chatterjee seeking order quashing the proceeding being Kalyani P.S. Case No. 340 dated 27th July, 2012, under Section 406/420/468/471/34 of the I.P.C. corresponding to G.R. Case No. 1158 of 2012 pending before the learned Additional Chief Judicial Magistrate, Nadia.
2. Briefly stated, the petitioner was holding the post of Secretary of Kulia Meen Co-operative Credit Society during the period from 7th August, 2009 to 31st March, 2011. After his tenure was over it was

detected from audit report that the petitioner along with Sri Ranjan Sarkar defalcated a sum of Rs. 20,00,913/- from the fund of the Kulia Meen Co-operative Credit Society Ltd. and they also issued 12 fake and false loan in the name of 12 members without disbursing the amount. The petitioner confessed the guilty and refunded rest part of the amount with an undertaking to make good the loss suffered by Co-operative. Thereafter, the petitioner was served with to act in terms of undertaking notice but in vain.

3. On 27th July, 2012, Pranab Kumar Chatterjee the then Secretary of Kulia Meen Co-operative Credit Society Ltd. informed the Inspector-in-charge of Kalyani Police Station in writing that in the year 2009, Ranjan Sarkar and Uttam Kumar Chatterjee the erstwhile Chairman and Secretary of the Society defalcated amount to the tune of Rs. 20,00,913/- only from the fund of Kulia Meen Co-operative Credit Society. They issued 12 fake and false loans in the name of 12 members but without disbursing the amount to them defalcated further sum of Rs. 17,11,254/-. The said persons confessed their guilt and refunded part of the amount and gave an undertaking to repay the rest of the amount at the earliest which they did not do despite being served with notice thrice. On the basis of such information Kalyani P.S. Case No. 340 of 2012 dated 27th July, 2012 was registered under Section 406/420/468/471/34 of the I.P.C.
4. It is contended by the petitioner that he himself took a loan and repaid said loan to Co-operative Society. It is further contended that the Secretary of the Co-operative Credit Society filed the Money

Dispute case being no. 12 of 2012-13 before the District Registrar of Co-operative Society, Nadia at Krishnanagar. It is further contended by the petitioner that no sanction has been taken from the Registrar to prosecute the petitioner in a criminal proceeding, therefore, the petitioner is seeking an order, quashing the criminal proceeding. Despite notice none appears on behalf of the Opposite Party No. 2.

5. Heard Mr. Mrinal Kanti Mukherjee, learned Advocate for the petitioner extensively. Drawing my attention to different provisions of West Bengal Co-operative Societies Act, 2006. Mr. Mukherjee submits that the criminal proceeding is bereft of any previous sanction of the Registrar, the informant is not the person authorized by the Registrar to initiate prosecution and according to Mr. Mukherjee West Bengal Co-operative Societies Act, 2006 being a special Act has been given an overriding effect. Section 153 of the Act envisages punishment for corrupt practices. Therefore, the criminal proceeding initiated at the instance of the Secretary of the Co-operative Credit Society, Mr. Pranab Kumar Chatterjee is but an abuse of process of law which deserves an order of quashment. My attention is drawn to Annexure-P1 to the Supplementary Affidavit photocopy of the order passed in an arbitration proceeding by the Additional Registrar Co-operative Credit Society. In the said award the petitioner Uttam Kumar Chatterjee was directed to repay a sum of Rs. 7,82,156/- to the Co-operative Credit Society by 31st March, 2011, in default his retiral benefit are to be withheld. The petitioner Uttam Kumar Chatterjee was also directed by the Arbitrator to pay interest @ 15% as on the date of repayment.

6. According to Mr. Mukherjee, the said amount has already been paid. But it is candidly submitted that interest part inadvertently remained unpaid which the petitioner shall pay.
7. Learned Advocate appearing for the State submits that when there a special Act to care of the contingencies as appeared in this case the proceeding before the learned A.C.J.M. Kalyani, Nadia may not be allowed to remain in force.
8. Section 153 of the West Bengal Co-operative Societies Act, 2006 envisages punishment for corrupt practices which runs as follows:-

“153. Any officer or employee or member of Co-operative society or any arbitrator or liquidator appointed under this Act, who –

- (a) sanctions and receives, as the case may be, any benami loan, or*
- (b) accepts or obtains or induces to accept or attempts to obtain from any person for himself or for any other person any gratification as a motive or reward as is mentioned in section 161 of the Indian Penal Code, 1860, or*
- (c) signs the minutes of any meeting of the Co-operative society without attending such meeting, or*
- (d) dishonestly or fraudulently misappropriates, or otherwise converts for his use any property of the Co-operative society entrusted to him or under his control or allows any other person so to do.*

Shall be guilty of corrupt practice and shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and shall also be liable to such fine as may be prescribed.

Provided that the Court may, for nay special reason to be recorded in writing, impose a sentence of imprisonment of less than one year.”

9. Section 154 of the said Act speaks of its overriding effect in the following manner:-

“154. This Act shall have effect notwithstanding anything contained in any other law for the time being in force or in any contract, express or implied or in any instrument having effect by virtue of any enactment.”

10. Section 150 of the said Act lays down the statutory provision for taking cognizance of offence which runs:-

“150. (1) No Court inferior to the court of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(2) For the purpose of the Code of Criminal Procedure, 1973 every offence under this Act shall be deemed to be non-cognizable.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under section 403 of the Indian Penal Code, 1860 in respect of any movable property of a Co-operative society shall be cognizable.

(4) No prosecution shall be instituted under this Act, without the previous sanction of the Registrar.

(5) A prosecution under this Act shall be instituted by the Registrar or any person authorized by him in this behalf. All expenses for a prosecution instituted on the request of a Co-operative society shall be borne by or recoverable from such Co-operative society.”

11. The allegation against the petitioner is that he fraudulently or dishonestly misappropriated or otherwise converts for his use, the money of Co-operative Society entrusted to him. In view of Section 153 (d) he has exposed himself to the punishment for indulging in corrupt practices.

12. Section 154 says that notwithstanding anything contained any other law for the time being in force or in any contract expressed or implied this Act shall have overriding effect and Sub-Section 2 of Section 150 of the Act says that every offence committed under West Bengal Co-operative Society Act, 2006 shall be deemed to be non-cognizable offence meaning thereby the F.I.R. registered against the petitioner on the basis of information given by Pranab Kumar Chatterjee is out and out illegal being contrary to the provision laid down sub-Section 2 of Section 150 of the West Bengal Co-operative Societies Act, 2006. More so, in absence of any previous sanction of the Registrar, as required under sub-Section 4 of Section 150 of the West Bengal Co-operative Societies Act, 2006, no prosecution can be initiated.
13. Under such facts and circumstances of the case, I am of the view that in order to prevent miscarriage of justice the petition under consideration should be allowed and the F.I.R. being Kalyani P.S. Case No. 340 of 2012 dated 27th July, 2012 should be quashed, which I accordingly do. However, interest component as mentioned in the Award must be paid by 30th September, 2022.
14. The proceeding pending before the learned A.C.J.M. Kalyani, Nadia, is quashed as against the petitioner Uttam Kumar Chatterjee.
15. Thus, the case is disposed of together with interim application, if any.
16. Let a copy of the judgement be sent down to learned Additional Chief Judicial Magistrate, Kalyani, Nadia 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.)