IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee.

CRR No.1554 of 2020

Srikant M Abuj & Ors.
Vs.
Soharab Sekh

For the petitioners	:Mr. Soumalya Ganguly Mr. D. Ganguly
For the opposite party:	Mr. Jyoti Prakash Chatterjee
Heard on:	04.08.2022
Judgment on:	31.08.2022

Ajoy Kumar Mukherjee, J.

1. Being dissatisfied with the proceeding being CR case No. 68/2018 under section 323, 341/34 of the Indian Penal Code, pending before the learned court of Judicial Magistrate, First Court, Kalna, Purba Burdwan, Present application under section 482 read with section 401 of the code of Criminal Procedure has been preferred. Petitioners herein contended that opposite party/complainant's father namely Rabiul Sekh is the borrower of the petitioner's bank and approached for a term loan of Rs. 8 Lakhs and additional adhoc loan of Rs. 1.50 Lakhs. After perusing and verifying all the documents, the bank had sanctioned the term loan and same was disbursed which was duly accepted by the opposite party/complainant's father, without any protest.

2. At the time of sanctioning the said term loan, the opposite party mortgaged the property, which is the property in question in the present complaint and opposite party also mortgaged deed lying in the custody of the petitioner's bank, including the form of intent to mortgage dated 10.03.2008 and the memorandum of title deeds dated 11.03.2008 duly executed by the opposite party in favour of petitioner's bank.

3. Since the borrower /opposite party's father made default in payment of loan amount, the bank was constrained to issue a notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 hereinafter called as SARFAESI Act, on 17th June 2010 and bank on 11 January 2011 was constrained to issue possession notice under section 13(4) of SARFAESI Act with Rule 8(1) of SARFAESI Rule 2002. The total due of bank is Rs. 56,22,010.13/- as on 18.07.2019.

4. Mr Soumalya Ganguly on behalf of the petitioners, submit that due to default made by the opposite party/complainant's father for the payment of the dues, the bank had taken appropriate steps in accordance with SARFAESI Act, 2002, following all the procedures and had taken possession of the mortgaged property (secured assets) as per the order passed by the District Magistrate, Burdwan on 25.04.2013 under section 14 of the SARFAESI Act. Accordingly Nandan Ghat police along with lady police personnel, attached thereto, helped the bank authorities to take physical possession of the said mortgaged property, duly following the proper procedure such as preparation of the inventory dated 26.07.2017, panch nama dated 26.07.2017, and also conducted proper videography of the whole process Opposite party/complainant had already filed writ for police inaction being WP No. 22140 (w) of 2017 before the Hon'ble High Court, Calcutta which was disposed of on 31.08.2017, observing that the police authority in this case had acted in accordance with law and that a criminal case had been filed against opposite part/complainant which was registered as Nandan Ghat P.S. Case No. 205/2017 dated 10.08.2017 under sections 453/461/506/34 of the I.P.C.

5. Mr. Gangully further submits that the petitioner no. 1 was not present during the time of taking the physical possession and his name has been included in the complaint with wrongful intention and to harass petitioner no. 1. He further submits that the entire premise for filling such criminal case is false and frivolous and not legally sustainable in the eyes of law, since the entire crux of the criminal case arises out of default /non payment, made by the borrower /opposite party's father and the intimation of SARFAESI proceeding was duly complied. The opposite party created a facade by filing such complaint case, only with mala fide intention to harass officers of the bank from taking steps for recovery of the legitimate dues of the bank. Therefore, the intention of impugned proceeding is clearly with *malafide* intention to harass and vex the bank and it's officers and as such, it is liable to be quashed. He further submits that on perusal of the complaint it appears that all the accused persons reside at places beyond the territorial jurisdiction of learned ACJM, Kalna, Purba Burdwan and in such conspectus of the matter, it was imperative on the part of the learned Magistrate to conduct an inquiry in terms of section 202 of the code of criminal procedure, prior to deciding on the question of issuance of the process against the accused in the instant case. He further submits that the dispute completely is civil in nature and as such on that ground alone the said complaint case is not sustainable in the eyes of law.

6. On perusal of the petition of complaint along with annexure, it appears that in the written complaint it has been alleged that on 26.07.2017 at about 3:30 p.m. the accused persons illegally trespassed into the house of the complainant and started threatening them. When the complainant and others raised protest, the accused persons had physically assaulted , complainant and his father and also abused them with filthy languages. They also outraged modesty of the family members and illegally tried to take possession of the complainant's house. In the complaint it is further alleged that Rabiul Sekh had taken loan mortgaging complainant Sohrar Sekh's dwelling house but Sohrar sekh had not taken and loan and for which he has got no liability in connection with repayment of said loan amount. The accused persons with an illegal motive has trespassed into the house, ransacked the house and tried to kill complainant and his father and also outraged modesty of the female members of the house.

7. Inspite of the service of the summons none appeared on behalf of opposite party.

8. It appears from the documents marked as annexure that complainant's father Rabiul Sekh borrowed money from the bank mortgaging the property in question and as the said borrower failed to repay the loan amount the bank lawfully initiated proceedings under the relevant provisions of SARFAESI Act read with SARFAESI rules 2002. According to petitioners the total outstanding amount is Rs. 56,22,010.13/- as on 18.07.2019 and it further reveals from the submissions and documents filed on behalf of the petitioner that the bank following the procedure laid down in SARFAESI Act, 2002, had taken possession of the mortgaged property on 25.04.2013 under section 14 of the SARFAESI Act, due to non-payment of outstanding Loan amount. Accordingly documents reveal, whatever steps have been taken by the petitioner, in taking possession of the mortgaged land, arose due to non-payment of the outstanding loan amount. Even if there is dispute between the parties in connection with taking over mortgaged property by the bank, on the ground of non-payment of outstanding amount that dispute is purely civil in nature. The allegations levelled in the complaint in the above background appears to be absurd and inherently improbable in view of the fact that there appears to be no animosity in between the petitioners and the borrower or his family members. Taking over possession of the mortgage property has been done in accordance with concerned statute, so there cannot have any reason or *mens rea* to assault the borrower or his family members or to outrage modesty of the borrowers family members and as such it is palpably clear that the present proceeding has been initiated by the complainant out of grudge and to harass the petitioners by entangling them in a criminal proceeding.

9. In ***State of Haryana Vs. Bhajanlal*** reported in **(1992) Supp (1) SCC 335,** it was held that criminal proceeding should be quashed when the complaint does not disclose a *prima facie* cognizable offence or when the allegation in the petition of complain or the FIR are inherently improbable or absurd or when the petition of complain or the FIR is a *mala fide* one intended to harass the opponent or when no evidence of legal character is available or when there is legal bar to the entertainability of the application.

10. In view of above I find that following ratio of **Bhajanlal's Case (supra)** this is a fit case where invoking power under section 482 of the code, the present proceeding is required to be quashed as further proceeding, if allowed to be continued, that will be an abuse of the process of the court. In view of above all further proceeding in CRR 1554 of 2020 pending before Learned Court of Judicial Magistrate, 1st Court, Kalna, Purba Burdwan is herby quashed.

11. CRR 1554 of 2020 is accordingly allowed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible.

(AJOY KUMAR MUKHERJEE, J.)