28.03.2023
Item no.33.
Court No.551.
AB

CRR 351 of 2018

In the matter of : Anshul Himatsingka

……Petitioner.

Mr. Ayan Bhattacharya,
Mr. Karan Dudhwewala,
Mr. Anil Chowdhury ….for the Petitioner.

Mr. Swapan Kr. Banerjee,
Ms. Manisha Sharma …..for the State.

The instant criminal revision has been preferred for quashing the proceeding of G. R. Case No.658 of 2012 arising out of English Bazar Police Station Case No.115 of 2012 Dated 20.02.2012 under Sections 406/409/420 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Malda.

The brief case of the prosecution is that on 20.02.2012 the present opposite party no.2 lodged a first information report with the Officer in Charge, English Bazar Police Station against the car dealer, namely, M/s Lexican Motors Limited, proprietor of Reliance Industrial Consortium Limited, contending, inter alia that a car loan of Rs.4.75 Lacs was sanctioned to one Sri Sekhar Bose. The loan amount was forwarded to the Company for the delivery of a car for which necessary papers and documents were produced by Indrajit Sarkar, one agent of the said Company. The cheque was handed over to Indrajit Sarkar for delivery of the car to Sekhar Bose but instead, the fund was utilized for delivery of two cars to other two persons as advised by the said Company. On the basis of the written complaint, the police case was started. The police took up the investigation and after completion of investigation, submitted charge sheet being no.590 of 2017 dated 24.07.2017 against the present petitioner and Indrajit Sarkar.

Learned Advocate for the petitioner submitted before this Court that the criminal proceeding pending against the present petitioner is actually illegal in the eye of law. The present petitioner is one of the Directors of the Company registered under the provisions of the Companies Act. The present petitioner is not responsible for the day to day affairs and businesses of the Company and according to the law, the vicarious liability against the present petitioner regarding the conduct of any of the Company cannot be raised.

He further argued that the car loan was obtained and the car was delivered from the Company and it would be revealed from the investigation that the Bank was receiving the EMI regularly in respect of the said loan.

He further argued that the present petitioner is in no way involved in the alleged offence.

Learned Advocate for the petitioner also cited the copy of the charge sheet wherein he argued that the signature of the accused Indrajit Sarkar, ex-agent of the Lexican Motors, was not collected during the course of investigation for which the completion of investigation by the Investigating Agency is doubtful.

He again argued that the allegation of misappropriation of fund is only basis of the wrongful gain by the present petitioner and wrongful loss of the Bank. The present Company never made any complaint with the police. It would be revealed that the fund, which was given by the Bank, was utilized for delivery of car to the persons. Thus, the loan amount and any part thereof was never utilized by the present petitioner or the Company itself.

He again argued that during the course of investigation, it is revealed that the car loan was regularly paid by EMI. Thus, the Bank has suffered no loss.

He further argued that the present petitioner has never cheated any person. So, the commission of alleged offence under Section 420 IPC does not arise in the present case. He prayed for quashing of the instant criminal proceeding.

Learned Advocate appearing on behalf of the State raised strong objection and submitted that on the basis of the written complaint of the State Bank of India, the instant police case was initiated. During the course of investigation, police collected several evidences. The statements of available witnesses were recorded under Section 161 Cr.P.C. It would be revealed that the present petitioner was very much involved in the alleged offence. The loan was given to Sekhar Bose but the car was delivered to other two persons for which the present petitioner, who is the Director of the present Company, is very much involved in the alleged offence. He placed the case diary.

Heard learned Counsel for the parties. Perused the materials on record. Also perused the case diary. It appears that the allegation of the State Bank of India is on the basis of a written complaint contending, inter alia, that the car loan was obtained by Sekhar Bose but the said amount of the loan was utilized for giving delivery of cars to one Sanjay Saha and Tutul Sarkar.

It further appears that the entire amount of loan that is Rs.4.75 Lacs was utilized in the name of two persons. Thus, no amount of money was actually utilized by the car dealer.

In considering the facts and circumstances of this case and in considering the involvement of the present petitioner, who is one of the Directors of the Company, it appears that the first information report names one ex-dealer of the Company, namely, Indrajit Sarkar, who actually obtained the cheque and gave direction on behalf of M/s Lexican Motors for delivery of the cars to other two persons. Indrajit Sarkar was arrayed as an accused in this case.

In considering the involvement of the present petitioner, I have perused the statements of available witnesses and other materials on record in the case diary. The statement of Sekhar Bose, who was cited as P.W. 9 in the charge sheet, disclosed the fact before the police and from his statement, it appears that there was no allegation against the present petitioner but it is against Indrajit Sarkar. Sekhar Bose has also not suffered any wrongful loss. Other statements of available witnesses do not disclose the involvement of the present petitioner in the alleged offence. Considering the same, the instant case may very well lie against the accused Indrajit Sarkar but the present petitioner is in no way involved in the present offence.

Attending facts and circumstances and evidences collected by the Investigating Officer does not co-relate the alleged offence against the petitioner. Basic ingredients of mens rea in an offence punishable under Section 420 IPC is very much missing in this case.

Considering the same, it appears to me that the instant criminal proceeding against the present petitioner and trial thereof would amount to an abuse of process of Court.

I find merit to entertain the instant criminal revision to quash the criminal proceeding.

Accordingly, CRR No.351 of 2018 is allowed. The criminal proceeding in G. R. Case No.658 of 2012 arising out of English Bazar Police Station Case No.115 of 2012 Dated 20.02.2012 under Sections 406/409/420 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Malda, against the present petitioner is hereby quashed.

C.R.R. No.351 of 2018 stands, accordingly, disposed of.

Any order of stay passed by this Court during the pendency of this revisional application is also vacated.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Subhendu Samanta, J.)