

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE**

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 376 of 2019

With

CRAN 2 of 2019

(Old No. CRAN 3857 of 2019)

With

CRAN 3 of 2021

The Chief Manager, Central Bank of India

Vs.

The State of West Bengal & Anr.

For the Petitioner	: Mr. Debangana Bhattacharya, Mr. Manish Biswas.
For the State	: Mr. Saswata Gopal Mukherjee, Id. PP.
For the Opposite Party No. 2	: Mr. Hironmay Ghosh, Mr. Amarnath Ghosh.
Heard on	: 11.07.2023
Judgment on	: 27.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being C-208 of 2018 under Sections 403/406/418/419/420/463/464/468/120B/34 of the Indian Penal

Code, pending before the Learned Additional Chief Judicial Magistrate, Sealdah, 24 Parganas (South).

2. The petitioner's case is that the Central Bank of India, is a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 having its Head Office at Chander Mukhi, Nariman Point, Mumbai- 400 021, and branch office inter alia at 1, Park Street, P.S.- Park Street, Kolkata 700 016, commonly known as "Park Street Branch".
3. The Complaint Case being C-208 of 2018 was filed by the complainant (i.e. the opposite party no. 2 herein) therein, alleging the commission of offence by the petitioner (in his official capacity) and other accused persons, punishable under Sections 403/406/418/419/420/463/464/468/120B/34 of the Indian Penal Code, before the Learned Additional Chief Judicial Magistrate at Sealdah, 24 Parganas (South). The petitioner (accused no. 4) was the Chief Manager at the relevant point of time.
4. The allegations in the complaint is that the joint owners of the disputed property entered into a development agreement with accused no. 3, one Sujan Kumar Roy Burman. An agreement for sale on 09.02.2006, in respect of Flat No. 101/A, 1st floor, was entered into with the complainant. Loan for the said sale was sanctioned by the **State Bank of India, Paikpara Branch**. Deed of conveyance was executed on 12.02.2008 and possession was handed over.
5. It is further stated that the complainant for the first time on 01.12.2016, when a person visited the said flat and claimed himself as

Receiver appointed in the proceedings being R.C. No. 120 of 2014 (arising out of O.A. No. 165 of 2010 between Central Bank of India ... Certificate Holder – vs- Animesh Mitra & Ors. Certificate Debtors) pending in the Debts Recovery Tribunal No. 1, Kolkata and pasted a notice on the outer wall of the said flat, came to know on enquiry that the Central Bank of India, Park Street Branch, Kolkata had initiated the above O.A. proceedings against the accused persons no. 1, 2 and 3 for recovery and/or realization of Rs. 18, 38, 875/- plus interest on the grounds that the said Central Bank of India sanctioned house building loan of Rs. 16,52,000/- to and in favour of the accused person no. 1 against the flat being no. A-1 on the first floor measuring about 1225 Sq. Ft. consisting of three bed rooms, one dining room/living/drawing room, one kitchen, two bath & privy and one verandah wherein the accused person no. 2 is/was the guarantor. The complainant states that the flat in question of the petitioner has been attached by an order dated 01.12.2016 passed by the learned Recovery Officer in R.C. No. 120 of 2014 for the wrong acts done by the accused persons and for them, the petitioner/complainant suffered a lot and has been suffering huge monetary loss and mental agony. **That the complainant being innocent has become victimized in the hands of the accused persons who have practiced fraud upon the Central Bank of India (of which the petitioner was the Chief Manager), Park Street Branch, Kolkata and for their such illegal, unethical, fraudulent activities, they should be penalized and punished.** Having no other alternative, the complainant lodged a written complaint against the accused persons

(which includes the petitioner in his official capacity) before the Sinthee Police Station on 09.04.2018 requesting to treat the complaint as FIR and to investigate but the Sinthee Police Station sat tight over the matter and as such the petitioner has been compelled to rush before this learned Court for issue of process against the accused persons.

6. A Receiver was appointed in a proceeding between the petitioner's Bank and accused no. 1, Animesh Mitra and others. A notice for recovery of the loan amount taken by accused nos. 1, 2 and 3 by way of mortgage of the said flat was served upon the complainant by the petitioner's Bank. Thus the present case has been initiated.

7. Mr. Debangana Bhattacharya, learned counsel for the petitioner has submitted that the dispute, apparent from the materials on record relates to, recovery of Rs.18,38,875/- (Rupees Eighteen Lakhs Thirty Eight Thousand Eight Hundred Seventy Five) only plus interest between the accused persons 1, 2 & 3 on one hand and the Bank officials being accused no. 4 & 5 on the other side. The petitioner's Bank claimed due payment from the opposite party no. 2 and **a receiver was duly appointed by the Debts Recovery Tribunal in O.A. No. 165 of 2010.** This clearly reflects a dispute which is purely civil in nature. In such circumstances, it is apparent that a purely civil transaction has been attempted to be transformed into a criminal proceeding in order to create pressure upon the petitioner to bow down to the illegal demands of the opposite party. In such circumstances, the proceeding impugned is liable to be quashed as the contents of the petition of complaint do not even

remotely surface the elements of the alleged offence under Sections 403/406/418/419/420/463/464/468/120B/34 of the Indian Penal Code, 1860.

8. That the learned Magistrate by holding that a prima facie case has been made out against the petitioner regarding commission of the offences punishable under Sections 403/406/418/419/420/463/464/468/120B/34 of the Indian Penal Code has reflected non-application of mind to the facts as disclosed in the complaint. In such circumstances, the order issuing process against the petitioner is bad in law and the proceedings initiated on the basis of such order, is liable to be quashed.
9. **Mr. Hironmay Ghosh, learned counsel for the opposite party no. 2** has submitted that the case should also be permitted to proceed against all the accused persons including the petitioner.
10. **Mr. Saswata Gopal Mukherjee, learned Public Prosecutor** is present.
11. **Admittedly, the petitioner is the Chief Manager of Central Bank of India, Park Street Branch, which granted the loan in favour of the accused no. 1 of which the accused no. 2 is the guarantor.**
12. **From the petition of complaint,** it is evident that the complainant's specific allegations are **against the accused nos. 1, 2 and 3** (not before this Court). **The petitioner's Bank has also proceeded against them (accused no. 1, 2 & 3) for recovery of the loan.** The petitioner's Bank has proceeded in accordance with law. It has also been stated by the

complainant that the said accuseds no. 1, 2 & 3 have practiced fraud upon the petitioner's Bank.

13. In *M. N. Ojha & Ors. vs Alok Kumar Srivastav & Anr., Criminal Appeal No. 1582 of 2009 (arising out of SLP (crl.) No. 1875 of 2008)*, on 21 August, 2009, the Supreme Court held:-

*“14. In our considered opinion, the learned SDJM set the criminal law in motion against the appellants without even examining the allegations and averments made in the complaint filed by the respondent-complainant. The learned SDJM took cognizance of the case without considering the allegations on merits. Had the learned SDJM perused the complaint properly he would have realized that the complainant himself had made a mention about the lodging of the FIR for criminal breach of trust and other offences against the respondent-complainant and others. Had he looked into the complaint properly, he would have certainly asked the complainant to furnish the copy of the said FIR. A copy of the legal notice issued on behalf of the respondent-complainant to the appellants was filed along with the complaint and a mention is made about it in the order passed by the learned SDJM. Had the learned SDJM perused the said legal notice, he would have realized that the complainant himself admitted about his execution of agreement of guarantee and other documents unconditionally agreeing to discharge the loan amount in case of failure of the principal borrower to pay the said amount to the bank. Had the learned SDJM applied his mind to the facts and circumstances and sequence of events and as well as the documents filed by the complainant himself along with the complaint, surely he would have dismissed the complaint. He would have realized that the complaint was only a counter blast to the FIR lodged by the Bank against the complainant and others with regard to same transaction. This Court in *Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors.* [(1998)5 SCC 749 held:*

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations

in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The case on hand is a classic illustration of non-application of mind by the learned Magistrate. The learned Magistrate did not scrutinize even the contents of the complaint, leave aside the material documents available on record. The learned Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants.

15. *The High Court committed a manifest error in disposing of the petition filed by the appellants under Section 482 of the Code without even adverting to the basic facts which were placed before it for its consideration. It is true that the court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot go into the truth or otherwise of the allegations and appreciate the evidence if any available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage/when the investigation/enquiry is pending. Interference by the High Court in exercise of its jurisdiction under Section 482 of Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair-minded and*

informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the Complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint. It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If such power is not conceded, it may even lead to injustice". [See: State of Karnataka Vs. L. Muniswamy (1977) 2 SCC 699]. We are conscious that inherent powers do not confer an arbitrary jurisdiction on the High Court to "act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases". [See: Kurukshetra University Vs. State of Haryana (1977) 4 SCC 451].

16. This is one case where the averments and allegations made in the complaint do not disclose the commission of any offence by the appellants or any one of them. They were merely discharging their duties to realize and recover the amounts due to the bank from the borrower as well as the guarantors. The complaint obviously has been filed as counter blast to the proceedings already initiated by the bank including the first information report lodged by the first appellant against the complainant and the borrower for the offences of cheating and misappropriation. Sequence of events undoubtedly suggests that the criminal proceedings have been maliciously instituted with an ulterior motive of wreaking vengeance on the appellants and with a view to spite them due to personal grudge. It was clearly intended to prevent the public servants from discharging their duties. The criminal law has been set in motion by the learned SDJM by mere asking to do so by the complainant. The High Court almost abdicated its duty in refusing to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure though the case on hand required its interference in order to prevent abuse of the process by a court subordinate to it. A

clear case is made out requiring our interference to secure the ends of justice.”

14. **The present case** has been against a Chief Manager of a Bank (in his official capacity) when a notice (as per RBI guidelines) was served upon the complainant for recovery of loan.
15. The offences alleged are under Sections 403/406/418/419/420/463/464/468/120B/34 of the Indian Penal Code. None of the ingredients required to constitute the said offences alleged are applicable in respect of **the petitioner, who has acted in accordance with law in his official capacity.**
16. If an Authorise Office of a bank/institution has to face criminal charges, for acting in accordance with law, then it is clearly an abuse of the process of law and such proceeding should not be allowed to continue in the interest of justice.
17. **The revisional application being CRR 376 of 2019 is accordingly allowed.**
18. The impugned proceedings being C-208 of 2018 under Sections 403/406/418/419/420/463/464/468/120B/34 of the Indian Penal Code, pending before the Learned Additional Chief Judicial Magistrate, Sealdah, 24 Parganas (South), is quashed, in respect of the petitioner, the then Chief Manager of the Central Bank of India, Park Street Branch.
19. The proceedings being C-208 of 2018 under Sections 403/406/418/419/420/463/464/468/120B/34 of the Indian Penal Code, pending before the Learned Additional Chief Judicial Magistrate,

Sealdah, 24 Parganas (South) shall proceed in accordance with law in respect of accuseds no. 1, 2 & 3.

- 20.** All connected applications, if any, stands disposed of.
- 21.** Interim order, if any, stands vacated.
- 22.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 23.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)