

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 997 of 2020

Imran Ahamad Ansari alias Md. Imran Ahmed & Anr.

Vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Dipanjan Datta,
Ms. Rituparna Saha,
Mr. Sayan Datta.

For the Opposite Party : Mr. Bitasok Banerjee.

Heard on : 01.05.2023

Judgment on : 07.06.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being C.R. Case No. 865 of 2019, under Sections 452/327/341/323/382/354/467/471/120B of the Indian Penal Code, presently pending before the Learned Judicial Magistrate, 2nd Court at Durgapur.
2. The petitioners' case is that a Partnership Firm under the name and style of M/s. J.B. Steel, having office at Village Kanksa Mollapara, Panagrah,

P.O. Panagarh Bazar, PIN – 713148 (hereinafter referred to as the “said Firm”), through its constituents, approached Bank of Baroda, a body corporate constituted under the Banking Companies (Acquisition and Transfer of undertaking) Act, 1970, having its head office at the Mandvi, Baroda and carrying on banking business amongst other places at its branch at Panagarh, Panagarh Bazar (rail par), opposite Agragami Club, Panagarh, P.S. Kanksa, Paschim Burdwan, West Bengal, PIN – 713 148 (hereinafter referred to as the “said Bank”) for financial assistance and upon execution of various documents, declaration and undertakings, the said Bank of Baroda had granted a Cash Credit facility in favour of the said M/s. J.B. Steel with a limit of Rs.20,00,000/- (Rupees Twenty Lac) only, by way of a Sanction Letter dated 30.05.2013.

3. That in order to secure the said credit facilities one Noor Hossain Sekh alias Sk. Noor Hossain, residing at Kanksa, Molla Para, Paschim Burdwan, PIN – 713148, stood as Guarantor to the said credit facilities obtained by the said Firm and had created a valid equitable mortgage of all that property lying and situated at Mollarparar, near Mohammadam Sporting Club at Plot No. 244, Khatian No. 170/HAL, Khatian No. 404, Mouza Debipur, P.S. Kanksa Sub-Division Durgapur, District Burdwan, PIN – 713148, having a total area of 04 decimals, in the name of Noor Hossain Sekh alias Sk. Noor Hossain.
4. Further in acknowledgment of the liability to pay the dues of the said Bank, the said Firm through its constituents executed several documents, declarations, undertakings, agreements, etc. including the letter of confirmation of mortgage on several dates thereby indicating

their acknowledgment and acceptance of the terms and conditions as will appear from various documents.

5. With passage of time, the said credit facilities were classified as Non-Performing Asset (NPA) on 30.06.2016 as the said Firm failed and/or neglected to pay the legitimate dues of the Bank.
6. Being left with no other alternative the Bank was constrained to initiate SARFAESI Act proceedings against the said Firm in respect of the secured assets, and in discharge of its statutory obligations under the SARFAESI Act initiated a notice under Section 13(2) of the SARFAESI Act on 31.05.2017 and a notice under Section 13(4) of SARFAESI Act on 13.12.2017 upon compliance of all relevant provisions as enshrined in the said SARFAESI Act. The said Firm through its Learned Advocate replied to the notice under Section 13(4) of the SARFAESI Act on 18.12.2017.
7. Being aggrieved by and dissatisfied with the SARFAESI action of the said Bank, the said firm through its constituents filed an application under Section 17 of the SARFAESI Act before the Learned DRT, Kolkata and the same is presently pending for adjudication.
8. Thereafter in order to take physical possession of the secured asset, the Bank filed an application before the Learned Additional District Magistrate, Paschim Burdwan under Section 14 of the SARFAESI Act which was duly disposed of on 19.09.2019 and duly communicated to Sub Divisional Magistrate at Durgapur on 26.09.2019 vide Memo No.289/RM/DM/XVI.

9. All of a sudden the petitioners received a bolt from the blue when they were served with the summons of the instant case where the complainant being the wife of the Guarantor, filed a false, fabricated criminal complaint against the instant petitioners.
10. The petitioners further put on record that the petitioners are no way connected with the allegations as alleged by the complainant, and specifically state that the petitioners never went to the premises of the complainant on the day, as alleged.
11. **Mr. Dipanjan Datta, learned counsel for the petitioners** has submitted that the learned Court erred in law and in fact by mechanically admitting the complaint case for trial, when prima facie consideration of the facts of the allegations appeared to be false and baseless.
12. The Learned Court ought to have considered that the officers of the bank never ever visited the subject property or premises of the complainant as alleged, as such the question of commission of the alleged offence does not arise at all.
13. The learned Court failed to appreciate the facts and events in its true sense of spirit and mechanically went on to issue notices against the petitioners.
14. The Learned Court failed to consider that the complainant by making these false allegations was ultimately trying to find ways and means only to delay the process of recovery of the lawful dues of the Bank and these sort of harrassive allegations are mere ploys of borrowers to try and avoid

repayment of loan by unnecessarily dragging the officers of Bank for no reasons.

15. The Learned Court ought to have considered that the primary duty of the officers of the bank is to administer their functions and official duties from their office premises only, unless otherwise required by law. The officers of the bank do not normally visit the premises of the borrower and particularly since such processes of recovery are assigned to Recovery Agents, in this case neither the officer of the bank nor the recovery agent went to visit the premises of the complainant on the alleged day and as such the complaint itself should be quashed being vexations, malicious, false, harassing and baseless.

16. It is submitted that the officers of the bank are amply protected and/or shielded for their acts done in good faith by the provisions of Section 32 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as such no complaint should lie against the petitioners and the impugned proceedings should be quashed being absolutely bad in law.

17. That in spite of the efforts of the petitioners and the State to effect service upon the opposite party no. 2, there is no representation on behalf of the opposite party no. 2.

18. **In the present case, the following facts are before this Court:-**

- (i) The Banks Possession Notice was issued on 13.12.2017 in respect of plot no. 244.
- (ii) Copies of photographs showing fixing of the said notice on the said plot has been annexed to the revisional application.

- (iii) Vide a letter dated 16.10.2019, the Borrower, Sk. Noor Hossain informed the SDM, Durgapur about the possession under SARFAESI Act, but alleged about forcible attempt to take possession of plot no. 246, not mortgaged with the bank. Whereas the order dated 17.09.2019 (earlier to the complaint) under Section 14 of the SARFAESI Act, was passed on the prayer of the bank for assistance to take possession. The SDM, Durgapur and Commissioner of Police were directed to provide assistance.
- (iv) The bank authorities which includes the petitioners vide letter dated 31.10.2019 informed the SDM, Durgapur that they would be taking possession of the mortgaged plot no.244 by appointing a **Registered Amin** to identify the said plot and also gave an undertaking that no coercive measures would be taken while taking possession.
- (v) **The present complaint case has been filed against the recovery agent and the bank officials by the borrower's wife on 01.11.2019 under Sections 452/327/382/354/467/471/120B of the Indian Penal Code.**
- (vi) Though the complainant has stated that the alleged incident also took place in presence of her daughter in law, **she has not been cited as a witness.** Process has been issued only on examination of the complainant.

19. **From the series of events narrated herein, it is evident that when the order to take possession under SARFAESI Act was passed on 17.09.2019, the borrower by a letter dated 16.10.2019 alleged forcible taking of possession by the petitioners of another plot no. 246 (not mortgaged). Taking note of the same the petitioners gave the undertaking vide letter dated 31.10.2019 and took the assistance of the SDM. In spite of that the present complaint was filed on the next date.**

20. It is stated that the petitioners took all precautions to take possession in accordance with law which they were duty bound to do in their official course of business. The complainant, who is the wife of borrower has now lodged this complaint.

21. **In the present case**, it is clear from the materials on record, that the ingredients required to constitute the offences alleged are totally absent. It is thus clearly an abuse of the process of law. **Public servants, if obstructed, in carrying out their official duty in accordance with law, by filing of such cases, then there shall be serious miscarriage of justice.**

22. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors.**, **2022 LiveLaw (SC) 993, Criminal Appeal No(s).....of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in Vineet Kumar and Others vs. State of Uttar

Pradesh and Another, (2017) 13 SCC 369 decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed 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. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to

appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 which is to the following effect :

'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :

“102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the

concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.***

23. **Herein the petitioners/persons implicated are officials of a nationalized bank** and their official recovery agent, who proceeded to take possession in accordance with law for default in payment of loan in course of their official duty and by maintaining all formalities.
24. Considering all these facts, ends of justice shall be met in quashing the proceedings under revision as there is, not even a prima facie case against the petitioners as alleged.
25. The revisional application **being CRR 997 of 2020 is accordingly allowed.**
26. The proceedings being C.R. Case No. 865 of 2019, under Sections 452/327/341/323/382/354/467/471/120B of the Indian Penal Code, presently pending before the Learned Judicial Magistrate, 2nd Court at Durgapur, is quashed.
27. No order as to costs.
28. All connected application, if any, stands disposed of.
29. Interim order, if any, stands vacated.
30. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

31. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)