06.12.2023
Serial no.4
Aloke
Ct. No. 30

CRR 1137 of 2020

Raman Kumar & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Rajdeep Mazumder
Mr. Moyukh Mukherjee
……… for the Petitioners

Mr. Ranabir Ray Chowdhury
Mr. Mainak Gupta
……………………. for the State

Mr. Somnath Adhikary
…….. for the Union of India Opposite Party No. 3

The revisional application is moved by the learned counsel for the petitioner in presence of the opposite party/Union of India including the State.

The present revisional application has been preferred praying for quashing of the proceeding being Hare Street Police Station Case No. 390 of 2019 dated 06.12.2019 under Sections 330/348/504/506/114 of the Indian Penal Code corresponding to G.R. Case No. 1630 of 2019, pending before the Court of the Learned Chief Metropolitan Magistrate, Calcutta.

The petitioner no. 1 is an Income Tax Officer (Investigation) posted in Kolkata. The petitioner no. 2 is the Deputy Director, Income Tax posted at Unit 3(2), Kolkata. The petitioner no. 3 is the Deputy Director, Income Tax posted at Unit 2(1), Mumbai. The petitioner no. 4 is the Deputy Director, Income Tax, posted at Unit 1(3), Mumbai. The petitioner no. 5 is an Income Tax Officer (Investigation) posted in Mumbai. The petitioner no. 6 is the Joint Director, Income Tax (Investigation) posted in Unit 6 Mumbai.

The opposite party no. 2 filed a written complaint on 06.12.2019 with the Hare Street Police Station which resulted in the registration of the present case wherein it was alleged that on 03.12.2019 at about 1 p.m., the opposite party no. 2 received a phone call from his staff. It was alleged that the petitioner no. 1 was on the other side of the said line, and asked the opposite party no. 2 to come to his office. It was further alleged that the opposite party no. 2 reached the said office at 3 p.m. It is stated that the opposite party no. 2 was informed that an Income Tax Survey was being carried on and that the petitioners were allegedly investigating their books of accounts all day. It was alleged that the opposite party no. 2 was under immense pressure due to the interrogation by the petitioners and the opposite party no. 2 was once again called the following day, and he was forced to accept "fake facts". It was also alleged that the informant was forcefully made to sit in an INNOVA Car by the petitioner no. 2 and was taken to the Income Tax Office. It was alleged that at the said office the informant was conjointly tortured and assaulted by the said officers, being the petitioners herein, and was forced to sign on a document. It was further alleged that on the said date after being released from the said office at about 10.30 p.m., the opposite party no. 2 went to SSKM Hospital.

It is submitted by the learned counsel for the petitioners that they were the authorized officers of the Income Tax Department who were a part of the said operation codenamed as 'PROJECT FALCON', to uncover a scam, which was causing immense financial loss to the country. During the course of inquiry into the said scam, the name of the opposite party No.2 transpired from the statements of the persons involved in the said scam as well as from the money trail. It is also pertinent to mention herein that a confessional statement made before an Income Tax Officer is admissible under law. Thus the course of inquiry revealed that the opposite party no.2 was an intrinsic part of the said scam and was one of the main accused persons in the said scam who was conducting his operations from his business premise situated at 6, Lyons Range, Kolkata, falling within the jurisdiction of Hare Street Police Station.

On 03.12.2019 the officers attached to the aforesaid operation also informed the Officer in Charge, Hare Street Police Station about the survey action under section 133A of the Income Tax Act which would be carried out at the said business premise of the Opposite Party No.2 to ensure the smooth conduct of the operation.

On reaching the said office, the petitioners herein, showed and read over the authorization for Survey under sub section 1 of section 133 A of the Income Tax Act to the Opposite Party No.2 and his accountant, namely, Tapan Kumar Dutta.

Furthermore, the petitioners also issued summons under section 131 of the Income Tax Act to the Opposite Party No.2 directing him to appear. The Opposite party no.2 on 04.12.2019, pursuant to such summons, accepted his role in the said scam as well as stated about the reversal trades arranged.

After completion of operation, a report was submitted by the officers attached to PROJECT FALCON, to the superior authorities, and appropriate legal proceedings have already been registered against the persons involved including the Opposite Party no.2, whose acts have resulted in such immense financial loss to the country.

It is further submitted that post the said operation, the Commissioner of Income Tax, being the official spokesperson of Central Board of Direct Taxes (CBDT), made a press release on 07.12.2019, informing the public at large about the unraveling of such major scam by the officers of the Income Tax Department, and that the action of the officers has led to the identification of a number of benefactors of such illegal operation who were being proceeded against as per law.

It is thus submitted that the allegations as leveled in the complaint are wholly baseless and have no factual foundation whatsoever.

At this stage a report is filed by the learned counsel for the State which has been submitted by the Sub-

Inspector of Police, Anti-Fraud Section, Detective Department, Lalbazar.

It appears that on completion of the investigation, the present case has ended in a final report submitted on 02.12.2023 being Hare Street Police Station final report No. 147/2023 dated 01.12.2023 declaring the case as mistake of fact.

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."***

In the present case the offences alleged are under Sections 330/348/504/506/114 of the Indian Penal Code. None of the ingredients required to constitute the said offences alleged are applicable in respect of **the petitioners, who have all acted in accordance with law in their official capacity and thus the case resulted in a final report (mistake of fact)**.

But if an Authorised Office of a government/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. **Interest of justice requires that prosecuting agencies have to be more diligent in cases of such nature. In the present case, it is most unfortunate that the officers had to face investigation for five long years for acting in course of their official duty.**

In view of the said facts, the revisional application being **CRR 1137 of 2020 is accordingly disposed of.**

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Copy of this order be sent to the learned Trial Court for necessary compliance.

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

(Shampa Dutt (Paul), J.)