

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2385 of 2019

Sri Arup Kumar Bhowmick

Vs.

**Central Bureau of Investigation, Anti
Corruption Branch, & Anr.**

For the Petitioner : Mr. Ayan Bhattacharjee,
Mr. Santanu Talukdar,
Mr. Aditya Ratan Tiwari,
Mr. Suman Majumder.

For the CBI : Mr. Kallol Mondal,
Mr. Amajit De,
Mr. Jasojeet Mukherjee.

Heard on : 12.07.2023

Judgment on : 02.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 22.04.2019 passed by the learned Judge, CBI Court No.4, Bichar Bhawan, Calcutta in Special Case No.2 of 2015 thereby rejecting the application of the petitioner praying for discharge from the case.

2. The petitioner's case is that CBI ACB Kolkata registered a FIR bearing no.RC0102013A0020(RC:20(A)/2013-Kol dated 29.06.2013 on the basis of a

letter of complaint dated 29.06.2013 by Sri Pinaki Mukhopadhyay, the Regional Manager, Reg-II, R.B.O. Chinsurah, State Bank of India alleging commission of offences under Section 120B, 420, 468, 471 Indian Penal Code and Section 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988 against (i) Mritunjay Bhar Regional Manager of Region-I, Regional Business Office, SBI, Howrah (ii) Arindam Bhattacharyya, the then Branch Manager, SBI, Pandua, Agricultural Development Branch, Pandua, (iii) Tridib Mondal, the then Field Officer, SBI, Agricultural Development Branch, Pandua, (iv) Arup Kumar Bhowmick, Director, M/s. Lokenath Multipurpose Himghar Pvt. Ltd.; Singur, Hooghly and (v) Smt. Gopa Bhowmick, Director M/s. Lokenath Multipurpose Himghar Pvt. Ltd.; Singur, Hooghly. It was alleged that the accused persons in criminal conspiracy got 119 fictitious PML (Produce Marketing Loans) amounting to Rs.10.71 crores released from the SBI Branch, Pandua during the period January, 2011 to May 2011 with the intention to cheat the Bank and cause wrongful gain to themselves.

3. After investigation, charge sheet has been filed before the trial court against 10 accused persons including the petitioner, Arup Kumar Bhowmick cited as accused no.4 and alleging commission of offences under Section 120B read with 420, 409, 467, 468, 471 of the Indian Penal Code and section 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988 and substantive offences under Section 420, 471, 201 of the Indian Penal Code.

4. A supplementary charge sheet was filed by the prosecution enclosing the opinion of CFSL, Kolkata.

5. The petitioner as the Director of Lokenath Multipurpose Himghar Pvt. Ltd. has stood as the corporate guarantor for all the 119 Produce Marketing Loans released from the SBI Branch, Pandua during the period January, 2011 to May, 2011.

6. The petitioner had filed a petition on 29.08.2018 as per provisions of Section 239 Code of Criminal Procedure seeking discharge from the case as he had repaid the entire loan amount for which he had stood as the Guarantor prior to lodging of the First Information Report.

7. The Prosecution vide its petition dated 24.10.2018 opposed the prayer of the petition seeking discharge and the prayer was rejected on 22.04.2019.

8. The FIR in the instant case was registered on 29.06.2013 and the letter of complaint on the basis of which the FIR was registered, does not quantify the wrongful pecuniary loss suffered by the Bank. It is stated in the charge sheet itself that the corporate guarantor repaid the entire loan amount in the account of all the 119 Produce Marketing Loanees by paying Rs.13,52,11,994 towards the principal amount of Rs.10.71 crores along with interest charged in the accounts between the period 07.12.2011 to 13.03.2013. Thus, the Bank had collected the entire loan amount along with applicable interest by 13.03.2013 and on the date (29.06.2013) of registration of this case the loan amount had been already nullified in the books of the Bank and thus there was no dues.

9. The Bank had also issued a certificate to the petitioner vide its letter No.CM/BR/13-14/140 dated 31.10.2013 that all advances made to the borrowers under PML (Produce Marketing Loans) against corporate

guarantee of Lokenath Multipurpose Himghar Pvt. Ltd.(the petitioner is the Director of the Company) had been liquidated.

10. It is further submitted that the moot point in the charge sheet is that by alleged fraudulent means the Bank had suffered pecuniary loss. But in the instant case when the loan amount of Rs.10.71 crores has been collected by the Bank with penal interest and an amount of Rs.13.52 crores had been received much before the lodging of the FIR, the question of any pecuniary sufferance does not arise. The Bank had not only collected the money lent out along with penal interest from the corporate guarantor but also issued a “no due certificate” to the petitioner. The issuance of such a certificate dated 31.10.2013 indicates that the bank has no grievance against the loanes/corporate guarantor.

11. The petitioner states and submits that once the Bank had received and accepted the loan amount along with penal interest of Rs.13.52 crores the allegations leveled under Section 420 of the Penal Code fails, and the allegations under the other sections automatically fail.

12. The learned Trial Judge after hearing both sides rejected the prayer of the petitioner for discharge vide its order dated 22.04.2019.

13. Mr. Ayan Bhattacharjee, learned counsel for the petitioner has submitted that the learned court contends that it is not empowered to grant discharge to a petitioner even if the circumstances of the case so warrants, as this court does not enjoy any inherent powers like the High Courts.

14. Mr. Bhattacharya further submits that several sections of forgery has been added to the allegations made against the petitioner but not a single of any such forgery is detailed in the charge sheet. There is no instance where

the petitioner appeared before the Bank and submitted any fake papers/documents.

15. That the cases being of civil nature and when there is a settlement between the Bank and the parties, the primary allegation of cheating is negated and when the allegation of cheating goes, the other allegations of forgery appended to it dies a natural death.

16. That the learned trial court seems to suffer from the notion that when there are sections that are non compoundable along with the compoundable sections the learned court cannot give any relief while exercising its powers under Section 239 Code of Criminal Procedure. In the instant case where the moot issue is the wrongful loss of the Bank but even before the registration of the case the outstanding have been paid and 'No Due Certificate' issued by the Bank, the trial court had every reason to put an end to the instant proceedings.

17. That the learned Judge erred in not taking into consideration the 'No Due Certificate' dated 31.10.2013 submitted much before the filing of the charge sheet.

18. That the learned Judge failed to comprehend that the instant case is one of civil nature and once a settlement has been reached by the parties and payment made and accepted, continuation of the criminal proceedings is a futile exercise.

19. The learned Judge failed to take into note that the Apex Court in several of its reported judgments held once a compromise settlement is reached between the borrower and the lender and the amount paid off, continuation of the criminal proceedings will be an abuse of process.

20. The learned Judge failed to hold the view that the relation between the borrowers and the Bank is one of commercial relationship and once the pecuniary outstanding are squared off it is futile to linger in the matter.

21. The learned Judge failed to take into consideration that there was no fake papers/documents produced before the Bank by the petitioner.

22. The learned Judge has failed to take into account that the offence of forgery cannot lie against a person who has not created or signed the documents (reference judgment reported in **2018(2) Crimes 449(SC) Sheila Sebastian versus R. Jawaharraj & Anr. M/s. Bengal Orchid Infrarealty Pvt. Ltd).**

23. That the impugned order is otherwise bad in law and is liable to be set aside and the petitioner to be discharged.

24. Mr. Bhattacharya has relied upon the following judgments:-

i. Nikhil Merchant vs. Central Bureau of Investigation & Anr. reported in (2008) 9 SCC 677, wherein:-

The court considered quashing of non compoundable offences under Article 142.

ii. Gian Singh vs. State of Punjab & Anr. reported in (2012) 10 SCC 303, wherein:-

The Court held that while exercising inherent powers should keep in mind the social impact of crime, including offences under prevention of corruption act committed by public servants even when compromised.

iii. Central Bureau of Investigation, ACB, Mumbai vs. Narendra Lal Jain & Ors. reported in (2014) 5 SCC 364.

In the case under reference, it is the Bank who had initiated the recovery process. In the present case, the Bank authorities are also accuseds.

iv. Central Bureau of Investigation vs. Sadhu Ram Singla & Ors. reported in (2017) 5 SCC 350.

v. Anita Maria Dias & Anr. vs. State of Maharashtra & Anr. reported in (2018) 3 SCC 290.

Matter was settled by the Bank.

vi. M/s. Nik Nish Retail Ltd. & Ors. vs. CBI & Anr. passed in CRR 1682 of 2018.

vii. Central Bureau of Investigation, New Delhi vs. B. B. Agarwal & Ors. reported in (2019) 15 SCC 522.

The court held charge of forgery can be imposed only on the maker.

25. Mr. Kallol Mondal, learned counsel for the CBI has submitted that even if the petitioner has repaid the loan amount along with interest, there has been no amicable settlement in this case. The offence in this case is serious and is one with a huge social impact. **Bank officials with whom the transaction of the petitioner took place, are also accuseds in this case for offences under the Indian Penal Code and also Prevention of Corruption Act.**

26. Mr. Mondal has relied upon the following judgments:-

a) Sushil Suri vs. Central Bureau of Investigation & Anr. reported in (2011) 5 SCC 708.

b) State of Maharashtra vs. Vikram Anantrai Doshi & Ors. reported in (2014) 15 SCC 29.

c) Satya Narayan Sharma vs. State of Rajasthan reported in (2001) 8 SCC 607.

d) Central Bureau of Investigation vs. A. Ravishankar Prasad & Ors. reported in (2009) 6 SCC 351.

27. From the materials on record and the case diary, it is on record:-

- 1) That the petitioner has repaid the loan with interest prior to filing of this case on 29.06.2013.
- 2) The investigation report is with the findings, in respect of the petitioner as follows:-

(i) taking Produce Marketing Loan without following the provisions of law,

(ii) operating without licence,

(iii) submitting fake PML applications,

(iv) fake KYC documents,

(v) signatures and photographs without knowledge of the persons whose identification was used,

(vi) lower rate/amount of interest and insurance,

(vii) wrongful pecuniary advantage,

(viii) incentive to the Bank Officials.

28. All these materials on record/case diary prima facie show that there are sufficient materials on record, to show the presence of the ingredients required to constitute the offence alleged against the petitioner and for the case to proceed towards trial.

29. Thus to exercise the inherent powers of this court in this case would be an abuse of process of law/court, even though the loan amount has been repaid in a business transaction prior to FIR. **It is the transaction that has been alleged to be prima facie unlawful, which makes the proceedings in accordance with law as there are sufficient materials on record.**

30. Accordingly, the order dated 22.04.2019 passed by the learned Judge, CBI Court No.4, Bichar Bhawan, Calcutta in Special Case No.2 of 2015 being in accordance with law **is affirmed.**

31. The revisional application being CRR 2385 of 2019 is dismissed.

32. All connected applications stand disposed of.

33. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)