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MAT 1279 of 2019

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IA No. CAN 1 of 2019 (Old No.: CAN 9514 of 2019)

Konnagar Samabaya Bank Ltd. & Another
- Versus –
State of West Bengal & ors.

Mr. Milan Chandra Bhattacharya,
Ms. Sulagna Bhattacharya
….for the Appellants.
Mr. Amitesh Banerjee,
Mr. Biswabrata Basu Mallick,
Mr. Sayan Ganguly
…for the State.
Mr. Deepnath Roy Choudhury,
Mr. Sounak Banerjee,
Mr. Asis Dutta
…for the Respondent nos. 3 & 4.
Mr. S. Chakraborty,
Mr. S. Bhattacharjee,
…for the Respondent nos.5 & 6.

The present appeal has been preferred challenging an order dated 31st July, 2019 passed in a writ petition being WP 11143 (W) of 2018.

The appellants' case is that on 24th March, 2017 a current account of the appellant no.1 with the respondent no.3 was debited with Rs.60,00,057/- for effecting a fund transfer by RTGS in the account of one Md. Gulzar, maintained in ICICI Bank, Chandausi (U.P) Branch. Such fact was first intimated to the appellant no.1 on 31st March, 2017 over telephone by a person claiming to be an official of the respondent no.3. On the said date, the credit balance in the account of the appellant no.1 was

Rs.38,41,213/-. Surprisingly, the respondent no.3 allowed an overdraft of Rs.21,58,843/- and thereafter, a total amount of Rs.60,00,057/- was debited from the account of the appellant no.1. Stating that a fraud must have been perpetrated, the appellants sent an *e-mail* to the respondent no.3. In reply, the respondent no.3 intimated that on the basis of an *e*-mail advice with a scanned copy of a letter dated 24th March, 2017 bearing the signatures of two officials of the appellant no.1, fund transfer was effected. Thereafter the appellant no.2 lodged a complaint before the Officer-in-Charge, Uttarpara Police Station which was registered as Uttarpara Police Station case no.287 of 2017 dated 1st April, 2017 under Sections 418/420/409/120B of the Indian Penal Code. Upon being intimated about such misappropriation of public money, the respondent no.2 appointed a Joint Registrar to conduct an enquiry. Stating such facts the appellants preferred a writ petition primarily praying for issuance of necessary direction upon the respondent no.3 to reverse the entire transaction by which Rs.60,00,057/- was debited from the current account of the appellant no.1 bearing no. 29312034103 on 24th March, 2017.

The writ petition was heard finally after exchange of affidavits and by the order dated 31st July, 2019 the same was dismissed for non-joinder of necessary party observing *inter alia* that it would have been only natural for the appellants to have applied for knowledge of the particulars of one Md. Gulzar. However, liberty was granted to the writ appellants to file a fresh writ petition on the self-same cause of action '*after including Mr. Md. Gulzar as a party or annexing documents showing that the respondent no.5 was approached for the communication of the address of said Md. Gulzar, but that the same was not acceded to by the respondent no.5'.*

Mr. Bhattacharya, learned senior advocate appearing for the appellants argues that the respondent no.5, being the ICICI Bank Ltd. was not the banker of the appellant no.1 and there was no cause of action against Md. Gulzar, who was having an account in the said bank. The respondent no.3 illegally debited the current account maintained by the appellant no.1 with Rs.60,00,057/- and transferred the same by RTGS to the account of Md. Gulzar after allowing an overdraft of Rs.21,58,843/-. Such action of the respondent no.3 gave rise to the cause of action towards preference of the writ petition. In view thereof, the writ petition ought not to have been dismissed for non-joinder of Md. Gulzar.

He contends that on 24th March, 2017 the credit balance in the account of the appellant no.1 was Rs.38,41,213/-. The said account was not having any overdraft facility. Though no instruction was furnished by the appellants, the respondent no.3 allowed an overdraft and transferred a total amount of Rs.60,00,057/- to the account of Md. Gulzar. The respondent no.3 is, thus, answerable for such fund transfer and as such, the learned Judge ought to have directed the respondent no.3 to reverse such transaction and return the fund to the account of the appellant no.1.

Drawing our attention to the documents annexed at pages 86-89 of the stay application, Mr. Bhattacharya submits that the respondent no.3 was of the opinion that its own officials were responsible towards such fraudulent fund transfer and for such acts of its officers, the appellant no.1 cannot be made to suffer. The Reserve Bank of India's guidelines for all Scheduled Commercial Banks and all Small Finance Banks, annexed at page 103 of the stay application, also provides that it is incumbent upon the respondent no.3 to reverse the erroneous debits arising from fraudulent transactions and that in case of contributory fraud on the part of the bank, the customer's entitlement to zero liability shall arise.

According to Mr. Bhattacharya, the police authorities were also silent spectators to the entire episode and have not properly investigated the contemporaneous complaint lodged by the appellant no.2 and have not taken any steps to recover the amount debited from the account of the appellant no.1.

Per contra, Mr. Roy Choudhury, learned advocate appearing for the respondent nos.3 and 4 submits that on 24th March, 2017 in the official *e-mail id* of the respondent no.3 two *e-mails* from the official *e-mail id* of the appellant no.1 were received along with an attachment of a requisition letter dated 24th March, 2017 in the official letter head of the appellant no.1 bearing the signatures of its Secretary and Vice-Chairman requesting the respondent no.3 to transfer the amount of Rs.60,00,057/- to the account of one Md. Gulzar.

He contends that it is the general practice of the respondent no.3 to allow overdraft on several occasions to the Central Co-operative Banks and Urban Co-operative Banks even if there is no existing overdraft agreement between the banks as all are under the co-operative fold and having long banking relations with each other.

Mr. Chakraborty, learned advocate appearing for the respondent nos.5 and 6 submits that the said respondents have no nexus with the dispute which is primarily between the appellants and the respondent nos.3 and 4 and that they have extended all cooperation to the investigating officer and have furnished all necessary records.

Records reveal that on the prayer of the appellant no.1, the respondent no.2 also initiated an enquiry and an enquiry report was filed on 18th March, 2017. In the midst thereof, show-cause notices were issued by the respondent no.3 to some of its officials and that they were also transferred. In the said enquiry report it has *inter alia* been observed that *'Origin of the alleged fraud lies in wrongful use of the email ID of the Konnagar Samabay Bank Ltd. whose password was being shared by the three officers of the Konnagar Samabay Bank Ltd. Primarily for this reason, it is required to be investigated by some cyber crime experts. Tracing the IP address of the email used for the said foul purpose and involving the Chandausi Branch of ICICI Bank Ltd. in the process of investigation may be of some help. Kolkata Main Branch of the West Bengal State Co-operative Bank Ltd. dealt with the case in a casual and unprofessional manner'*.

On 8th September, 2022, upon hearing the learned advocates and considering the materials on record, we arrived at a *prima facie* finding that there was a collective failure on the part of the officials of both the banks. There are elements of deep rooted conspiracy and criminal breach of trust and such elements are not solely restricted to Md. Gulzar and as such, the writ petition ought not to have been dismissed for not impleading Md. Gulzar. However, we were not satisfied with the investigation conducted by the Uttarpara Police Station Case no.287 of 2017 and accordingly, we constituted a Special Investigation Team (in short, SIT) to be headed by the DIG (CID) (Special) and directed the said team to conduct a thorough investigation.

Mr. Banerjee, learned senior Standing Counsel, appears on behalf of the State authorities and files the reports, as called for from SIT. He submits that the concerned officers made a sincere endeavour and could ultimately arrest Md. Gulzar on 17th March, 2023. He apprises us that three other persons, namely, Nazim Hasan, Sarik Hasan and Mehmood are also directly involved in the alleged offence. Nazim Hasan had also been arrested and investigation is still continuing. Let the report, as filed today, be kept on record.

From the enquiry report of the respondent no.2 and the reports filed by SIT it appears that an *e-mail* from the official mail *id* of the appellant no.1 was received by the respondent no.3 at its mail *id* containing a scanned copy of a letter signed by the Secretary and the Vice-Chairman of the appellant no.1. Upon receipt of the said mail the Manager of the respondent no.3 took out a print copy of the mandate letter and marked it to an officer of the Current Department, who in turn passed on the same to a Single Window Operator – B (Maker). It further appears that three officials of the appellant no.1, namely, Mr. Somnath Mukherjee, Mr. Susanta Kumar Pal and Mr. Sanjay Majumder were authorised to access and use the mail *id* of the appellant no.1. Thus the involvement of the officials of the appellant no.1 and the officials of the respondent no.3 in the offence cannot be ruled out at this stage since investigation is still continuing in Uttarpara Police Station case no.287 of 2017.

In view thereof, in this jurisdiction, we are unable to accede to the prayer of the appellants for issuance of direction upon the respondent no.3 for refund of the alleged amount of Rs.60,00,057/- to the account of the appellant no.1.

This Court also cannot convert itself into a monitoring agency and indefinitely supervise the investigation as initiated.

For the reasons discussed above, no further interference is called for in the present appeal.

The writ petition, the appeal and the connected application are, accordingly, disposed of.

Needless to observe, SIT shall take all necessary steps to produce the persons involved for facing trial and to bring the investigation to its logical conclusion, as expeditiously as possible.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)