

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 4214 of 2017

Chirag Hasmukh Khatri & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners

:Mr. Prabhat Kumar, Adv.

Ms. B Khatun, Adv.

For the State

:Mr. Ranbir Roy Choudhury, Adv.

Mr. Mainak Gupta, adv.

Heard on

:26.06.2023,26.07.2023,

18.08.2023,12.09.2023

Judgment on

: 22nd September, 2023

Bibhas Ranjan De, J.

1. Challenge is the proceeding in respect of G.R. No. 376 of 2017 arising out of Bidhannagar (North) Police Station Case No. 89 of 2017 dated 08.05.2017 under Sections 387/506/34 of the Indian Penal Code, 1860 pending before the Ld. Additional Chief Judicial Magistrate, Bidhannagar (North) 24 Parganas.
2. The instant revisional application has been filed with a prayer for quashment of the proceeding mentioned above.
3. The aforesaid proceeding was initiated at the instance of opposite party no. 2, Subhas Kumar Sharma, by lodging a written complaint before the Inspector in-charge Bidhannagar (North) Police Station, Sector I, Salt Lake City, Kolkata-700064 alleging *inter alia* that on 30.03.2017 at about 12.15 p.m. petitioner Mr. Chirag Khatri entered into his house along with his associate on the plea of visiting opposite party no. 2 who had undergone a surgery. Though security personnel allowed them to enter into the house but wife of the opposite party no. 2 did not allow them to meet opposite party no. 2. Petitioner

did not pay any heed to the request of wife of opposite party no. 2 and she was threatened with severe consequences and forcefully barged into the bedroom of opposite party no. 2. Petitioner introduced his associate with opposite party no. 2. Petitioner demanded payment of Rs. 50,00,000/- with the assurance of withdrawal of all pending litigation against the company of opposite party no. 2. Petitioner also threatened with dire consequences if the opposite party no. 2 did not fulfill the above stated unlawful demand within next 2 months. Thereafter, opposite party no. 2 asked both the petitioners and his associate to leave his house or else he would call the police and accordingly they left the house. From then on he found the associate of petitioner roaming around his house and they were planning something dangerous. His daughter-in-law was also intimidated by one unknown person regarding payment of Rs. 50,00,000/- otherwise his grandson will have to face consequences.

4. On receipt of that complaint 08.05.2017 at 21.15 hours Bidhannagar (North)Police Station Case No. 89 of 2017 dated

08.05.2017 under Section 387,506,34 Indian Penal Code was started.

5. Ld. Advocate, Mr. Prabhat Kumar, appearing on behalf of the petitioner has submitted that all allegations made in the FIR is absolutely false or fabricated just to avoid payment of loan of Rs. 20 crores which was borrowed from M/s. India Factoring and Financial Solutions Pvt. Ltd. (for short NBFC) registered office at Unit no. 201, 2nd Floor, Vibgyor Tower, Plot no- C-62 near City Bank, Bandra-Kurla Complex, and the petitioner is Assistant Vice President (Debt Department) of the said NBFC. Upon considering the application submitted by the opposite party no. 2, NBFC sanctioned a term loan for 10 crores each in the name of his (opposite party no. 2) Companies namely M/s. Prity Tubes Pvt. Ltd. and M/s. E-Zones Stripes Pvt. Ltd. total amounting to Rs. 20 crores against the factored invoices and some property which were mortgages. Invoices were later found to be fake and fabricated. After availing the total loan amount opposite party no. 2 started defaulting on the repayment of the said loan amount and requested for settlement. Even NBFC interfered into a settlement agreement.

Accordingly, opposite party no. 2 was to pay a sum of Rs. 11, 36,82,096/- in 84 installments in case of M/s. E-Zones Stripes Pvt. Ltd. and a sum of Rs. 11,28,18,183/- was to be paid in 84 installments in the case of M/s. Prity Tubes Pvt. Ltd.

- 6.** OPW 2 did not honour the terms of settlement and made a random payment of Rs. 1, 17,00,000/- only for M/s. E-Zones Stripes Pvt. Ltd. and an amount of Rs. 65,00,000/- for M/s. Prity Tubes Pvt. Ltd against total outstanding due of Rs. 11,36,76, 096/- and Rs. 11,28,18,183/- respectively.
- 7.** Petitioner met opposite party no. 2 several times and they discussed on the settlement proposal. During talk opposite party no. 2 once informed petitioner from Calcutta that he had undergone some surgery and is on bed rest. Opposite party no. 2 requested the petitioner to visit him at his residence to settle the account. Accordingly, along with his associate the petitioner visited him and had a talk in very cordial atmosphere over a cup of tea.
- 8.** It is alleged that the filing of FIR was a pre-planned conspiracy to pressurize the company by implicating its employee to bring

to a settlement amount of his choice. However, the said account became irregular and classified as Non-Performing Asset (for short NPA). Opposite party no. 2 and his family member forged the invoices against which the loans were disbursed and that is why the case of forgery and cheating was filed before economic offences wing, Mumbai Police against directors of E-Zones Stripes Pvt. Ltd. and M/s. Prity Tubes Pvt. Ltd. i.e. Subhas kumar Sharma (opposite party 2 of this case) Mr. Pratik Sharma, Mrs. Krishna Devi Sharma and Ms. Prity Sharma (Directors of the Company).

9. No one appeared on behalf of the opposite party no. 2 in spite of receiving notice through Public Prosecutor, High Court Calcutta.

10. Ld. Advocate, Mr. Ranbir Roy Choudhury, appearing on behalf of the State has produced the case diary and submitted that there was fiduciary relation between the parties and opposite party no. 2 who took loan of Rs. 20 corers on behalf of M/s. Prity Tubes Pvt. Ltd. and M/s. E-Zones Stripes Pvt. Ltd. Mr. Chowdhury has submitted the case wherefrom it is seen that during investigation statement of family member of

opposite party no. 2 were recorded under Section 166 of Code of Criminal Procedure along with PA and Accountant of opposite party no.2, all of them stated about demand of Rs. 50,00,000/- and threat. That apart, during investigation a complaint addressed to the economic offences wing of Mumbai as per direction of RBI got revealed that cheques deposited on behalf of M/s. E-Zones Stripes Pvt. Ltd were dishonored and returned. During investigation all the documents relating to loan of Rs. 20 Corers in favour of companies of opposite party no. 2 sanctioned by NBFC have been collected which, at least support the sanction of loan in favour of companies of opposite party no. 2. All documents collected during investigation *prima facie* show that loan sanctioned in favour of opposite party no. 2 was not repaid and classified as NPA.

- 11.** In the aforesaid background if I come to the written complaint, I find that petitioner and his associate coming from Mumbai entered into the house of opposite party no. 2 where security personnel were posted at the gate along with CCTV surveillance. It is absurd to believe that an assistant vice president (debt department) of a finance company came to the

residence of opposite party no. 2 at Calcutta and made illegal demand of Rs. 50,00,000/- and also threatened with dire consequences.

12. In the aforesaid view of the matter the claim of false implication to avoid repayment of huge amount of loan cannot be ruled out.

13. Therefore, such absurdity and malice in the complaint inspires this Court to exercise jurisdiction under Section 482 of the Code of Criminal Procedure for quashing the proceeding.

14. Thus, the proceeding in respect of G.R. No. 376 of 2017 arising out of Bidhannagar (North) Police Station Case No. 89 of 2017 dated 08.05.2017 under Sections 387/506/34 of the Indian Penal Code, 1860 pending before the Ld. Additional Chief Judicial Magistrate, Bidhannagar (North) 24 Parganas stands quashed.

15. The revision application being no. 4214 of 2017 stands allowed.

16. Interim order, if there be any, stands vacated and all interim application, if pending, stand disposed of.

17. Case diary be returned.

- 18.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 19.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]