

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 134 of 2023
CRAN 2 of 2023

AMIT BHOJNAGARWALA & ANR.
VS.
STATE OF WEST BENGAL

For the Petitioners	: Mr. Debasish Roy, Sr. Adv. Mr. Sabyasachi Banerjee, Adv. Mr. Abrojyoti Das, Adv. Ms. M. Palan, Adv. Mr. Rahul Poddar, Adv. Mr. Rajdeep Das, Adv. Ms. Pratyasha D. Chowdhury, Adv.
For the State	: Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Nilay Chakraborty, Adv. Mr. Ujjal Luksom, Adv. Mr. Arjun Chowdhury, Adv.
For the respondent nos. 1 & 2	: Mr. Sourav Ganguly, Adv. Mr. Bikramaditya Ghosh, Adv. Ms. Supriya Singh, Adv. Mr. Gopal Roy, Adv.
Hearing concluded on	: 6 th September, 2023
Judgement on	: 8 th September, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Code of Criminal Procedure is filed by the petitioners seeking quashment of the proceeding of G.R. Case No. 561 of 2020 corresponding to Alipurduar Case No. 116 of 2020 dated 7th March, 2022 under Section

380/420/406/467/468/471/477A/120B/34 of the Indian Penal Code.

2. Briefly stated, Sri Sanjoy Pramanik, Manager (Garden) Patkapara Tea Estate of Dooars Plantation and Industrial Limited, Alipurduar informed the Inspector-in-charge of Alipurduar in writing that the accused persons Shayma Prasad Agarwal, Naresh Agarwal and Piyush Agarwal were the erstwhile Directors and in active control over the management of Dooars and Plantation and Industries Limited (hereinafter referred as 'DPIL'). They owned tea gardens under the name and style "Patkapara Tea Estate". The other accused persons namely Manju Agarwal, Vinay Agarwal, Anushree Agarwal, Vrinda Agarwal, Pankaj Bhognagarwala and Amit Bhognagarwala are their relatives and family members. The accused persons were in-charge of day to day running of the said company till the month of January 20, 2017.
3. It is alleged that the company DPIL was holding an amount of Rs. 45,35,652/- as cash in hand as on 31st March, 2017. The said amount was reflected in the Books of accounts of the company. The accused persons have withdrawn a sum of Rs. 27,08,475/- from the said account but the accused persons neither repaid nor accounted for the amount to the company. This issue was highlighted in the annual and accounts report of 2017 and 2018 but the accused persons did not care to take appropriate action.
4. Enquiry further revealed that the accused persons hatched a conspiracy and cheated the company by creating fake creditors with

false identities and by incorporating sham transactions in the books of accounts of the company, they gained wrongfully and the company was made to suffer wrongful loss. It is further alleged that from the scrutiny of the audit report it was found that DPIL had removed illegally from the store, the materials of the company without any authorization and thereby committed offence of theft. It is further informed that the amount of money as well as stock that was misappropriated by the accused persons and siphoned by forging the records of the company and by creating fake and sham transactions, the accused persons made the company suffer loss to the tune of Rs. 4,94,04,496/-.

5. On the basis of such information Alipurduar Police Station Case No. 116 was registered on 7th March, 2020. Police took up investigation. The petition under consideration is filed to quash the instant proceeding, set into motion by the informant.
6. Heard Mr. Debasish Roy, learned Senior Counsel ably assisted by Mr. Sabyasachi Banerjee, learned Counsel for the Petitioners.
7. It is submitted by Mr. Roy, learned Senior Counsel that this criminal proceeding has been set into motion, in suppression of material facts with malafide intention to harass the petitioners. The informant did not disclose all the relevant facts with an oblique purpose. After entering into an agreement on 31st December, 2013 Roshanlal Agarwal took the control of the company. Roshanlal Agarwal and two of his nominees Deepak Bansal and Vivek Bansal were inducted as directors of the said company. To substantiate his

claim Mr. Roy makes the Court go through Form No. INC-22, annexure-P3. It is further contended that on 28th July, 2018 a letter was given to Shayma Prasad Agarwal, Naresh Agarwal and Pijush Agarwal on 28th July, 2018 and 28th September, 2018 stating, *inter alia*, that pursuant to the agreement Mr. Roshanlal Agarwal were to hold 50% of share while Mr. Shayama Prasad Agarwal and others were to hold 50% of shares and the parties to the agreement resolved to share the profit and loss in that ratio. Those three persons were requested to contribute their portion of loss and investment. As the same was not adhered to Money Suit No. 4 of 2019 was filed before the competent Civil Court, Alipore which was subsequently transferred to the Commercial Court. In the said Civil proceeding Roshanlal Agarwal and others filed a petition under Order 39 Rule 1 and 2 of the Code of Civil Procedure which was not allowed. Attention of the Court is drawn to paragraph 7 and 8 of the said order.

8. It is further adverted that the movement of stocks at the garden level could be done only with the sanction of authorized person and such authorized person was the de-facto complainant. The attention of the Court is drawn to one such indent issued by the Manager on 30th April, 2017 for the season 2017-18.
9. Mr. Roy further draws the attention the Court to Master Data P.W. 6 to show that apart from the petitioner no. 1, 3 and 5, Mr. Roshanlal Agarwal, Deepak Bansal and Vivek Bansal were the directors of the said company but they have not been arrayed as accused by the de-facto complainant. Mr. Roy further argues that after the control of the

company was taken over, Roshanlal Agarwal group appointed N.C. Banerjee and Company as auditor and since 2014 the said auditor was doing the audits of the company. While the purported allegation about the withdrawal of cash dedicated only in the year 2017 three years after Roshanlal Agawar group took the control over company and this belated allegation is to make the petitioners culpable.

10. Drawing the attention of the Court to Form no. ADT/1 in terms of Section 139 (1) of the Companies Act, 2013 and Rule 4 (2) of the Companies (Audit and Auditor) Rules, 2014, Mr. Roy submits that the auditor was appointed not to fill up the casual vacancy. The auditor was appointed with the approval of the shareholders in the AGM held on 30th of September, 2015. This fact indicates that dominion control over the management of the company was Mr. Roshanlal Agarwal and not with the accused persons in 2015.
11. Therefore, according to Mr. Roy, learned Senior Counsel, had there been any such illegal act of siphoning of money or withdrawal of cash of the company, the responsibility of such illegal act rests on the then directors of the company including Mr. Roshanlal Agarwal and the Petitioners cannot be saddled with any responsibility whatsoever.
12. Mr. Roy further makes me go through the letter given by Shyama Prasad Agarwal, Naresh Agarwal and Pijush Agarwal to the Board of Directors of DPIL dated 25th day of May, 2017 indicating the mismanagement being carried out in running the company. Mr. Roy further submits that the alleged incident took place in 2017 but the FIR was filed on 7th March, 2020.

13. Attention of the Court is drawn to paragraph 3 of the FIR in question it is alleged that as on 31st March, 2017 there was a sum of Rs.45,35,652/- as cash in hand of the company. Out of the said amount a sum of Rs.27,08,475/- allegedly was taken out or withdrawn by the accused persons. It would be very difficult for a man of ordinary prudence to reconcile as to how there could be Rs. 45,35,652/- cash in hand if there was withdrawal of Rs. 27,08,475/- prior to that, argues Mr. Roy, learned Senior Counsel. This statement according to learned Counsel is mutually destructive and demonstrates the evil mind of the informant to harass the petitioners.
14. My attention is drawn to the order no.25 dated 3rd of October, 2019 passed by Ld. Judge, Commercial Court at Alipore in Money Suit No.4 of 2019. By the said order Ld. Judge was pleased to reject the prayer for temporary injunction made by the plaintiffs Roshanlal Agarwal and others against the Defendants Shyama Prasad Agarwal and nine others holding inter-alia : “27. Before parting with the discussion, I have to mention that it is admitted position that the Petitioners presently in-charge of the company after allocation of shares and they have admitted that they run the business by themselves. So already, the Petitioners have the opportunity to manage the company’s removal of Respondents No.2, 3, 5 to 9 is also a subject matter of controversy in the present case. In such circumstances, in my opinion, that at this stage, there is no point for allowing any injunction and/or attachment before judgment as prayed for as the whole claim is under challenge and depends on the

interpretation of the agreement dated 31st December, 2013 on the backdrop of the prevailing commercial customs and intention of the parties to be gathered from different correspondences which only can be done after evidence.” This finding of Ld. Judge of Commercial Court has not been challenged by the Plaintiffs who are the opposite parties in this proceeding under Section 482 of the Code of Criminal Procedure.

15. The attention of the court is further drawn to paragraph 7 and 8 of the order of injunction which are as follows:-

“7 It has been further alleged that there was cash balance shortage of Rs.27,08,475/- which was revealed upon verification conducted by the auditors of the company at garden level and such of money was misappropriated by the SPA Group by resorting to unauthorized cash withdrawal from the bank account of the company maintained with Bank of Baroda, Brabrone Road Branch etc.

8. It has been further alleged that there was a shortage in the inventory of the store materials. Through the stated value of store materials of the company in financial statements of 2012-13 was 200, 17, 282, the actual value of stores and materials available with the company was Rs.26,21,400/- and by that way the defended deliberately over stated the value of the store materials or had misappropriated the inventory of the store materials to the extent of Rs.1,87,86,925/-.”

These two paragraphs according to Mr. Roy are sufficient to draw the inference that a civil dispute was given the colour of criminality as the criminal proceeding has been set into motion by incorporating the identical narrative in the written information. The attention of the court is further drawn to the charge-sheet prepared by the investigating officer and submitted in the violation of the direction given by the Co-ordinate Bench on 21st December, 2022.

16. However, it is pointed out by Mr. Roy that in course of investigation the Investigating Officer did not or could not collect any document, whatsoever, to substantiate the allegation even prima facie. But learned Chief Judicial Magistrate has take cognizance, mechanically. This action of Investigating Officer further confirms the hollowness in the entire proceeding which is attended with malafide.
17. Mr. Sourav Ganguly, learned Counsel and Mr. Bikramaditya Ghosh, learned Counsel while presenting the case for the opposite parties submit that the manner the investigation has been conducted, is far from being satisfactory. Mr. Ghosh, learned Counsel submits that the case largely depends on documentary evidences and no document was seized. The charge-sheet should be quashed. The investigating agency may be directed to hold reinvestigation and to buttress his point Mr. Ghosh places his reliance upon the judgement of Hon'ble Apex Court in ***Devendra Nath Singh Vs. State of Bihar & Ors.***, reported in **(2023) 1 SCC 48**, precisely to paragraph 45.3 of the said judgement wherein Hon'ble Supreme Court culled out the

principles for application of Section 482 of the Code of Criminal Procedure to the present case -

“45.3 Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8) CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8) CrPC do not limit or affect such powers of the High Court to pass an order under Section 482 CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.”

18. According to Mr. Ganguly as well as Mr. Ghosh, allegations so made out in the FIR disclose offence cognizable in nature. Only proper investigation can unveil the incriminatory role of the accused persons.
19. Mr. Arjun Kumar Chowdhury, Ld. Counsel for the state submits that the information since disclosed offence cognizable in nature, the police had the obligation to register the FIR and to take investigation but in course of investigation no document could be found to substantiate the allegation of the de-facto complainant. Therefore, the Investigating Officer did not seize any document.
20. From the attending facts of the case it stands admitted that over the identical issue, the Directors of the Company, DPIL filed a suit for recovery of money and preferred an application under Order 39, Rule

1 and 2 of the Civil Procedure Code which was rejected by learned Judge, Commercial Court at Alipore. Upon perusal of the said order of injunction precisely from paragraph 7 and 8 of the Order I find that narrative of the de-facto complainant in the FIR and narrative of the plaintiffs, the employer of the de-facto complainant in Money Suit No. 4 of 2019 are identical in nature. This institution of civil suit demonstrates that it is essentially a civil dispute which is the foundation of criminal proceeding. Law does not say that parallel to a civil dispute a criminal proceeding cannot be maintained but there has to have some ingredients of offence within the meaning of the Penal Code. That apart it is the settled principle of law that decision of the Civil Courts is binding on Criminal Courts but the converts is not true. Of course the unchallenged order of temporary injunction is an interlocutory order but having accepted the said order the Directors of the Complainant Company have allowed this court to hold prima-facie that the allegation is not correct. The de-facto complainant was the Manager of the Company and there is every reason to hold that he informed police in writing under the instruction of the directors of the company. But the said fact was not disclosed in the FIR. In such a situation Hon'ble Supreme Court in **USHA CHAKRABORTY VS. STATE OF WEST BENGAL & ANR.** reported in **2023 SCC Online SC 90** held that :-

“17 in the aforesaid circumstances, coupled with the fact that in respect of the issue involved which is of civil nature the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending there can be

no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceeding as weapon of harassment against the Appellants.”

21. Upon perusal of the documents viz Form No. ADT-1, INC-22 under the Companies Act suggest that in the year 2017, the opposite parties had the dominion control over the management and day to day affair of the business even before the alleged incident in 2017. This fact takes the sting out of the prosecution case, nay points the prosecution story bereft of any iota of truth.

22. In a recent judgement in **SALIB @ SHALU @ SALIM VS. STATE OF UP & ORS.** reported in **2023 SCC online SC 947**, Hon’ble Supreme Court held :-

“28 in frivolous or vexatious proceeding, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The court while exercising its jurisdiction u/s 482 of the Cr.P.C. or article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in course of investigation.....”

23. If we consider the attending circumstances of this case right from registration of the FIR till the completion of investigation that culminates into submission of charge sheet, feel no hesitation to hold that the entire proceeding is attended with malafide, more so when the investigating officer did not collect any document in course of

investigation it leads to the conclusion that the prosecution did not find any document to substantiate the allegations made in the FIR yet has filed the charge sheet with an intention to send up the petitioners to trial and the other interesting feature is except the de-facto complainant none of the Directors are cited as witness in the charge sheet, which underscores the fact that the proceeding has been initiated with malice.

24. In the aforesaid facts and circumstances I do not consider it necessary to invoke the power conferred under Section 482 of the Code of Criminal Procedure to direct re-investigation as prayed for by Mr. Ghosh, learned Counsel representing the private opposite parties.
25. Scope of exercise of power under Section 482 of the Code Criminal Procedure and the categories of case where such power could be exercised by the High Court relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, were set out in the **STATE OF HARYANA VS. BHAJAN LAL** reported in **1992 Supp (1) SCC 335** wherein it is held :-

“108. 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.”

26. The proceeding in question in G. R. Case No. 561 of 2020 since appears to have been attended with malafide and the investigating agency failed to collect any documentary evidence in course of investigation to substantiate the allegation towards commission of any offence as alleged on the contrary it appears prima facie, the directors of the company writing letter requested the petitioners to share the burden of loss, in my humble opinion, to avert abuse of process of law, the proceeding should be quashed, which I accordingly do.
27. Consequently, the revisional application is allowed in contest but without cost. The proceeding of G.R. Case No. 561 of 2020 stands quashed. Pending application, if any, stands disposed off.
28. Let a copy of the judgment be sent down to Ld. Trial Court for information and necessary action.
29. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)