

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 426 of 2020

Ms. Tanisha Chanda & Ors.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Debangana Bhattacharya,
Mr. Ranjit Singh,
Ms. Tutul Das.

For the Opposite Party No.2 : None.

For the State : Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.

Hearing Concluded on : 11.03.2024

Judgment on : 19.04.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings in GR No. 803 of 2019, pending before the Court of Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas, as also the corresponding Investigational proceedings of Bidhannagar North P.S. Case no. 155/19 dated 16th October, 2019 under Sections 341/447/506/323/354/509/34 of the Indian Penal Code, 1860.
2. The petitioners are the officers of IDFC First Bank Limited (Erstwhile known as Capital First Limited).
3. The opposite party no.2 is the de facto complainant in the impugned proceedings and runs a business of Pharmaceutical Distributor in the name and style of “Puja Enterprise” situated at AE-401, Salt Lake, Sector-I, Kolkata-700 064.
4. Bidhannagar North P.S. Case no. 155 dated 16th October, 2019 had been registered on the basis of a letter of complaint filed by the opposite party no.2 before the Officer-in-Charge, Bidhannagar North Police Station, therein alleging the commission of the offences by the petitioners punishable under Sections 341 /447 /506 /323 /354 /509 /34 of the Indian Penal Code, 1860.
5. The allegations leveled in the said petition of complaint are to that effect are:-

- I. *On 15th October, 2019, the accused persons came to the office of the de facto complainant/opposite party no.2 at around 2.30 pm and mentally and physically abused him.*
 - II. *That when his wife came to rescue him, one Mr. Belal Ahmed assaulted the wife of the de facto complainant/opposite party no. 2 and also tore her shirt.*
 - III. *The de facto complainant further stated that for the purpose of the business, has taken several unsecured loans from various banks and companies, out of which IDFC Bank's EMI was dishonoured in the month of September, 2019. However, the de facto complainant had requested the bank to grant some time in order to pay the EMI. But, the concerned accused persons without considering his request, abused him and forcefully has taken a letter from the de facto complainant/opposite party no.2 about the payment of the EMI, which was dishonoured.*
6. The petitioners state that for the proper appreciation of the instant case, following facts are important:-
- a) *The de facto complainant/opposite party no.2 and his wife have obtained two Loans from the Capital First Limited presently known as IDFC First Bank Limited vide Loan Agreement No. 11954898 dated 20th July, 2017 of Rs. 20,72,000/- and another Loan Agreement No. 18967720 dated 28th November, 2018 of Rs. 31,62,000/- in the name of "Puja Enterprise".*
 - b) *The de facto complainant/opposite party no.2 after obtaining the said loans, became defaulter to pay the EMIs and requested for time to pay the outstanding amount. Believing upon such representations, the concerned Bank duly gave the opportunity in order to pay the remaining dues.*

- c) *However, on 14th October, 2019, the de facto complainant/opposite party no.2 approached the bank and requested them to come to his office to collect the remaining amount. The de facto complainant/opposite party no. 2, further assured that it will be very helpful for him to foreclose the loan and requested the bank to comply with all the formalities in order to foreclose the loan account.*
 - d) *Believing the said representations, IDFC First Bank Limited sent its four representatives, including one of its empanelled Advocate to honour the request of the de facto complainant/opposite party no. 2. On reaching the office, the de facto complainant/opposite party no.2 and his wife started to use foul language and without any reason threatened them with dire consequences.*
 - e) *The petitioners were shocked when they found out that an FIR has already been lodged before the Officer-in-charge of Bidhannagar Police Station North on concocted allegations, just in order to pressurize the Bank to come for a compromise regarding the loans which were obtained by the de facto complainant/opposite party no. 2 and his wife on 20th July, 2017 and 28th November, 2018 respectively.*
7. Hence the revision, against the registration of a false case against the petitioners and praying for quashing of the same.
 8. From the written complaint it appears that the accuseds/petitioners allegedly visited the complainant's office at **around 2.30 pm** and demanded payment of the outstanding EMI (due).
 9. On careful perusal of the materials on record and the case diary, it appears that there are no medical papers to substantiate the allegations made by petitioners.

10. 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:-

“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.”

11. The Supreme court in ***Manager, ICICI Bank Ltd. vs. Prakash Kaur & Ors., in Appeal (Crl.) 267 of 2007, on 26.02.2007***, held:-

“Additional inputs considering the difficulties of the customers as well as banks, the concept to be developed is to create distinct and separate department for recovery. This should be manned by persons who will not resort to violence or force when they are in the process of recovery of the dues.

While the fraudulent defaulters can be dealt with by taking the Police help for such action, it is only when law is taken into the hands of the so called recovery agents, who are appointed on contract basis, the issue gets aggravated. **A separate wing, wherein appropriate training is given in accordance with RBI guidelines would facilitate the bank in its recovery process and also would provide more responsibilities to the persons so engaged.**

Yet another suggestion would be that of loans whether they are Personal Loans or Credit Cards or Housing Loan with less than Rs.10 lakhs exposure, can be referred to Lok Adalat which can be specially created for resolving the issues between the banks and the borrowers. In fact, the Lok Adalat would be used as an effective machinery to resolve the issues and concentrate with reference to keeping the fine balance between Banks and Borrowers.

If the Agency System is inescapable, then the Agency must be coupled with a license issued after conducting examination. Appropriate training should be given to the agents who should have requisite qualification and maturity to handle delicate and sensitive situation. Merely because the Agency System is convenient to the banks, and has been approved by RBI, it should not lead to lawlessness and conduct resulting in challenge to rule of law.

While performance of the banks are always correlated with reference to its growth, its assets utilization and finally profit in the balance sheet, that and that alone cannot be relied upon, with reference to a country like India, where there is enormous disparity in respect of various sections of the society. These are all positive steps that would bring in the overall balance in the working of all these institutions.

Whether it is bank, which concentrate on higher segment of banking or it is a bank which concentrate upon middle class, lower middle class and such other segment of the Indian Public who look to and requires the banking comfort, it is not mere question of lending the money that matters, but also the consequences thereafter. The social responsibility is larger than the banks profit and growth ratio alone.”

12. The act of the petitioners in this case is part of their job and the time of going to the complainant's house is also appropriate. **Considering**

the time to be 2.30 pm, it is apparent that the petitioners did not intend to act in an unlawful manner.

- 13. The outstanding dues of the complainant is admitted.** Thus, the conduct of the petitioners was in due course of their official duty.
- 14. The present case** has been filed against the officers of a Bank (in official capacity), **one of them being a woman.**
- 15.** The officers visited the office of the complainant at 2.30 p.m., a time of the day when there **is little chance of acting unlawfully.**
- 16.** The offences alleged are under Sections 341 /447 /506 /323 /354 /509 /34 of the Indian Penal Code. None of the ingredients required to constitute the said offences alleged are applicable in respect of **the petitioners, who acted in accordance with law in their official capacity.**
- 17.** If Authorised Officers of a bank/institution have to face criminal charge, 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.
- 18. The revisional application being CRR 426 of 2020 is accordingly allowed.**
- 19.** The impugned proceedings in GR No. 803 of 2019, pending before the Court of Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas, as also the corresponding Investigational proceedings of Bidhannagar North P.S. Case no. 155/19 dated 16th

October, 2019 under Sections 341/447/506/323/354/509/34 of the Indian Penal Code, 1860, **is quashed, in respect of the petitioners.**

- 20.** All connected applications, if any, stands disposed of.
- 21.** Interim order, if any, stands vacated.
- 22.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 23.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)