IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE
CRR 1095 of 2016
Sudhir Satnaliwala
Vs.
The State of West Bengal & Anr.

For the petitioner	:Mr. Ayan Bhattacharjee, Adv. Mr. M.S. Tiwari Adv. Ms. Shweta Poddar, Adv. Mr. Debarka Guha, Adv. Mr. Shounak Mondal, Adv.
For the State	:Mr. Binay Panda, Adv. Ms. Puspita Saha, Adv.
For the opposite party no.2	:Mr. Sanjay Banerjee, Adv. Ms. Samriddhi Majumdar, Adv.
Heard On :	:20.07.2023,17.08.2023, 30.08.2023, 13.09.2023, 04.10.2023, 28.11.2023, 13.12.2023, 17.01.2024, 29.01.2024, 19.03.2024, 24.04.2024, 26.04.2024, 25.06.2024, 09.07.2024, 05.08.2024, 07.08.2024 19.08.2024
Judgment On :	**:10.09.2024**

Bibhas Ranjan De, J. :

1. The petitioner has sought quashing of the proceedings of West Port Police Station Case No. 141 of 2013 dated 16.07.2013 under Sections 120B/406/420/467/468/471 of the Indian Penal Code (for short IPC) presently pending before the Court of Ld. Chief Judicial Magistrate, Alipore, South 24 Parganas through this revision application.

Brief facts:-

2. A brief gist of the allegations made by the opposite party no. 2 herein through the written complaint which gave rise to the West Port Police Station Case No. 141 of 2013 is to the effect that opposite party no. 2 herein is a Director of a Company under the name and style of Aggarwal Steel Complex Limited duly incorporated under the Companies Act, 1956. In the year 1999 the said company was referred to the Board of Industrial and Financial Reconstruction (for short BIFR) and was subsequently declared as a Sick Industrial Unit under the provisions of Sick Industrial Companies Act vide an order dated 29.07.1999. However, in the year 2004 the present petitioner approached the opposite party no. 2 herein with a proposal that if he is inducted as a director then he would infuse fresh funds for proper rehabilitation of the said company and revive it back from the status of Sick Industrial Unit. In good faith the opposite party no. 2 herein agreed to such request of the petitioner. However, soon after the petitioner upon continuous misrepresentation started to take entire control of the said company and disposed of all assets of the said company in violation of the order of the BIFR and without the knowledge of the opposite party no. 2 herein or the Board of Directors of the said company. Thereafter, when the opposite party no. 2 herein started to visit the fixed assets of the said company viz the Furnace Factory site, the office of the company at Shakespeare Sarani, the second manufacturing facility/a Rolling Mill at Paharpur, he to his utter despair came to know that all those assets were either sold of or transferred to some 3rd party without any prior intimation either to the opposite party no. 2 or the Board of Directions of the said company. Thereby, the opposite party no. 2 alleged that the petitioner entered into a criminal conspiracy and in pursuance to that conspiracy, misappropriated the assets of the said company and thus committed cheating and forgery totaling to a substantial amount and thereby committed all the offences alleged.

Arguments Advanced:-

3. Ld. Counsel, Mr. Ayan Bhattacharjee, appearing on behalf of the petitioner has mainly canvassed his argument on the following points:-

- The charge sheet filed by the Investigating Officer is a conclusion of nothing but a faulty investigation as in spite of providing all material documents against the queries of the Investigating Officer in response to the notice under Section 41A of the Code of Criminal Procedure (for short CrPC) nothing was properly considered by the Investigating Officer before filing of charge sheet which led to a formation of opinion without any proper basis. Therefore, impugned charge sheet is not sustainable in the eye of law.
- On a wholesome perusal of the averments levelled in the purported FIR and the charge sheet, it would be crystally clear that the entire issue pertains to a dispute amongst the directors of a corporate body for which no criminal action ought to have been imitated as it is trite law that no

criminal proceeding should be allowed to emanate if the main grievance is related to the affairs of a corporate body.

- In reply to the allegation put forth in the written complaint by the opposite party no. 2 herein relating to the order of the BIFR, the opposite party no. 2 has made an intentional magnum suppression of the fact that this Hon'ble Court in WPA No. 1229 of 2000 gave a stay order against such order of the BIFR. Therefore, the very foundation of the prosecution case is faulty and unclean which makes the subsequent investigation and charge sheet a fit case for quashing.
- From a prima facie appreciation of the allegation made in the written complaint, by no stretch of imagination, it can be said that the offences alleged are made out against the petitioner as there is no question of any wrongful gain on the part of the petitioner. Therefore, such absurd and inherently improbable allegations cannot be allowed to linger any further.
- Before parting with, Mr. Bhattacharjee has highlighted the inexplicable and inordinate delay of 9 years in institution of the complaint which gave rise to the West Port Police

Station Case No. 141 of 2013 and submitted that there is no proper explanation so as to why the delay in filing FIR occurred as the present petitioner was appointed in June 2004 but FIR was only filed in 2013.

4. In support of his contention, Mr. Bhattacharjee has relied on some material documents and has taken assistance of the following cases which are as follows:-

- ***Dinesh Gupta vs. State of Uttar Pradesh & Anr.*** reported in ***2024 (1) SCALE 532***
- ***A.M. Mohan vs. The State of represented by SHO & Anr.*** reported in ***2024 (4) SCALE 218***
- ***Zandu Pharmaceutical Works Ltd. & Ors. vs. Mohd. Sharaful Haque & Anr.*** reported in ***(2005) 1 SCC 122***
- ***A.K. Khosla & Ors. vs. T.S. Venkatesan & Anr.*** reported in ***1992 CRI. L.J. 1448***
- ***M/S Raymond Ltd. vs. M/s HV Doshi & Bros Pvt. Ltd.*** reported in ***(2006) 1 C Cr LR (Cal) 186***
- ***Chanchalpati Das vs. State of West Bengal & Anr.*** reported in ***AIR 2023 SC 2710***
- ***Salib @ Shalu @ Salim vs. State of Uttar Pradesh & Ors.*** reported in ***[2023] 11 S.C.R. 58***

5. In opposition to that, Ld. Counsel, Mr. Sanjay Banerjee, appearing on behalf of the opposite party no. 2 has stated that the petitioner who was entrusted with the affairs and properties of the said company for its rehabilitation blatantly misused his powers and sold the entire landed property of the company admeasuring 1802.5 decimal and utilized the proceeds to pay One Time Settlement with the Bank of India by falsely claiming to have raised such funds from his own resources. Thereafter, the petitioner clandestinely executed 3 separate registered deeds of conveyance by falsely claiming to be an authorized signatory of the said company and sold of the entire property to the 3rd parties and received the sale consideration in companies owned and controlled either by petitioner himself or his family members.

- Mr. Banerjee further argued that the petitioner is a habitual offender and in support of this contention he has annexed a letter of complaint dated 20.09.2007 addressed to DCP, Detective Department, Lalbazar by another company wherein the allegation was to the effect that the petitioner herein and his wife used forged signature and seal of the complainant company in the audited balance sheets of the companies which they have been filing with the office of the Registrar of Companies, Kolkata for almost a period of 10 years. By producing this document Mr. Banerjee has tried to make this Court understand the petitioner along with his family members have had a prior criminal intention to hatch a conspiracy and defraud the opposite party no. 2 herein from the very inception.

- It has been further contended that the petitioner who was never an authorized signatory of the company for execution of any agreement for sale or deed of conveyance in respect of the properties of the company, has used false documents to commit criminal breach of trust and make a wrongful gain causing exorbitant loss to the company.
- Before parting with, Mr. Banerjee has refuted the claim of Mr. Bhattacharjee that there is inordinate delay in filing FIR and has submitted that the opposite party no. 2 was kept in dark by the petitioner for many years and only in the year 2013 the opposite party no. 2 became aware of suspicious activities regarding his landed properties and after making proper enquiry he gradually came to know about the alleged fraudulent activities and soon after he

filed the complaint which gave rise to the instant prosecution.

6. Ld. Counsel, Mr. Binay Panda, appearing on behalf of the State has referred to the case diary and has contended that there is enough incriminating material collected to constitute offences alleged against the petitioner.

Findings of the Court:-

7. Before delving into the merit of the case, I think it would be profitable to analysis the cases relied on behalf of the petitioner for brevity of discussion:-

- In ***Dinesh Gupta*** (supra) the Hon'ble Apex Court held that a criminal complaint which is filed against the opposite party despite commercial nature of dispute is nothing but ill intended act of abuse of power and of legal machinery which seriously affects the public trust in judicial functioning.
- In ***A. M. Mohan*** (supra) the Hon'ble Apex Court highlighted the growing tendency in business circles to convert purely civil disputes into criminal cases on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/ creditors.

The Hon'ble Apex Court also observed that there is an impression to the effect that if a person could somehow be entangled in a criminal prosecution then there is likelihood of an imminent settlement.

- In ***Zandu Pharmaceutical Works Ltd.*** (supra) the Hon'ble Apex Court observed as follows:-

> *"13. The factual position as highlighted above clearly goes to show that the complainant had not come to court with clean hands. There was no explanation whatsoever for the inaction between 1995 and 2001. The High Court seems to have been swayed by the fact that the appellants have rejected claim of the complainant on 5-12-2001. It failed to notice that the communication dated 5-12-2001 was in response to the letter of the complainant dated 24-11-2001."*

- In the case of ***A.K. Khosla (supra)*** the Co-ordinate bench of this Hon'ble Court laid down that continuation of the proceeding would be an abuse of process of Court if the dispute is purely of civil nature and the impugned criminal proceeding appears to be frivolous, vexatious and malafidely initiated with the oblique motive of exerting pressure upon the other party to pay a huge amount of money and make other concessions for the alleged loss suffered by the complainant party. For ends of justice such proceeding should be quashed.

- In ***M/S Raymond*** (supra) the Co-ordinate Bench of this Hon'ble Court remarked that:-

> *"29. The suppression of material facts in the petition of complaint is a vital and serious matter for which the Court can treat that the complainant came to Court not with clean hands. In this connection the decisions cited by Mr. Mukherjee for the petitioner are pertinent. In Sundar Das Loghaniv. Fardun Rustom Irani (supra) a Division Bench of this Court affirmed the order of discharge by the learned Magistrate in a case in which the learned Magistrate after hearing both sides and examining some documents reached the conclusion that the complainant petitioner had deliberately suppressed several facts in his petition of complaint and that the complaint was a thoroughly dishonest one."*

- In ***Chanchalpati Das*** (supra) the Hon'ble Supreme Court held that inordinate delay in filing complaint in itself may not be a ground for quashing of a criminal complaint, however unexplained inordinate delay must be taken into consideration as a very crucial factor.

- In ***Salib @ Shalu @ Salim*** (supra) the Hon'ble Apex Court laid down the following ratio which stands as follows:-

> *" 26. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal*

> *vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, 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 under Section 482 of the CrPC 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 the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."*

8. The Hon'ble Apex Court in various landmark decisions has made a very clear suggestion that the High Court's while exercising its power under Section 482 of the CrPC **is not required to conduct a mini trial** as this is not the stage where the prosecution/ investigating agency is required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the Hon'ble Apex Court handed down that if the High Court while exercising inherent jurisdiction under Section 482 of the CrPC makes an observation that the charges against the accused are not proved, by going in detail in the allegations and the material collected during course of the investigation against the accused, then they will commit material err in doing so.

9. As at the stage of discharge and /or while exercising the power under Section 482 of the CrPC, the Court has a very limited jurisdiction and is only required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not." In addition to that the Hon'ble Apex Court has further held that at the **initiation of the Criminal Proceedings, whether the criminal proceedings are malicious or not, is not required to be considered at the stage of quashing as it is required to be considered only at the conclusion of the Trial**. The only material requirement which is to be considered is a prima facie case and the material collected during investigation, which warrants the accused to be tried.

10. I have gone through the case diary and from there it appears that a good number of evidence has been collected by the Police during investigation. Keeping in mind that context, in no stretch of imagination it can be said that the allegation made in the complaint is devoid of merits and does not prima facie constitute the alleged offence. It is too premature a stage, to focus on the veracity of the prosecution case as it is a settled proposition of law that **the High Court in exercise of it's jurisdiction under Section 482 of Cr.P.C does not function either as a Court of appeal or revision**, also having no power to conduct a mini trial.

11. Now coming to the material particulars of the case at hand it is an admitted position of fact that the petitioner was inducted as director of the company of the opposite party no. 2. The petitioner was also entrusted by the opposite party no. 2 to take necessary steps for the rehabilitation of the company by settling secured debt with the Bank. The main contention of the petitioner is that all the measures that he has taken are with the sole motive to rescue the company. In support of this argument Ld. Counsel, Mr. Bhattacharjee has relied on a bunch of voluminous documents.

12. Whereas the claim of the opposite party no. 2 is that the petitioner and his co-conspirators have clandestinely sold the entire land and have collected the sale proceeds in companies owned and controlled by the petitioner and his family members. In support of this contention, they have referred to the register deeds of conveyance. In the light of the principle laid down by the Hon'ble Apex Court in this regard which has been duly discussed above clearly puts a bar on the High Court to go in depth detail of the allegations and the evidence collected during investigation at this stage.

13. Now coming to the claim of the petitioner regarding in ordinate delay in filing the FIR by the opposite party no. 2 in the year 2013, I am not agreeable with Mr. Bhattacharjee that the cause of action arose in the year 2004 when he was made the Director because the opposite party no. 2 only started suspecting some irregularities when he paid a visit to the properties of the company situated in Srerampore. Therefore, In my humble view, I do not find that there is irrational delay in filing FIR which can lead to its quashment.

14. In light of the above principle, I am unable to interfere with impugned proceeding at this stage by invoking power under Section 482 of CrPC as all the material contradictions with regard to the alleged occurrence is a subject matter of trial and from careful perusal of the available evidence this Court cannot conclude that the allegations made in the complaint do not prima facie make out any offence. Nor can it conclude that the allegations made therein are patently and inherently improbable which will make the instant revision application a fit case for quashing as per the exhaustive guidelines of the Hon'ble Apex Court. And to add to that, in the present case, the nature of allegation is not in respect to any commercial dispute between the parties simpliciter.

15. To exercise the inherent power under Section 482 of the Cr.P.C is not the rule but it is an exception which can be applied only if it appears to the Court that miscarriage of justice would be committed if the trial is allowed to proceed further. This Court is also not oblivious to the settled proposition of law that this Court cannot function either as a Court of appeal or revision and this power can only be exercised to prevent abuse of the process of the Court.

16. In the aforesaid view of the matter, the instant revision application being no. CRR 1095 of 2016, devoid of merits, stands dismissed.

17. Interim order, if there be any, stands vacated.

18. Connected applications, if there be any, stand disposed of accordingly.

19. All parties to this revision application shall act on the server copy of this order downloaded from the official website of this Court.

20. 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.]