

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1245 of 2012
With
CRAN 1/2012 (Old CRAN 3756/2012)
CRAN 3/2013 (Old CRAN 3592/2013)

P Srinivasa Rao and Another
Versus
State of West Bengal and Another

For the Opposite Party No. 2 : Mr. Sabir Ahmed, Adv.

For the High Court Administration

: Mr. Sukanta Chakraborty, Adv.

Heard on : 22.03.2024

Judgment on : 07.05.2024

Ajay Kumar Gupta, J:

1. This instant revisional application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioners seeking quashing of the proceeding of C-1235 of 2012 under Sections 406/420/120B of the Indian Penal Code, pending before the Learned Metropolitan Magistrate, 10th Court, Calcutta and order passed therein on 2nd February, 2012 in the said proceeding, thereby the learned Court found a prima facie case against the petitioners under Sections 406/420/120B of the Indian Penal Code and directed for issuance of process against the petitioners.

2. The factual matrix of the instant case is that the petitioner no. 1 is the Chief Manager, Asset Recovery Management Branch, Vijaya Bank working for gain from the office of the Bank situated at 1st Floor, Temple Tower, P-17A, A.C. Avenue, Gariahat Road, Calcutta – 700 019 and petitioner no. 2 is the Deputy General Manager, Vijaya Bank, working for gain from the office of the said bank situated at 97/1, Trimurti Apartment, Park Street, 5th Floor, Calcutta – 700 016. A complaint case being C-1235 of 2012 has been initiated on the basis of complaint filed by the opposite party no. 2 before the Court of learned Chief Metropolitan Magistrate, Calcutta alleging therein that the husband of the complainant/opposite party no. 2, namely, Mr. P.

Kader M. Gani, had availed a credit facility from Vijaya Bank, Dharmatala Branch, Kolkata for Rs. 16,70,000/- on 13.11.2004 upon mortgaging one of his properties i.e. a two storied building situated at premises no. 3, Chandigarh, Dinabandhu Road, Post Office Madhyamgarm Bazar, Police Station Barasat within the District North 24-Parganas comprising of 4 cottahs of land. At that point of time, the value of the mortgaged property was Rs. 19,12,000/-. Prior to sanction of the loan, the opposite party no. 2 stood as guarantor and has signed various documents.

2a. The husband of the opposite party no. 2 repaid a sum of Rs. 3,97,000/- and thereafter a settlement was arrived in between the parties that he shall pay a total sum of Rs. 16,50,000/- as a full and final settlement. Accordingly, the husband of the opposite party no. 2 paid Rs. 1,00,000/- in two instalments of Rs. 50,000/- each on 15.09.2008 and 15.10.2008 respectively to the petitioner no. 2 on the basis of said settled amount of Rs. 16,50,000/-. Thereafter, he could not pay the remaining balance amount due to financial crises as a result the bank had initiated a process of sale of the mortgaged property at market value and after deducting its dues of Rs. 15,50,000/- assured that they would hand over the excess amount of the sale proceeds to the husband of the complainant/opposite party no. 2.

2b. It is alleged that the officials of the bank sold the mortgaged property at a price of Rs. 15,60,000/- though the current market price of the said property as on 15.09.2011 was Rs. 53,83,396/- as per the valuation report of the officer of the A.R.-II, Calcutta. With compelling circumstances, the husband of the opposite party no. 2 initiated a proceeding before the Debts Recovery Tribunal on 18.11.2011 against such illegal action of the bank officials and the same is still pending.

2c. It is further alleged that the petitioners entered into a criminal conspiracy with each other and manipulated the sale proceeds of the said property, thereby causing wrongful gain to themselves and wrongful loss to the opposite party no. 1 by selling that property abnormally low rate than the prevailing market price, which shows the conspiracy hatched by the accused persons. Accordingly, they committed offence punishable under Sections 406/420/120B of the IPC. Upon consideration of the entire facts as aforesaid, the learned Magistrate found a prima facie case made out against the petitioners and other under Sections 406/420/120B of IPC. Learned Magistrate directed to issue process against the petitioners under Section 204 of the Code of Criminal Procedure though the case of the petitioners is that the allegations are out and out false and fabricated. As such, the petitioners pray for quashing of

the proceeding as well as setting aside the impugned order passed by the learned Magistrate. Hence, the instant criminal revisional application has come up before this Court for its disposal after assignment by the Hon'ble the Chief Justice, High Court, Calcutta.

3. In spite of service of administrative notice, no body appears on behalf of the petitioners on call. No accommodation was sought for.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:

4. Learned counsel appearing on behalf of the opposite party no. 2 submitted that the case may be dismissed as no one appears on behalf of the petitioners and the learned Magistrate has rightly taken cognizance against the petitioners considering the materials available in the complaint and issued process against the petitioners for their appearance.

**SUBMISSION ON BEHALF OF THE HIGH COURT
ADMINISTRATION:**

5. Learned counsel appearing on behalf of the High Court Administration submitted that on 22.09.2021 while hearing the instant case, the Hon'ble Justice Tirthankar Ghosh found some

anomalies in case record as such His Lordship passed an order, *inter alia*, as under:

“On perusal of the revisional application at page 29 of the affidavit, it is revealed that although the application has not been filled up, the Commissioner of Affidavit, High Court Appellate Side Calcutta has signed the same and put his initial on the left hand side of the revisional application which was affirmed on March 26, 2012. The document speaks for itself that the revisional application was not brought to the office of the Oath Commissioner and the same was affirmed.

The Registrar General, High Court Calcutta is directed to conduct an enquiry and fix the responsibility on the officer concerned who has signed and affirmed such oath on blank portion of a typed paper.

So far the advocate on record is concerned namely, Suchayan Banerjee who has signed the same and filed the application without exercising his authority as a lawyer, a cost of Rs. 50000/- is imposed upon him. The cost is to be deposited by the advocate on record before the Ld. Registrar General of the High Court within a period of four weeks from date.

The Registrar General, High Court Calcutta will submit a report on 9th of November 2021 in respect of the officer/officers of the High Court involved and the steps taken against them on the date so fixed.

So far as the merits of the revisional application is concerned in an un-affirmed application this court is reluctant to interfere with the merits of the matter.

However till the revisional application is disposed of the proceedings before the court below is stayed.

.....”

- 6.** Thereafter, vide order dated 09.11.2021, the Hon’ble Justice Tirthankar Ghosh passed another order, inter alia, as under:

“The Registrar General, High Court, Calcutta is directed to intimate the High Court authorities for engaging a lawyer as also Sri Aloke Chatterjee, the officer who has been primarily held to be responsible for the performance of duty on the said date.

The grounds so assigned are not acceptable to this Court as cogent. The report dated 27.10.2021 so submitted by the Registrar General would be considered on the next date fixed for hearing.

Earlier by an order dated 22.09.2021, there was a direction for the matter to be part heard. The same is recalled.

List this matter before the regular Bench on 16.11.2021 under the heading “For Orders”.”

7. Thereafter, the matter was appeared before this Bench after assignment by the Hon'ble the Chief Justice for its disposal.

8. Learned counsel also submitted that a report has already been submitted by the Learned Registrar General after seeking report from the Joint Registrar (Judicial), Appellate Side through a note dated 28/09/2021 and in response thereto, a report was received from the office of Joint Registrar (Judicial), Appellate Side and said report was lying with the record. So, a necessary order may be passed by this Court with regards to the explanation submitted by the person concerned who had signed and affirmed such oath on blank portion of the typed paper.

9. Learned counsel further submitted that the translator of the High Court is guided by the West Bengal Service Rules.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

10. Having heard the submissions of the parties and on perusal of the report submitted by the then Registrar General dated 27.10.2021, it reveals in compliance of order dated 22.09.2021 passed by this Hon'ble Court, a cheque being No. 951621 dated 25.10.2021 amounting to Rs. 50,000/- was deposited by Sri Suchayan Banerjee, learned Advocate through a challan being No. 828 dated 26.10.2021 in connection with CRR 1245 of 2012. It

further reveals from the report that one Sri Aloke Chatterjee, Senior Translator of the person concerned who had signed and affirmed such oath on blank portion of the typed paper of affidavit portion on 26.03.2012 as the commissioner of affidavit.

11. It further appears from the explanation given by Sri Aloke Chatterjee, Senior Translator, High Court, Appellate Side, Calcutta, sought for apology for the sleep on his part during administering oath without paragraph number mentioning in para 3 of the affidavit page (page number 22) of the concerned criminal revisional application being CRR 1245 of 2012 which was affirmed by the deponent on 26.03.2012 at the office of the Commissioner of Affidavit in the Court premises. He also made an explanation that owing to tide over the rush of the litigants/clerks that prevails almost throughout the day, he had administered oath of about 194 petitions on that very date including writ, civil revision, criminal revision, bail application, anticipatory bail application, cancellation of bail and anticipatory bail, different types of civil and criminal applications including contempt and other affidavit viz affidavits-in-opposition, affidavits-in-reply and affidavits of service also.

12. He further stated he took every precaution in scrutinizing and checking the petitions including the affidavit's page and

annexures before administering oath, but the concerned omission was taken place unintentionally on his part and finally he tendered un-conditional apology. He further assured he will be cautious while discharging his duties so that no such mistakes be re-occurred in future.

13. The said report was placed before the Hon'ble Justice Tirthankar Ghosh. His Lordship had observed the grounds so assigned are not acceptable as cogent vide order dated 09.11.2021.

14. Consequently, this Court does not find any reason to pass further order with regards to the explanation given by the responsible officer. It would be appropriate to refer this matter to the High Court Administration for taking necessary action against the responsible person in accordance with law.

15. Now coming to the merits of the instant case, this Court does not find the application filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 in proper form since the affidavit portion of the application is incomplete. Furthermore, nobody appeared to represent the petitioners on call. No accommodation was sought for in spite of service of administrative notice.

16. Under the above facts and circumstances, this Court found the revisional application is incomplete and not in proper form as such this Court is not inclined to pass any order on merit of the case.

17. Accordingly, **CRR 1245 of 2012** is, thus, **dismissed** without order as to costs. Consequently, **CRAN 1/2012 (Old CRAN 3756/2012)** and **CRAN 3/2013 (Old CRAN 3592/2013)** are also, thus, disposed of.

18. Case Diary, if any, is to be returned to the learned Advocate for the State.

19. Let a copy of this judgment and order be sent to the learned Court below for information and for taking necessary steps in accordance with law.

20. Let a copy of this judgment and order be communicated to the learned Registrar General, High Court, Calcutta along with copy of reports of the then Learned Registrar General and explanation submitted by Sri Alope Chatterjee, Senior Translator, High Court, Appellate Side, Calcutta for information and placing the same before the Hon'ble the Chief Justice, High Court, Calcutta to pass any other administrative order as His Lordship may deem fit and proper.

21. Interim order, if any, stands vacated.

22. Parties shall act on the server copies of this order uploaded on the website of this Court.

23. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(AjayKumar Gupta, J)

P. Adak (P.A.)