IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 976 of 2015

Mr. Sachin Kumar Gupta & Anr.
Versus
Mrs. Malashree Biswas

For the Petitioners	:	Mr. Debasish Roy, Adv. Mr. Kaushik Chatterjee, Adv. Mr. Tirthankar Dey, Adv.
Heard on	:	29.04.2024
Judgment on	:	26.07.2024

Ajay Kumar Gupta, J:

1. By filing this criminal revisional application, the petitioners being the accused persons prayed for quashing of proceedings being Complaint Case No. 256C of 2014 pending before the Learned

Judicial Magistrate, 4th Court, Howrah under Sections 323/504/506/509/120B/34 of the Indian Penal Code and all orders passed therein.

2. The brief facts, leading to filing of this instant criminal revisional application, are as under:

2a. The petitioner no. 1 is the Legal Manager of an HDFC Bank Limited and petitioner no. 2 is an Assistant Vice President of the said bank. They have been arraigned as accused persons in a Complaint Case No. 256C of 2014 for alleged commission of offence punishable under Sections 323/504/506/509/120B/34 of the Indian Penal Code with an allegation as, inter alia, as follows:

"That the husband of the opposite party had taken loan from HDFC Bank Limited, Gillander House, 1st Floor, 8, Netaji Subhas Road, Kolkata – 700 001. Some instalments fell due, as the family of the opposite party was facing some financial trouble. On 21.04.2014 the accused nos. 1 and 2 of the said Bank over telephone abused the husband of the opposite party in most filthy languages. They also threatened to face dire consequences. Though the husband of the opposite party requested them that he would pay the instalment as early as possible. On the same day i.e. on 21.04.2014, the accused nos. 1 and 2 again made a call which was received by the opposite party. They asked about the husband of the opposite party. The opposite party politely replied about her husband's absence, but the said accused persons began to rebuke and scolded the opposite party. The husband of the opposite party had diarized the matter with Bowbazar Police Station on 21.04.2014 being G.D. Entry No. 2278/14 and with Netaji Nagar Police Station being G.D. Entry No. 2913/14.

Again on 23.04.2014 at about 2 pm, the aforesaid accused persons came at the door step of the opposite party and demanded the instalments. The husband of the opposite party politely asked for one month time. The accused persons became very furious and began to abuse and humiliate the husband of the opposite party. The opposite party interfered and objected to such languages. The accused persons pushed the opposite party aside by catching her hair. The accused persons abused in obscene languages. In the meantime, neighbouring people came and requested the accused persons to grant time to the husband of the opposite party to repay the loan. The accused persons went away giving threat to the complainant. The complainant went to the nearest Dasnagar Police Station, but police has not taken any action."

Consequently, complainant filed court complaint against the petitioners.

2b. In pursuance of receipt of the petition of complaint, the learned Chief Judicial Magistrate, Howrah, by his order dated 25.04.2014, was pleased to take cognizance of the offences allegedly disclosed in the said petition of complaint and was further pleased to transfer the case to the file of the learned Judicial Magistrate, 4th Court, Howrah for judicial enquiry and trial.

2c. Upon examination of the opposite party on solemn affirmation under Section 200 of the Cr.PC and upon perusal of the petition of complaint and the documents, the learned Judicial Magistrate, 4th Court, Howrah vide his order dated 19.06.2014, issued process against the petitioners for alleged commission of offences punishable under Sections 323/504/506/509/120B/34 of the Indian Penal Code. Hence, the present application.

2d. On the other hand, it is the case of the petitioners that some times in the month of January, 2010 the husband of the opposite party had approached the said bank for financial help in the nature of a personal loan.

2e. The said bank had duly processed the loan application submitted by the husband of the opposite party and agreed to finance a sum of Rs. 1,90,000/- to the husband of the opposite party. It was agreed that the husband of the opposite party would clear of his financial liabilities by paying of Rs. 4,671/- per month for 60 months commencing from 04.03.2010.

2f. That since inception the husband of the opposite party was lackadaisical in repayment of the loan and had committed persistent defaults in making payment and a number of monthly instalments became overdue.

2g. In such circumstances, on 30.05.2012, the said bank had informed the husband of the opposite party that the aforesaid loan stood recalled and he was asked to pay the outstanding dues forthwith upon receipt of such letter. Despite receipt of such letter and further requests by the said bank to make payment, the husband of the opposite party deliberately refused and/or neglected to make any payment. Moreover, the cheques issued by the husband of the opposite party were returned unpaid upon presentation and the said bank was constrained to initiate several proceedings under the Negotiable Instruments Act against the husband of the opposite party.

2h. The said bank in terms of the Arbitration Clause contained in the Agreement dated 05.02.2010 had made a Reference to the sole Arbitrator, Mr. Partha Sarathi Ghosh on 08.06.2012. The opposite party was put to notice but he did not appear before the Arbitral

Tribunal and in such an event, the Sole Arbitrator, Mr. Partha Sarathi Ghosh had been pleased to pass an Award on 22.08.2012. The said Award has been put into Execution by filing execution case and the husband of the opposite party has been notified to appear in the Execution proceedings.

2i. Accordingly, the opposite party being the wife of borrower, only to avoid repayment of the loan amount, illegally initiated the instant case against the present petitioners with mala fide intention and with an ulterior motive for wreaking vengeance upon the petitioners and only on that score, the instant proceeding is liable to be quashed.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned counsels appearing on behalf of the petitioners submitted that the opposite party, to pre-empt the said bank for initiating recovery proceeding against the husband of the opposite party, who is a major defaulter of the said bank, filed frivolous and vexatious proceeding against the present petitioners who are merely bank employees and who can act in accordance with law to recover the money of the bank.

3a. It is further submitted that time and again the Hon'ble Supreme Court in number of decisions has laid down criteria under which High Court may exercise its inherent power in order to quash the proceeding pending before any Court of law. The Hon'ble Supreme Court has held that 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 the same would amount to sheer abuse of process of the Court.

3b. It is further submitted that the petitioners are high ranking officers of the said bank and have no control over the Collection Unit of the said bank which exclusively deals with the recovery of overdue amount pertaining to any loan. Even, in the instant case, the petitioners have never interacted with the opposite party or her husband pertaining to the recovery of the overdue amount regarding the loan account of the husband of the opposite party. The opposite party, with the ulterior motive to malign the petitioners, has impleaded them in the instant case. The initiation of a proceeding before a criminal court with regard to a dispute arising out of breach of an agreement between the borrower and the financier whosoever is not maintainable in the eye of law inasmuch as the dispute is purely civil in nature and is to be adjudicated in a civil forum of competent jurisdiction. This principle has been propounded both by the Hon'ble High Court as well as Hon'ble Apex Court. In such view of the matter, continuance of the instant proceeding is a sheer abuse of the process of court which should not be allowed to continue for a single day and same is liable to be quashed.

3c. It is further submitted that the bank has already initiated proceedings under Section 138 of NI Act against the husband of the opposite party and are pending. There was arbitration proceeding against the husband of the opposite party and award has already been awarded in favour of the bank. The execution case is also pending against the husband of the opposite party. But surprisingly suppressing all the above facts, the opposite party obtained order for issuing process against the petitioners which is liable to be set aside.

3d. The learned counsels further submitted that the petitioner no. 2 admittedly resides beyond the jurisdiction of learned Judicial Magistrate, 4th Court, Howrah. Thus, it is obligatory upon the learned Magistrate to take recourse to the amended provision of Section 202 of the Code of Criminal Procedure prior to issuance of process against the petitioner no. 2 and it is mandatory on the part of the learned Magistrate to hold an enquiry under Section 202 of the Cr.PC in case the accused is resided at a place beyond the jurisdiction in which learned Magistrate exercises his jurisdiction. Accordingly, the learned Magistrate has exceeded his jurisdiction prior to adverting to the provision of Section 204 of the Code of Criminal Procedure failing which the proceedings shall be vitiated by an incurable irregularity as happened in the instant case. As such, only on that score, the impugned order is liable to be set aside.

4. On the other hand, no one appears on behalf of the opposite party despite of service. No accommodation was prayed for. Accordingly, the matter has been heard ex parte for disposal.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

5. Having heard the submissions of the learned counsels appearing on behalf of the petitioners and on perusal of the record, this Court finds it is admitted facts that the husband of the opposite party had taken a personal loan from the HDFC Bank Limited where the present petitioners were working as Legal Manager and Assistant Vice President.

6. It is further admitted facts that there are dues of the loan amount. Owing to such dues, the husband of the opposite party issued cheques in favour of the bank but those cheques were returned unpaid upon presentation. As such, proceedings under the Negotiable Instruments Act have been initiated against the husband of the opposite party. One execution case is also pending against the husband of the opposite party. Since award dated 22.08.2012 was passed in favour of the bank by sole arbitrator Mr. Partha Sarathi Ghosh in an arbitration proceeding.

7. It is the allegation of the opposite party that on 21.04.2014, the accused nos. 1 and 2 made a call which was received by the opposite party. They asked about the husband of the opposite party. The opposite party politely replied about her husband's absence, but the said accused persons began to rebuke and scolded the opposite party. Again on 23.04.2014 at about 2 pm, the aforesaid accused persons came at the door step of the opposite party and demanded the instalments. The husband of the opposite party politely asked one month time. The accused persons became very furious and began to abuse and humiliate the husband of the opposite party. The opposite party interfered and objected to such languages. The accused persons pushed the opposite party aside by catching her hair. The accused persons abused in obscene languages. In the meantime, neighbouring people came and requested the accused persons to grant time to the husband of the opposite party to repay the loan. The accused persons went away giving threat to the complainant.

8. During examination under Section 200 of the Cr.PC, she narrated the facts before the learned Court below and specifically stated that the accused persons have also assaulted her and her husband. Similarly, the husband of the opposite party also examined under Section 200 Cr.PC on the same day.

9. It appears from the petition of complaint and examination of the complainant and her husband under Section 200 of the Cr.PC that there are material contradictions which go to the root of the case. Both of them have said that accused persons assaulted her and her husband but they did not disclose who and how assaulted them. No specific role has been attributed against the present petitioners. It is also not mentioned who had called the phone and at what time and by which means. Not only that, none of the neighbours, who rescued them, has been examined under Section 200 of the Cr.PC to support the allegations made by the complainant. From the materials available in the record, it reveals several proceedings have been initiated against the husband of the opposite party under Section 138 of the Negotiable Instruments Act and also execution case is pending to execute the award dated 22.08.2012.

10. On the given facts and circumstances, it reveals the case was lodged by the de-facto complainant is to avoid repayment of the loan amount and it has been illegally initiated against the present petitioners who are the Legal Manager and Assistant Vice President of the HDFC Bank Limited who had no role to play for recovery of dues amount as a recovery agent. This case falls in categories 5 and 7 mentioned in the judgment of Hon'ble Supreme Court passed in

State of Haryana and Others Vs. Bhajan Lal and Others[1] in Paragraph 102 as under:

> *"102. This Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to 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*

[1] AIR 1992 SUPREME COURT 604;

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 Act concerned (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 Act concerned, 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."

Accordingly, this Court can exercise its inherent power under Section 482 of the Cr.PC to prevent the abuse of the process of Court or otherwise to secure the end of justice.

11. It further appears from the record that the petitioner no. 2 resides outside the jurisdiction of the learned Judicial Magistrate, 4th Court, Howrah. In such a case, Section 202 of the Cr.PC as amended by the Code of Criminal Procedure (Amendment) Act, 2005 shall be followed by the learned Magistrate before issuing process. For ready reference, this Court would like to refer Section 202 of the Cr.PC as amended by the Code of Criminal Procedure (Amendment) Act, 2005 as under:

> "**S. 202. Postponement of issue of process.**—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1 [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: 1. Ins. by Act 25 of 2005, s. 19 (w.e.f. 23-6-2006).

> Provided that no such direction for investigation shall be made,—
>
> (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or
>
> (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.
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> (2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:
>
> Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.
>
> (3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

12. It is a mandatory provision on the part of the learned Magistrate to hold an enquiry under Section 202 of the Code of Criminal Procedure in the event the accused is resided at a place beyond area in which the learned Magistrate exercises his jurisdiction. Admittedly, no enquiry as prescribed under Section 202 of sub-section (1) of the Cr.PC made by the learned Court below and non-compliance of the provisions of Section 202(1) of the Cr.PC, mandatory in nature, summoning order cannot be passed where the petitioner no. 2 is resided outside the jurisdiction of the learned Court below where complaint was filed.

13. Complaint filed by the complainant, who is opposite party in this petition, is mala fide to put pressure upon the petitioners to avoid repayment of the loan amount is clearly misuse or abuse of the process of the Court. Therefore, there is no need to remand the case for fresh decision after holding enquiry as there is no sufficient material against the petitioners. As such, proceedings and summons are liable to be quashed.

14. In view of the above facts and circumstances, the aforesaid order dated 19.06.2014 passed by the learned Judicial Magistrate, 4th Court, Howrah for issuance of process against the petitioners for alleged commission of offences punishable under Sections 323/504/506/509/120B/34 of the Indian Penal Code is hereby set aside and proceedings being Complaint Case No. 256C of 2014 pending before the Learned Judicial Magistrate, 4th Court, Howrah under Sections 323/504/506/509/120B/34 of the Indian Penal Code is also quashed.

15. Consequently, **CRR 976 of 2015** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of with aforesaid terms.

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

17. Let a copy of this judgment and order be sent to the learned Court below for information and taking necessary action.

18. Interim order, if any, stands vacated.

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

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

(Ajay Kumar Gupta, J)

P. Adak (P.A.)