

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2787 of 2019

With

CRAN 1 of 2019

(Old No. CRAN 4647 of 2019)

Bank of Baroda & Ors.

Vs

M/s Jainex Metalliks Ltd.

For the Petitioners

: Mr. Milon Mukherjee, Ld. Sr. Adv.
Ms. Kabita Mukherjee,
Mr. Manas Dasgupta,
Mr. Biswajit Manna.

For the Opposite Party

: Mr. Anand Keshari,
Ms. Sutapa Ghosh.

Hearing concluded on

: 16.04.2024

Judgment on

: 10.05.2024

Shampa Dutt (Paul), J.:

1. In the instant criminal revisional application, the petitioners have prayed for quashing of the proceedings in Complaint Case No. CS/21374 of 2019 under Sections 120B /403 /409 /418 /420 /380 /500 /384 /511 of the Indian Penal Code, pending before the Court of the Learned 19th Metropolitan Magistrate, Calcutta.

2. The petitioners' case is that:-

- (a) The petitioner no.1 is a body corporate being a nationalized bank constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and affairs of the petitioner No.1 is regulated by the Reserve Bank of India.
- (b) The petitioner nos. 2 to 6 are the officers of the Petitioner no. 1 Bank. Petitioner No. 7 is the Managing Director of Bank of Baroda and having his office at Mumbai.
- (c) That the opposite party being the borrower of petitioner no.1 filed a Complaint Case No. CS/21374 of 2019 alleging commission of offence punishable under Sections 120B/403/409/418/420/380/500/384/511 of the Indian Penal Code.

3. The allegations made in the petition of complaint is that the petitioner no. 1 Bank of Baroda did not grant credit facility to the opposite party. The prayer of the opposite party for enhancement of the existing credit

facilities was also not granted for which the opposite party had allegedly suffered loss. The opposite party has termed such action of officers of the petitioner no.1 as mala fide, arbitrary, illegal and product of conspiracy.

4. The petitioners further state that the borrower opposite party failed and neglected to pay the outstanding dues of the petitioner bank in spite of repeated reminders and persuasion for which the petitioner bank served notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') and Security Interest (Enforcement) Rules, 2002 and a demand notice was also served upon the opposite party requesting them to repay the outstanding dues within a certain period.
5. Ultimately the borrower opposite party and/or guarantor/s failed to pay the outstanding dues of the petitioner bank in response to the said notice under Section 13(2) of the SARFAESI Act and **the petitioner bank without having any further option left initiated SARFAESI action against the borrower opposite party and their guarantor/s. Pursuant thereto possession of the secured asset was taken in terms of the SARFAESI Act.**
6. **The opposite party field an application under Section 17(1) of the SARFAESI Act before the Learned Debts Recovery Tribunal-I,**

Kolkata and the said application was numbered as S.A. No. 33 of 2016.

- 7. During pendency of the said S.A. No. 33 of 2016, the opposite party filed the instant petition of complaint** alleging commission of offence as stated hereinabove. The petitioner bank and its officers challenged the said initiation of the complaint case by filing the instant application.
- 8. During pendency of the instant revisional application, the said S.A. No. 33 of 2016 was dismissed by the judgment and order dated 16th December, 2019 by the Learned Debts Recovery Tribunal – I, Kolkata. Copy of the said order was brought on record before this Hon'ble Court by way of a supplementary affidavit.**
- 9.** The opposite party filed an appeal against the said judgment and/or order dated 16th December, 2019 before the Hon'ble Debts Recovery Appellate Tribunal which is still pending.
- 10.** The petitioners have relied upon the judgment in ***K. Virupaksha & Anr. Vs The State of Karnataka & Anr.***, reported in **2020 (4) SCC 440.**

“14. The issue, however is, as to whether such proceedings by the police in the present facts and circumstances could be permitted. At the outset, the sanction of loan, creation of mortgage and the manner in which the sanctioned loan was to be released are all contractual matters between the parties. The complainant is an industrialist who had obtained the loan in the name of his company and the loan account was maintained by Canara Bank in that regard.

The loan admittedly was sanctioned on 16-3-2009. When at that stage the amount was released and if any amount was withheld, the complainant was required to take appropriate action at that point in time and avail his remedy. On the other hand, the complainant had proceeded with the transaction, maintained the loan account until the account was classified as NPA on 15-1-2013. Initially, the issue raised was only with regard to the undervaluation of the property when it was brought to sale. On that aspect, as taken note, the writ proceedings were filed and the learned Single Judge having examined, though did not find merit had reserved liberty to raise it before DRT, which option is also availed. It is only, thereafter, the impugned complaint was filed on 20-5-2016.

15. *The SARFAESI Act is a complete code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstance, as already taken note of by the High Court in writ proceedings, if there is any discrepancy in the manner of classifying the account of the appellants as NPA or in the manner in which the property was valued or was auctioned, DRT is vested with the power to set aside such auction at the stage after the secured creditor invokes the power under Section 13 of the SARFAESI Act. This view is fortified by the decision of this Court in Indian Overseas Bank v. Ashok Saw Mill [Indian Overseas Bank v. Ashok Saw Mill, (2009) 8 SCC 366 : (2009) 3 SCC (Civ) 403] wherein it is held as hereunder :*

“35. *In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.*

36. *The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even*

though possession may have been made over to the transferee.

37. *The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr Gopalan and Mr Altaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted."*

(emphasis supplied)"

11. The petitioners further state that in the instant case the opposite party as borrower has defaulted in payment of monies due to the Bank. In other words, public money due by the opposite party to the Bank has not been repaid and the account of the opposite party has been classified as a 'non-performing asset'. **The petitioner bank has initiated proceedings under the SARFAESI Act to recover its dues. By filing the instant petition of complaint the opposite party is attempting to stall the SARFAESI proceeding which is not permissible inasmuch as the petitioner bank which is a nationalized bank is the custodian of public money taking steps to recover its dues by e-auction.**
12. **In this connection Section 32 of the SARFAESI Act is referred to. It is the absolute domain of the Learned Debts Recovery Tribunal to look into the matters relating to the said SARFAESI action and**

other Courts have very little role to play in this matter. If the borrower had any grievance with regard to the measures taken by the secured creditor invoking the provisions of Section 13 of the SARFAESI Act the remedy is to take recourse to Section 17 of the SARFAESI Act. In the instant case, the opposite party has already taken such recourse under Section 17 of the SARFAESI Act and was unsuccessful therein.

13. The intention of the legislature is very clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the Learned DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to pass remedial orders. The SARFAESI application of the opposite party has been dismissed by the Learned Debts Recovery Tribunal. Therefore, the initiation of the present petition of complaint before the Criminal Court is an intimidatory tactic and an afterthought which is an abuse of the process of law.
14. Affidavit in opposition filed by the opposite party/complainant reiterating the statements in written complaint. S.A. No. 33 of 2016 filed by the complainant/opposite party herein before the Debts Recovery Tribunal, was dismissed on 16.12.19 on observing as follows:-

*(a) The loan account was classified as NPA on 08.12.2014 and subsequently notice under Section 13(2) was issued on 14/10/2015 and after completion of 60 days mandatory period the Respondent Bank has issued notice under Section 13(4) on 15.01.2016 under Annexure-F and the Respondent bank after following due process of law all further proceedings were started. **The Respondent bank has acted as per the statutory provisions of law and no irregularity has been committed by the Bank.***

(b) In view of the discussion as made above and in absence of any merit, the present SARFAESI application bearing SA No. 33 of 2016 is dismissed, but there shall be no order as to cost.

The Respondent Bank is at liberty to proceed in this matter as per law.

15. The statement of accounts of the complainant's cash credit account in this case has been filed by way of a supplementary affidavit as directed by this Court.

16. By way of written notes of argument the opposite/complainant has again stressed on the points taken in his written complaint.

17. It is stated by the complainant/opposite party herein that:-

A. Section 32 of SARFAESI is not an absolute Bar in case of any and every criminal case against the Bank and its employees. It is not applicable to the present case to safeguard the accused persons as they acted not in accordance with law, mala fide and not in good faith violating Rules and Regulations of RBI and order of DRT.

18. The following judgments have been relied upon on behalf of the complainant:-

- i) *Celir LLP Vs. Bafna Motors (Mumbai) Pvt. Ld, 2024 (2) SCC 1 [Para : 105].*
- ii) *CBI V. Aryan Singh, 2023 SCC OL SC 379.*
- iii) *Priti Saraf Vs. State of NCT of Delhi, AIR 2021 SC 1531.*

19. From the materials on record, the following facts are evident:-

- a) The complaint in this case has been filed on 7 May, 2019.
- b) The debt recovery proceeding was initiated in 2016.
- c) Final order in the said proceeding was passed against the complainant on 16.12.2019.
- d) It prima facie appears that towards the end of the proceedings before the DRT, the complainant initiated the criminal proceedings in the present case.

20. 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:-

“14. In our considered opinion, the learned SDJM set the criminal law in motion against the appellants without even examining the allegations and averments made in the complaint filed by the respondent-complainant. The learned SDJM took cognizance of the case without considering the allegations on merits. Had the learned SDJM perused the complaint properly he would have realized that the complainant himself had made a mention about the lodging of the FIR for criminal breach of trust and other offences against the respondent-complainant and others. Had he looked into the complaint properly, he would have certainly asked the complainant to furnish the copy of the said FIR. A copy of the legal notice issued on behalf of the respondent-complainant to the appellants was filed along with the complaint and a mention is made about it in the order passed by the learned SDJM. Had the learned SDJM perused

the said legal notice, he would have realized that the complainant himself admitted about his execution of agreement of guarantee and other documents unconditionally agreeing to discharge the loan amount in case of failure of the principal borrower to pay the said amount to the bank. Had the learned SDJM applied his mind to the facts and circumstances and sequence of events and as well as the documents filed by the complainant himself along with the complaint, surely he would have dismissed the complaint. He would have realized that the complaint was only a counter blast to the FIR lodged by the Bank against the complainant and others with regard to same transaction. This Court in Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors. [(1998)5 SCC 749 held:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The case on hand is a classic illustration of non-application of mind by the learned Magistrate. The learned Magistrate did not scrutinize even the contents of the complaint, leave aside the material documents available on record. The learned Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants.

15. *The High Court committed a manifest error in disposing of the petition filed by the appellants under Section 482 of the Code without even advertng to the basic facts which were placed before it for its consideration. It is true that the court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot go into the truth or otherwise of the*

allegations and appreciate the evidence if any available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage/when the investigation/enquiry is pending. Interference by the High Court in exercise of its jurisdiction under Section 482 of Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair-minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the Complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint. It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If such power is not conceded, it may even lead to injustice". [See: State of Karnataka Vs. L. Muniswamy (1977) 2 SCC 699]. We are conscious that inherent powers do not confer an arbitrary jurisdiction on the High Court to "act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases". [See: Kurukshetra University Vs. State of Haryana (1977) 4 SCC 451].

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.”

21. The Supreme Court in ***PHR Invent Educational Society vs UCO Bank & Ors.*** has issued clear guidelines in cases of this nature.
22. **The present case** has been filed against a Bank and its officers, when they proceeded under the SARFAESI Act and proceedings before the DRT had been initiated by the opposite party/complainant herein, prior to filing of the present complaint.
23. The offences alleged are under Sections 120B/403/409/418/420/380/500/384/511 of the Indian Penal Code. None of the ingredients required to constitute the offences alleged are applicable in respect of **the petitioners, who have acted in accordance with law in their official capacity.**
24. If an Authorised Officer of a bank/institution has to face criminal charges, 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.
25. **The present case has been initiated against the petitioners who were/are Bank officials of a Nationalized Bank, who acted in**

accordance with law in their official capacity on behalf of the Bank. The said fact has also been stated by the Debt Recovery Tribunal, while dismissing the complainant's case before it.

26. The revisional application being CRR 2787 of 2019 is accordingly allowed.

27. The proceedings in Complaint Case No. CS/21374 of 2019 under Sections 120B/403/409/418/420/380/500/384/511 of the Indian Penal Code, pending before the Court of the Learned 19th Metropolitan Magistrate, Calcutta, is hereby quashed, in respect of the petitioners.

28. All connected applications, if any, stands disposed of.

29. Interim order, if any, stands vacated.

30. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

31. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)