

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 2868 of 2017****IN THE MATTER OF****Jaswant Singh & Anr.****Vs.****State of West Bengal & Anr.****For the Petitioner : Ms. Subshree Patal Adv.,****For the Opposite party : Mr. Arindam Jana, Adv.,
Mr. Arhan Sengupta, Adv.,
Mr. Partha Pratim Sinha Adv.****For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Imran Ali, Adv.,
Ms. Debjani Sahu Adv.****Judgment on : 09.01.2024****Subhendu Samanta, J.**

This is an application u/s 482 of the Code of Criminal Procedure for quashing of a criminal proceeding being CGR Case No. 1690 of 2017 pending before the Learned Chief Judicial Magistrate Alipur, South 24 Pargans, arising out of South Port Police Station case No. 75 of 2017 dated 22.04.2017 u/s 420/406/120B IPC.

The brief fact of the case is that the present opposite party No. 2 has lodged a written complaint with the South Port Police Station against the present petitioner and pursuant thereto the South Port Police Station Case No. 75 of 2017 dated 22.04.2017 was started.

The brief fact of the FIR is that on 17.08.2011 the petitioners had requested the opposite party No. 2 for financial assistance, on further repeated persuasion the petitioner No. 2 gave a sum of Rs. 20,00,000/- vide Account Payee Cheques issued from his concern namely "Jaiswal Enterprise" in favour of "Punjab engineering". It has been alleged that petitioners had promised to pay a sum of interest to the tune of 24% per annum and the said sum transfer to them on the same date. Thereafter the OP 2 had made several requests for returning the same amount and accrued interest but the petitioner No. 2 being the sole proprietor of "Punjab Engineering" refrain from making such payment instead of TDS was shown of interest and deposited with the Income Tax Authorities with acknowledged the loan to the concern of the petitioner No. 2. The payment of the TDS was not continued by the petitioner No. 2. No sum repaid to the petitioner No. 2 and it has been alleged that he was cheated to the tune of Rs 63,73,730/-.

After registering such criminal case the present petitioner apprehending arrest, preferred an application u/s 438 Cr.PC. before the Learned Sessions Judge, Alipur.

Vide the order of Learned Sessions Judge dated 15.06.2017 and 03.07.2017 in furtherance to the terms of bail conditions, the petitioners voluntarily surrendered before the Learned CJM Alipur and deposited the alleged principal outstanding to the tune of Rs. 20,00,000/- on 12.07.2017 by virtue of the order of the of the Learned Magistrate. The present opposite party No. 2 has accepted the demand drafts totalling of Rs 20, 00,000/- from the investigating officer. The entire principal amount was received by the present OP 2. So there is no justification to further proceed with the criminal case against the present petitioner. Hence this application for quashing.

Learned Advocate for the petitioner submits that alleged loan amount of Rs 20,00000/- was advanced by the OP 2 to the concern petitioners on 17.08.2011, the FIR lodged on 22.04.2017. It is proved that the alleged time barred debt has been sort to be recovered through the instant criminal proceeding in a situation where a due process of civil court are unavailable to the OP No. 2 being barred by the law of

limitation. Thus the instant criminal proceeding is liable to be quashed.

The OP 2 has succeeded to recover the alleged principal amount by abuse and/ or misuse of the process of criminal law in respect of time barred debt. Further continuation of the impugned proceeding for the recovery of the alleged interest of his time barred debt would amount to further abuse of the process of criminal law. The OP 2 was not entitled to recover the debt as well as interest therein in view of the fact that OP No. 2 does not possess a license under the Bengal Money Lender Act; Section 8 of the said Act would operate against the OP 2 with full force. The petition of complaint does not disclose or make out a criminal offence u/s 420/406/120B of IPC as such impugned proceeding liable to be quashed. It would appear from the plain reading of petition of complaint that there were good terms between the parties and they had running regular course of business transaction. The dispute appears to be dispute of accounting between the parties which is completely civil in nature. So the instant criminal proceeding is barred. So he prayed for hearing of the entire proceeding.

Learned Advocate appearing on behalf of the private OP No. 2 submits that the conduct of the petitioners proved their criminal mind to cheat the present OP No. 2. Police has

registered a criminal case and during the course of investigation police has collected several evidences and submitted charge sheet; at this juncture the evidence collected by the police cannot be wiped out by quashing the entire criminal proceeding. The report of the police regarding the TDS upon interest has been specifically collected. Thus at this juncture the entire criminal proceeding cannot be quashed.

Learned Advocate appearing on behalf of the State submits that the police registered a specific case on the basis of the specific complaint of the OP No. 2. During the course of investigation police has collected several evidences. Police has also enquired the available witnesses and recorded their statements u/s 161 Cr.P.C. On plain perusal of the materials in record the prima facie offence against the present petitioners are made out. At this juncture the entire criminal case cannot be quashed.

Heard the Learned Advocates.

Perused the materials on record it is true that during course of investigation and inquiry of the case the principal amount has been deposited by the present petitioner and Opposite Party No. 2 has received the same through the IO. The allegation made in the FIR u/s 420/406/120B of IPC has been specifically dealt with by the IO. IO has also collected

several evidences both oral and documentary during the course of investigation of this case.

At the stage of quashing this court cannot go into the merit of those evidences and evaluate the same in favour of parties. The evaluation of the evidences collected by the IO would tantamount to be a mini trial conducted by this court. During hearing of a quashing application this court cannot go into the merit of this case. Thus I find no justification to entertain the instant criminal revision. The instant criminal revisional application for quashing appears to be not meritorious and hence it is rejected.

CRR is disposed of.

Connected CRAN applications if pending are also disposed of.

Any order of stay passed by this court during the continuation of the instant criminal revision is also vacated.

CD be returned.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)