IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

C.R.R. 3589 of 2023
Tapan Roy (Paul)
Vs.
The State of West Bengal & Ors.

Before: The Hon'ble Justice Apurba Sinha Ray

For the Petitioner	Mr. Satrajit Sinha Roy, Adv.
For the respondent Nos. 2, 4 & 5.	Ms. Soni Ojha, Adv. Ms. Sonia Nandy, Adv.
For the State.	Mr. Anwar Hossain, Adv. Ms. Manisha Sharma, Adv.
For Orders On:	05.03.2024

Apurba Sinha Ray, J. :-

1. This is an application under Sections 482 and 397 of the Code of Criminal Procedure for setting aside and quashing of the order dated 31st August, 2023 passed in M.P. Case No. 1438 of 2023 by the Learned Additional Chief Judicial Magistrate, Barrackpore. The learned counsel for the revisionist Mr. Satrajit Sinha Roy has submitted that initially the wife of the revisionist applied for a term loan of Rs. 4,87,000/- on 6th April, 2021 and offered the Gold Ornaments as mentioned in the schedule of the said loan documents as the securities of the said Term Loan but the respondent Nos. 2 and 3 processed the said loan application as overdraft loan of Rs. 4,90,000/- including the processing fees and sanctioned the same on 6th April, 2021 being Account No. 50200051591393 which was continued till 26th June, 2022 i.e. for 15 months and the respondent no. 5 received the sum of Rs. 92,937/- from the wife of the revisionist which is 19 percent of the principal amount of Rs. 4,80,857/- with a closing debit balance of Rs. 4,80,857/-. According to revisionist the respondent HDFC Bank Limited being one of the schedule banks of the Reserve Bank of India charged interest higher than the agreed rate of interest in contravention of RBI guidelines and therefore such practice is illegal and opposed to public policy.

2. It is also alleged that the sales manager being the respondent no. 5 has managed one local money lender and deposited the entire cash in the savings bank account of the petitioner and therefrom the outstanding amount of Rs. 4,80,857/- was transferred to the said account no. 50200051591393 of Basanti Roy and closed the said account and simultaneously opened a gold loan account being account no. 73590023 for the sum of Rs. 5,17,000/- in the name of Tapan Roy being the petitioner/revisionist herein and the entire loan amount was given to the said sales manager to meet the demand of the said money lender as such the petitioner was neither benefitted nor achieved anything from such transaction. It is also mentioned that petitioner/revisionist has already paid Rs. 92,937/- and Rs. 24,558/- totalling Rs. 1,17,495/- but the said payments are not properly reflected in the ledger of the particular account as other bank employees are also involved in the malpractices with the other respondents as stated above. It is also mentioned that on and from 28th February, 2023 to 12th April, 2023 the petitioner complainant paid Rs. 22,000/- only and the purported outstanding balance of the loan amount is Rs. 5,09,061/- which the is subject matter of challenge.

3. The petitioner filed a petition under Section 156(3) Cr.P.C. to the Leaned Additional Chief Judicial Magistrate Barrackpore with a prayer to direct the Inspector-in-Charge of Baranagar Police Station to register the complaint as an FIR and to initiate investigation under Section 420, 406 and 506 read with Section 34 of the Indian Penal Code and pass appropriate order.

4. It appears that the Learned Additional Chief Judicial Magistrate Barrackpore has called for report a from the Baranagar Police Station and after receiving the said report, the Leaned Additional Chief Judicial Magistrate Barrackpore has dropped the said matter being M.P. Case No. 1438 of 2023. The relevant order dated 31.08.2023 is quoted herein below:-

> *"Order dt. 31-08-023*
>
> *Today is fixed for report from the Concerned Ps. BARANAGAR Complainant takes no steps.*
>
> *A report is received from the concerned ps BARANAGAR.*
>
> *Considering the report and the relevant papers submitted by the concerned p.s. the said M.P. Case is dropped accordingly."*

5. The learned counsel Mr. Sinha Roy has submitted that the Learned Additional Chief Judicial Magistrate Barrackpore has committed serious wrong in calling for a report from the concerned Police Station before directing the concerned Police Station to register the complaint of the petitioner as an FIR. In support of his contention the learned counsel has relied upon judicial decisions reported at **(2014) 2 SCC 1 (Lalita Kumari Vs. Government of Uttar Pradesh & Ors.) and also upon (2008) 2 SCC 409 (Sakiri Vasu Vs. State of**

Uttar Pradesh & Ors.). The learned counsel has further argued that the petition has disclosed cognizable offences against the concerned employees of the bank and therefore an FIR was required to be registered in view of the settled principles of law. It is also alleged that the complainant's wife had prayed for Term Loan but bank granted a Gold Loan without her consent. So there is a fraud committed upon the complainant's wife and the allegation is required to be investigated by the concerned police station in its proper perspective but without directing the concerned police station to initiate criminal proceedings the Learned Additional Chief Judicial Magistrate, Barrackpore has gone beyond the established principles of law.

6. The learned counsel appearing for the HDFC Bank has submitted that petition under Section 156(3) Cr.P.C. filed by the revisionist does not disclose any cognizable offence. It appears from the said petition under Section 156(3) Cr.P.C. that the petitioner has made allegation of charging higher rate of interest in violation of banking norms and RBI Guidelines. No case of fraudulent activities has been mentioned. The relevant Gold Loan application form contains the signatures of the petitioner and therefore the petitioner cannot take the plea right now that he or his wife was not aware of the terms and conditions for getting Gold Loan particularly when the revisionist himself is a legal practitioner. The learned counsel for the bank has further contended that initially the revisionist approached for a term loan in the name of his wife Basanti Roy who did not have any bank account and the revisionist was not ready to open a savings bank account with HDFC. As per the internal norms of the bank, Term Loan can be disbursed with six months upfront interest to the external customers exclusively. However, the revisionist was not willing to avail the interest option and he opted for zero balance overdraft account instead of Rs. 10,000/- regular savings bank account and availed the overdraft facility at 10% ROI which was processed with his consent and overdraft agreement was duly signed by the wife of the revisionist in presence of the customers at Gold Loan Desk of the bank under CCTV surveillance. The revisionist has cleared interest on overdraft account as per the norms and payment pattern, and the same has been admitted by the revisionist as he has signed the requisite documents at the time of closure. The interest paid by the revisionist does not pertain to the revisionist's abovementioned Gold Loan Account 73590023 as the same has been taken under upfront mode and therefore a sum of Rs. 24,558/- has been deducted as upfront interest. No more interest have been paid by the revisionist and he has made a payment of Rs. 5,500/- on 28th February, 2023 and Rs.

10,000/- on 23rd March, 2023 which has got adjusted against his principal.

7. The learned counsel of the bank has also contended that there are two accounts and the Gold Loan account is a separate one. Irregularities or deviation, if any, on the part of the bank authorities, may be brought to the notice of Banking Ombudsman but filing of criminal complaints against the bank employees is only to create pressure upon the bank to come to terms with unlawful demand of the revisionist. The learned counsel has strenuously argued that public fund is being disbursed to the individuals for loan purposes, and now if the individuals are allowed to take criminal action against the bank officials even when they are actually making default in payment of loan, it would cause serious repercussion and predicament in the overall transaction of the bank.

8. The learned counsel for the state has also submitted that the court must be very slow to initiate any criminal investigation against the banking employees otherwise there would be serious disturbances in the financial regime of the country. In support of her contention the learned counsel for the State has referred to the decision of the Hon'ble

Supreme Court reported in **(2015) 6 SCC 287 (Priyanka Srivastava & Anr. Vs. State of Uttar Pradesh & Ors**.).

9. In reply the learned counsel for the revisionist has argued that the case law of **Priyanka Srivastava & Anr. (supra)** is not applicable in this case since in the reported decision provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 were involved but that is not the case in the instant matter.

<u>Court's View</u>

10. Section 156(3) Cr.P.C. deals with cognizable cases only and it has specifically mentioned that any Magistrate empowered under Section 190 Cr.P.C. may order an investigation to be carried out in respect of any cognizable case which has been disclosed to him. The question is whether the petition under Section 156(3) Cr.P.C. in our case has disclosed any cognizable case or not. Section 2(c) of Code of Criminal Procedure, 1973 has defined cognizable offence and cognizable case as hereunder:-

> *""Cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or*

under any other law for the time being in force, arrest without warrant;"

11. Such definition shows that the cognizable cases include those cases where police can arrest even in the absence of warrant of arrest issued by any court. That indicates the serious nature and gravity of the offence alleged to have been committed. After going through the entire petition under Section 156(3) Cr.P.C. it appears that the petitioner has made allegation that the bank employees have charged excess interest in violation of the banking norms and the guidelines issued by the Reserve Bank of India from time to time. The allegation contained in the said petition shows that the agreement between the bank and the revisionist or his wife was not respected by the concerned bank officials. If there is any allegation for breaches of contract or charging higher rate of interest in violation of the agreed terms and contract, the remedy of the revisionist lies in the civil court of law. However, the allegation from the side of the revisionist that outstanding loan amount in the relevant term loan account has been paid by a local money lender and thereafter the amount was transferred to the said money lender after creating a new account with the connivance with the bank officials are, in fact, matters of rules in connection with the discipline and Bank employees' conduct. If such an allegation is made, the banking authority or the Bank Ombudsman is the real and appropriate authority to deal with the issue. It is found that not a single letter or any other step has been taken by the revisionist to bring the matter to the notice of the concerned authority, even when allegedly the outstanding amount of the revisionist has been cleared after taking the help of the local money lender.

12. Learned counsel for the revisionist has categorically stated that **Priyanka Srivastava's case (supra)** is not applicable in this case since the matter therein relates to SARFAESI Act, 2002. It was held in the said decision that when a citizen avails a loan from a financial institution it is his obligation to pay back and not play truant or for that matter play possum. It is further held that the remedy available under Section 156(3) is not of routine nature and exercise of power there under requires application of judicial mind. If a Magistrate exercises the said power without application of mind, such order of the Magistrate should be condemned. In the said decision the actual fact was that the borrower of the housing loan failed to repay the loan to the bank and on action being taken against the borrower by the bank under SARFAESI Act, 2002, the borrower instead of resorting to remedy available under the relevant Act, took recourse to Section 156(3) Cr.P.C. and got various FIRs registered against the bank authorities merely to harass them with sole intent to avoid loan. By the said criminal action the bank authorities compelled to concede to borrower's request for one time settlement.

13. By quashing the order of the Magistrate under Section 156(3) Cr.P.C. the Hon'ble Supreme Court has been pleased to direct that all Sessions Judges and Magistrates should remain more vigilant and diligent while exercising power under Section 156(3) Cr.P.C. From the above it does not appear that such observation was made only in respect of proceedings under SARFAESI Act, 2002 but the above direction is applicable in respect of any loan granted to the individuals or others by the banks which are also regarded as financial institutions of our country.

13.1. Be it mentioned, the record contains two letters one written by the learned counsel or the revisionist on 18.03.2023 and another by the revisionist himself also on 18.03.2023. Both the letters after challenging the action of the bank reiterated that the revisionist is ready to pay the principal amount of Rs. 4,80,857/- with equated monthly instalments (EMIs). It goes to show that the revisionist is more interested in repaying loans by way of month's instalments rather than the conditions of gold loan. This statement weakens the case of the petitioner; and the possibility of creating pressure upon the bank by lodging criminal complaint at the instance of the revisionist cannot be ruled out.

14. In the instant case the Leaned Additional Chief Judicial Magistrate Barrackpore should have mentioned the reasons as to why such proceedings were dropped. But it appears that without recording any reason the learned Magistrate dropped the matter with his four lines order. The Hon'ble Supreme Court and this Court have time and again directed the judicial officers to record the reasons before disposing any matter in which they are called upon to apply their judicial mind. It appears that the Learned Additional Chief Judicial Magistrate Barrackpore (31.08.2023) was not aware of such observations of the Hon'ble Courts.

15. However, from the materials on record it appears that the petition under Section 156(3) discloses certain allegations which are of civil nature and the remedy lies in the civil courts of law. Moreover, the Banking Ombudsmen can be of significant help for the revisionist. As the petition under Section 156(3) does not disclose any cognizable case or offence the decision reported at **Lalita Kumari (supra)** is not applicable. In the said case law it is clearly held that the registration of FIR is mandatory under Section 154 of the Cr.P.C. if the information discloses commission of a cognizable offence and in that case no preliminary enquiry is permissible. In such a situation, as the petition in our case does not disclose any cognizable offence, seeking a preliminary report from the concerned police station at the instance of Leaned Additional Chief Judicial Magistrate Barrackpore cannot be frowned upon in view of the directions of the case of **Lalita Kumari (supra).**

16. In view of the aforesaid discussion I am constrained to hold that there is no need to interfere with the order dated 31.08.2023 passed by the Leaned Additional Chief Judicial Magistrate Barrackpore.

17. In fine, the revisional application stands dismissed. No costs.

18. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(APURBA SINHA RAY, J.)