

14.03.2024
Serial no.42
Aloke
Ct. No. 30

CRR 4336 of 2022

Mayukh Ghosh

Vs.

The State of West Bengal & Anr.

Mr. Sabir Ahmed
Mr. Sayak Ranjan Ganguly
Ms. Srijani Ghosh
Ms. Suman Biswas
Mr. Tasnim Ahmed

... for the petitioner

Mr. Sudip Ghosh
Mr. Bitasok Banerjee

... for the State

- 1.** The present revisional application has been preferred praying for quashing of the proceeding being G.R. Case No. 2723 of 2022 arising out of Naihati P.S. Case No. 150 of 2022 dated 01.04.2022 under Sections 448/323/354/506/34 of the Indian Penal Code, pending before the learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas.
- 2.** Affidavit-of-service is on record showing that the opposite parties have been duly served but in spite of service the opposite party no. 2 is not represented.
- 3.** The learned counsel for the State is present and has placed the case diary.
- 4.** The petitioner states that the petitioner is an employee with TATA Capital Housing Finance Limited and while discharging his duties in the official capacity, he has been implicated in a false criminal case having no connection or nexus with the

alleged offence and the complaint is an outcome of violation of the agreement arrived at by and between the complainant and the TATA Capital Housing Finance Limited. Since the opposite party no. 2 herein failed to comply with the terms for payment of monthly installment in respect of the loan available by him, he has taken ploy to rope the employees of the said TATA Capital Housing Finance Limited to avoid his financial liability and lodged a false and frivolous complaint against the employee of the said TATA Capital Housing Finance Limited.

5. It is further stated that the opposite party no. 2 lodged a written complaint before the Officer-in-Charge, Naihati P.S. which lead to the initiation of the present proceeding stating therein as follows:-

“He took a loan from TATA Capital Housing Finance Limited on 24.04.2019 against the security of his residential property and after taking the said loan, he used to pay the monthly installment, regularly, to the financial institution. Due to the outbreak of COVID-19 virus as well as lockdown, he requested the said financial institution for moratorium, but the said financial institution refused to give the same and demanded huge amount for non-payment of the loan during the lockdown period and the men and agents of the said financial institution created several nuisance in his residential house and he sent a letter on 07.03.2022 to the said financial institution for furnishing the statement of the account, loan agreement, etc. but the said institution ignored the same and on 26.03.2022 at about 4 PM, some men and agents of the said financial institution came to his house, two of them were Mayukh Ghosh and Saugata Chakraborty (the petitioner herein) forcibly entered into his house. His father and wife tried to stop their ill attempt and they in connivance with the superior officials of the said financial institution forcibly entered into his house and maliciously inflicted torture upon his old ailing father and outraged the modesty of his wife. His father was taken for treatment at Naihati State General Hospital, and he is passing his days with great fear that the physical torture may continue.

Accordingly, on the basis of such complaint, Naihati Police Station started a case being Naihatai Police Station Case No. 150 of 2022 dated 01.04.2022 under Sections 448/323/354/506/34 of the Indian Penal Code, 1860.”

6. The petitioner states that the opposite party no. 2 herein along with his father, viz. Sahadeb Rajbanshi, is the co-borrower of home loan amounting to Rs.22,70,000/- (Rupees Twenty-Two Lakhs Seventy Thousand only) under Loan Account No. TCHHF0500000100000566 on the terms and conditions, more particularly stated in the sanction letter as well as in the loan agreement. The loan was repayable in 180 equal monthly installments @ Rs.26,518/- (Rupees Twenty-Six Thousand Five Hundred Eighteen only) at a variable rate of interest @11.40 per annum. The opposite party no. 2 has signed and executed the documents and created mortgage of the immovable property situated at Premises No. 7/C, Bijay Nagar, Kali-Sitala Temple, Jelepura, Police Station-Naihati District-North 24-Parganas, PIN-743 165 to secure due payment of the said loan facility availed.
7. The petitioner further states that the opposite party no. 2 has failed and neglected to pay the monthly installment of the loan amount and adopted a tactic to implicate the officials of the said financial institution only to avoid the payment of the loan liability and the opposite party no. 2 sent a letter dated 17.03.2022 demanding some documents and returning the unused blank cheques with instruction not to drop the cheque before the bank for encashment as he has closed the said bank account from which the cheques were issued.

- 8.** The petitioner states that the company on receipt of the said letter has gently replied that the company does business in fair and legal as well as ethical manner and no employee has ever created any nuisance to recover the loan and has specifically stated that the loan agreement has already been supplied to him and if he wishes to get the copy, he may visit the branch office during working hours to collect the required copies pertaining to the loan account. However, he intimated that a total sum of Rs. 29,518 is overdrawn as on 04.04.2022.
- 9.** The petitioner states that a notice was sent only to create cause of action to initiate a false criminal case against the employees. However, before the reply was given the Opposite Party No. 2 with false and frivolous allegation engineered with oblique purpose has lodged a complaint to the Naihati Police Station on 01.04.2022.
- 10.** Thereafter, on 05.04.2022 the opposite party No. 2 sent a complaint to the Branch Manager alleging that his letters are not being replied to and due to the incident that occurred on 26.03.2022, he has lodged a complaint against the employees of the said company and most surprisingly he has stated that he has never signed the agreement copy with the office regarding loan account and he has not received the insurance copy and also intended to get back the cheques given to the company.
- 11.** The company in reply to its notice dated 25.04.2022 specifically stated that none of the employees has acted unethically or threatened to recover the dues and he was

called for placing such false and baseless allegation. He was called on to receive the issue related post-dated cheques, insurance documents, loan agreement, but he has failed to come to the office.

- 12.** The petitioner further states that since the opposite party No. 2 has failed or neglected to repay the loan amount the company issued a Loan Recall Notice cum SARFAESI Awareness cum Conciliation Notice on 07.04.2022 and specifically contended that since the opposite party no. 2 has failed or neglected to pay the monthly EMIs, the loan account was being recalled, and accordingly, a sum of Rs. 27,85,558/- (Rupees Twenty-Seven Lakhs Eighty-Five Thousand Five Hundred Fifty-Eight only) stood as the outstanding dues and the Opposite Party No. 2 was called upon to repay the amount.
- 13.** The petitioner states that despite receipt of such notice dated 07.04.2022, the opposite party no. 2 has failed or neglected to pay the amount. Accordingly, to recover the loan amount, the company initiated a proceeding under the SARFAESI Act, 2002 and issued notice under Section 13(2) of the said Act on 12.07.2022. The opposite party no. 2 has duly received and despite receipt of the same, the opposite party no. 2 has failed or neglected to pay the amount till date.
- 14.** The petitioner states that in accordance with the provision of the SARFAESI Act, 2002, the said notice was published in one vernacular daily newspaper and one in English on 26.07.2022.
- 15.** The petitioner further states that the FIR is an outcome of violation of the loan agreement and non-payment of the EMIs

that loan taken by the opposite party no. 2. The opposite party no. 2 has hatched up a conspiracy and lodged a false and frivolous complaint against the employees of the TATA Capital Housing Company Limited to avoid the payment of the loan amount and coerce them in the garb of a criminal litigation to avoid the repayment of the loan amount.

16. Heard the learned counsel for the petitioner and the learned counsel for the State. The opposite party no. 2 is not represented in spite of notice perused the case dairy.
17. On perusal of the written complaint filed by the opposite party no. 2 with the Naihati P.S., it appears that the loan taken by the opposite party no. 2 from the petitioner/institution has been admitted by the opposite party no. 2/complainant.
18. It is categorically stated in the written complaint that:-

*“On 26.03.2022 at about 4 p.m. some men and agents of the said institution came to my house and two of them namely **Mayukh Ghosh (Employee of Collection Department for TATA CAPITAL HOUSING FINANCE PVT. LTD., Mobile:9563640047) and Sougata Chakraborty (and other employees of TATA CAPITAL HOUSING FINANCE PVT. LTD.) [OFFICE ADDRESS : TATA CAPITAL HOUSING FINANCE PVT. LTD., 2nd Floor, Park Plaze 2C & 2D, P.O.- Park Street, Pin-700016, Kolkata, West Bengal]** forcefully entered into my house. When my father and my wife tried to stop their ill attempt, the said men and agents in connivance with their higher authority forcefully entered into my house and mercilessly inflicted torture upon my old ailing father and injured him badly and also outraged the modesty of my wife. My father was taken for treatment at Naihati State General Hospital and therefore myself and my family members are passing our days with great fear and I apprehend that the said persons may further come to my house and physically torture inflicted upon us and the same is continuing.”*

19. On perusal of the case diary, this Court finds that there is no materials on record to prima facie make out the offence as alleged by the complainant against the petitioner.
20. The petitioner being an authorized agent of the financial institution allegedly visited the complainant's house on **26.03.2022 at about 4 p.m.** The timing of the said visit is in accordance with law and the conduct of the petitioner cannot be in any manner whatsoever, said to be unlawful.
21. **Admittedly, the petitioner is an employee of TATA Capital Housing Finance Pvt. Ltd., which granted the loan in favour of the complainant/opposite party no.2.**
22. 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 advertent 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.”

- 23. The present case** has been filed against an employee of a Financial Institution (in his official capacity), when a notice was served upon the complainant for recovery of loan and **the institution had started proceedings under the SARFAESI Act.**
- 24.** The offences alleged are under Sections 448/323/354/506/34 of the Indian Penal Code. None of the ingredients required to constitute the said offences alleged are applicable in respect of **the petitioner, who has acted in accordance with law in his official capacity.**
- 25.** If an Authorised Officer of a bank/financial 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.
- 26. CRR 4336 of 2022 is accordingly allowed.**
- 27.** The proceeding being G.R. Case No. 2723 of 2022 arising out of Naihati P.S. Case No. 150 of 2022 dated 01.04.2022 under Sections 448/323/354/506/34 of the Indian Penal Code, pending before the learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas, **is quashed, in respect of the petitioner.**
- 28.** All connected applications, if any, stands disposed of.
- 29.** Interim order, if any, stands vacated.

- 30.** Copy of this order be sent to the learned Trial Court for necessary compliance.
- 31.** Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)