

13.09
2024
Ct. No. 237

Opposite party No. 2 herein in the year 2019 approached for financial accommodation and/or loan to the petitioners erstwhile employer and the loan was sanctioned and disbursed in favour of the opposite party No. 2 herein. Thereafter, opposite party No. 2 defaulted in repayment of the equal monthly installment. The petitioner states that the petitioner, being the employee of the said concern as per advice of the said concern made a regulatory phone call to the opposite party No. 2, requesting her to repay her dues but on such request the opposite party No. 2 became infuriated and started abusing and castigating in

filthy languages. Thereafter opposite party No. 2 bluntly stated that she would see to it that the petitioner is incarcerated in a series of false criminal cases and she intended to foist on the petitioner for making such regulatory phone call, seeking repayment, though according to the petitioner such practice of regulatory phone call to its defaulting customers prior to issuance of notice, is common to other concerns also.

Petitioner's further allegation is in order to deflect her responsibility of repaying the said loan, she has initiated aforesaid false and frivolous proceeding against unknown accused persons.

Learned Counsel appearing on behalf of the petitioner submits that on a bare perusal of the allegation leveled in the said complaint it is evident that the allegation is omnibus in nature and the same by no stretch of imagination gives rise to any criminal offence, far less the offences under Sections 509/506 of the Indian Penal Code.

It is further submitted that upon completion of perfunctory investigation in the instant case, the Investigating Agency submitted a charge sheet against the present petitioner under Sections 509/506 of the Indian Penal Code.

It is further alleged that learned Court below without applying judicial mind had taken cognizance of the said offences in mechanical and laconic manner which is reflected from the order dated 02.7.2021.

Petitioner's Counsel further submits that said order is wholly illegal also in view of the fact that the procedure adopted contrary to

Rule 183 of the Calcutta High Court Criminal (Subordinate Court) Rules, 1985.

It is further submitted on behalf of the petitioner that the circumstances leading to initiation of instant proceeding and the materials makes it clear that impugned proceeding has been maliciously instituted by the opposite party No. 2 with an ulterior motive, for wreaking vengeance on the petitioner and with a view to spite him due to private and personal grudge, in order to settle scores. He further submits that from the four corners of the complaint and the materials collected during investigation suggests that the said Sections are wholly inapplicable in the facts of the instant case and in view of above, the continuance of impugned proceeding would amount to gross abuse of process of Court and the law.

In spite of service, opposite party No. 2 is not represented.

On perusal of the written complaint it appears that the only allegation leveled against the present petitioner is that when the complainant informed about the threat given by the other accused, he supported the commission of such offence by the other accused. The said other accused is not the petitioner in the present context.

I have gone through the statements recorded during investigation and on perusal of the statements recorded under Section 161 as well as under Section 164 of the Code of Criminal Procedure, from which it appears that nothing transpired against the present

petitioner. The witnesses have not stated anything about the present petitioner during course of investigation. Even during investigation, no phone call details have been collected nor any seizure has been made to implicate the present petitioner.

The most unfortunate part of the matter is that on perusal of other impugned dated 02.7.2021 by which magistrate took cognizance it appears that Magistrate has merely filled up the blanks in a previously typed out order sheet, which clearly reflects that he passed the order in a mechanical way without applying judicial mind. Rule 183 of the Calcutta High Court Criminal (Subordinate Court) Rules 1985 mandated that orders requiring the exercise of judicial discretion and the final order shall be recorded by the Magistrate in his own hand or typed by him. Such practice of filled up the blanks by the Magistrate on a previously typed order sheet, without application of judicial mind, is highly deprecated.

Time and again, this High Court reminded that cognizance cannot be taken unless there is at least some materials indicating the guilt of the accused. In fact taking cognizance is a mental as well as judicial act, meaning thereby that the Magistrate has come to the conclusion that there is a case and that is to be adjudicated. In the instant proceeding concerned magistrate passed the order of taking cognizance of the offences against petitioner in utter violation of aforesaid mandatory provisions.

In such view of the matter and on the basis of materials so far collected during investigation, it can safely be concluded that conviction order against the present petitioner at the end of trial is bleak. In such view of the matter, continuance of the present proceeding against the present petitioner is mere abuse of process of Court.

Accordingly, the application, being C.R.R. 4713 of 2022 is allowed.

The impugned proceeding, being G.R. Case No. 675 of 2021 pending before the learned Additional Chief Judicial Magistrate, Sealdah in connection with Beniapukur Police Station Case No., 104 dated 17th March, 2021 is hereby quashed, quo the petitioner, Sri Abhoy Biswas.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)