

**IN THE CIRCUIT BENCH CALCUTTA HIGH COURT
AT JALPAIGURI
(Criminal Revisional Jurisdiction)
Appellate Side**

Present:

The Hon'ble Justice Bibhas Ranjan De

**C.R.R. 270 of 2022
Jayanta Adhikari @ Adhikary
Vs.
State of West Bengal & Anr.
With
C.R.R. 299 of 2022
Jayanta Adhikari @ Adhikary
Vs.
State of West Bengal & Anr.**

For the Petitioner :Mr. Ajay Debnath, Adv.
Mr. Pradip Kar, Adv.
Ms. Mamata Ghosh, Adv.
Mr. Dipankar Das, Adv.

For the State :Mr. Aditi Shankar Chakraborty, Ld. A.P.P.
Mr. Ujjwal Luksom, Adv.
Mr. Arjun Chowdhury, Adv.

- 2.** The instant revision application was filed with a prayer for quashment of the proceeding with respect to FIR being Kotwali Police Station Case No. 533 of 2020 dated 02.12.2020 under Sections 406/420/468/471/474 of the Indian Penal Code (for short IPC).
- 3.** The law was put into motion by an application under Section 156(3) of the Code of Criminal Procedure (for short Cr.P.C) in

the Court of Ld. Chief Judicial Magistrate, Cooch Behar against the petitioner which, in turn, was forwarded to Kotwali Police Station, Cooch Behar where it was registered as Kotwali Police Station Case No. 533 of 2020 dated 02.12.2020.

4. The application under Section 156(3) of Cr.P.C disclosed the following allegation:-

4.1. That the husband of the complainant decided to engage the accused/petitioner herein to make necessary arrangement for loan in the name of the Tea Garden owned by the husband of the complainant, on a percentage of commission upon the loan amount as remuneration of the petitioner/accused who is an advocate. Accordingly, the husband of the complainant handed over necessary documents relating to title deeds and necessary documents of the Tea Garden required for submitting application for loan.

4.2. On 14.08.2018 complainant and her husband received a letter sanctioning loan of Rs. 3 Crores by the Catholic Syrian Bank Head Office, CSB Bhavan, Thrishur-680020, Kerala. By the said letter dated 14.08.2018 complainant and her husband were directed to pay a sum of Rs. 1,75,000/- to the said Bank as processing charges and a further sum of Rs. 65,000/-

towards Air Fare, Lodging and Fooding of the officials of the said Bank.

4.3. Petitioner/ accused informed the complainant and her husband to pay the amount of Rs. 2,40,000/- to him for necessary arrangement for the said officials of the Bank who were supposed to visit their Tea Gardens in the second week of October, 2018. Accordingly, husband of the complainant paid the said amount to the accused on 10.10.2018. Thereafter, complainant and her husband paid a sum of Rs. 15,00,000/- for opening a Fixed Deposit account in the name of their company as security deposit for the purpose of sanctioning loan. Complainant and her husband also paid Rs. 5,00,000/- on 19.02.2019 to the petitioner/accused on account of rectification of Credit Information Bureau Indian Limited (CIBIL) score of the bank account of the husband and complainant. On December, 2019 petitioner/accused informed the husband of the complainant that prayer for loan application was rejected and assured them of arranging loan from Ministry of Finance and accordingly complainant and her husband consented to process the needful for the said loan. Again petitioner/accused requested them to pay a sum of Rs. 15,00,000/- further on account of margin money of the said

loan. Husband of the complainant again paid that amount to the petitioner/accused on good faith.

4.4. On 28.02.2020 the complainant and her husband received a letter dated 12.01.2020 informing them issuance cheques bearing no. 32459, 32460 & 32458 of Rs. 1 Crore each totaling to Rs. 3 Crores were ready to be dispatched subject to fulfillment of some conditions issued by Ministry of Finance, Department of Economic Affairs, North Block, New Delhi, Government of India. To that effect, complainant and her husband paid Rs. 1,70,000/- to the petitioner/accused for payment of Income Tax penalty to the Income Tax Department as the part of the documentation for the said loan.

4.5. All the payments were made by the complainant and her husband to the different accounts of the petitioner/accused on the assurance that all cheques will be handed over to them. But, after lapse of considerable period petitioner/accused started to ignore the complainant and her husband, who were compelled to verify those documents which were handed over to them and it was found that all those documents were false, fabricated & manufactured and thereby petitioner/accused misappropriated the amount totaling to Rs. 39,10,000/- (Rupees Thirty Nine Lakhs Ten Thousand) and thereby cheated

the complainant and her husband by manufacturing all the documents of Bank and Ministry of Finance, Government of Indian.

4.6. On 04.11.2020 complainant lodged a written complaint before Inspector-in-charge, Cooch Behar but no action was taken and complainant then sent a complaint addressed to Superintendent of Police, Cooch Behar on 11.01.2020 but no case was started.

4.7. The case was investigated and in course of investigation several documents were collected including the communications made by the Ministry of Finance as well as Catholic Syrian Bank addressed to the complainant and her husband.

C.R.R. 299 of 2022

5. By this revision application the order dated 17.11.2022 passed in Criminal Revision No. 14 of 2022 passed by Ld. Sessions Judge, Cooch Behar with respect to Kotwali Police Station Case No. 533 of 2020 dated 02.12.2020 under Sections 406/420/468/471/474 has been challenged.

5.1. In Criminal Revision No. 14 of 2022 accused/ petitioner herein challenged the order dated 23.08.2022 passed by Ld. Chief Judicial Magistrate, Cooch Behar in G.R. Case 1084/

2020 wherein WP&A was issued against the accused /petitioner on prayer of Investigation Officer (for short I.O.).

5.2. Petitioner/accused advanced his argument before the Ld. Sessions Judge that the application under Section 156(3) of Cr.P.C did not disclose any offence under Section 474 of IPC and therefore I.O. ought to have sent a notice under Section 41A of Cr.P.C. It was further submitted before the Ld. Sessions Judge that Ld. Chief Judicial Magistrate ought not to have issued the warrant against the petitioner.

5.3. Ld. Sessions Judge relying on observation of the Hon'ble Apex Court in several celebrated judgments recorded his findings that no illegality was found in the order of issuing proclamation in compliance with the provision of Section 82 of Cr.P.C. Considering the stage of investigation, Ld. Sessions Judge refrained himself from entering into the issue of alleged offence under Section 474 of IPC. Accordingly, Criminal Revision was dismissed.

Argument Advanced:-

6. In connection with both the revision applications, Ld. Counsel, Mr. Ajay Debnath, appearing on behalf of the petitioner has submitted that provision of Section 154(1) & (3) was not

complied with at the time of filing application under Section 156(3) of Cr.P.C.

- Mr. Debnath has further assailed the contents of the application under Section 156(3) of Cr.P.C and submitted that there is no allegation of receiving money by the petitioner who is an advocate.
- Before parting with his argument, Mr. Debnath has submitted that the offence alleged in this case does not attract the offence punishable under Section 474 of IPC as no incriminating document was found in possession of the petitioner.

7. In connection with CRR 270 of 2020, Ld. Counsel, Sandip Mandal, appearing on behalf of the opposite party no. 2 has drawn my attention to the allegation made in the application under Section 156(3) of Cr.P.C. particularly in paragraph 5 onwards and submitted that there is specific allegation of preparation of fake documents regarding sanction of loan in favour of opposite party no. 2 and her husband.

- Mr. Mandal has further submitted that complaint under Section 156(3) disclosed a cognizable offence alleged to have been committed by the petitioner.

8. In connection with CRR 299 of 2022, Mr. Mandal has referred to observation made by the Ld. Sessions Judge, Cooch Behar, in Criminal Misc. Case No. 1457/2021 whereby Ld. Judge refused to entertain the application for anticipatory bail sought for on behalf of the petitioner.

- Mr. Mondal also referred to the observation of the Hon'ble Co-Ordinate Benches of this Court in WPA 783 of 2023 & WPA 2124 of 2022 whereby Hon'ble Court passed direction upon the Ld. Chief Judicial Magistrate, Cooch Behar to issue warrant of arrest against the petitioner of this revision application who was then absconding since long.

9. Per Contra, Ld. Counsel, Mr. Aditi Shankar Chakraborty, appearing on behalf of the State has relied on a good number of documents collected during investigation as well as notices under Section 41 (A) (1) of Cr.P.C. kept in the case diary. Mr. Chakraborty also referred to the documents viz letters addressed to the complainant and her husband by the Catholic Syrian Bank as well as Ministry of Finance.

Analysis:-

10. On scrutiny the application under Section 156(3) of Cr.P.C supported by affidavit, I find that in paragraph 17 & 18 initially written complaint was lodged before Inspector-in-

charge, Cooch Behar on 04.11.2020 and also a complaint addressed to the Superintendent of Police, Cooch Behar was sent on 11.11.2020 by registered post with AD and thereby compliance with the mandates handed down by the Hon'ble Apex Court in ***Priyanka Shrivastava vs. State of U.P. reported in (2015) 6 SCC 287*** was made.

11. Here in this case, the complaint under Section 156(3) of Cr.P.C disclosed cognizable offence which was forwarded to the Kotwali Police Station, Cooch Behar for investigation and during investigation sufficient evidence was collected including the statement of witnesses.
12. A complaint can be quashed where the allegation made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.
13. Before exercising jurisdiction under Section 482 of Cr.P.C, I am unable to refrain myself from quoting observation of the guidelines handed down by the Hon'ble Apex Court in the Case of ***Indian Oil Corporation vs NEPC India Limited and others*** reported in ***(2006) 6 SCC 736*** and it will be apposite to refer the observation of the Hon'ble Court in ***Indian Oil Corporation*** (supra) which stands as follows:-

“12. *The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiware v. Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692: 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupn Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:*

(i) *A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.*

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the

complaint, is warranted while examining prayer for quashing of a complaint.

(ii) *A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*

(iii) *The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.*

(iv) *The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.*

(v) *A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”*

- 14.** Therefore, this Court finds hardly any scope either to examine the merits of the allegations or detailed enquiry or meticulous analysis of the reliability of genuineness of the allegations in the complaint.
- 15.** In our case, there is allegation of false assurance to arrange loan in favour of the private opposite party and her husband by preparing false documents in support of sanction of loan and also allegation of inducement to deliver money to the accused/ petitioner.
- 16.** Mr. Debnath appearing on behalf of the petitioner has submitted that offence punishable under Section 474 of IPC does not attract in terms of allegation made in the complaint under Section 156(3) of Cr.P.C.
- 17.** It is true that possession of the document described in Section 466 & 467 of IPC is required to attract the offence punishable under Section 474 of IPC. In this case, the allegation has been made for preparation of a document purporting to be made by a public servant in his official capacity within the meaning of Section 466 of IPC against the accused who alleged to have used the said documents for giving an assurance to the complainant and her husband with regard the sanction of loan. An inference can be made that the

documents were in possession of the petitioner/accused. Had not it been so accused/petitioner could not have used those documents knowing those documents to be forged. Therefore, at this stage this Court is not in a position to come to any conclusion regarding the offence under Section 474 of IPC without evaluation of evidence.

18. Therefore, it is clear that the FIR discloses prima facie commission of a cognizable offence and as such, this Court cannot interfere by invoking the provision of Section 482 Cr.P.C for quashing the FIR.

19. With respect to the revision application being no. 299 of 2022 a prayer was made for quashing/ setting aside the order dated 17.11.2022 passed by the Ld. Sessions Judge, Cooch Behar in criminal revision no. 14 of 2022 whereby Ld. Sessions Judge affirmed the order passed by Ld. Chief Judicial Magistrate, Cooch Behar in connection with G.R. 1084/2020 issuing WP&A against the accused /petitioner herein in compliance with the provision of Section 82 of the Cr.P.C.

20. Mr. Debnath submitted that the allegation for the offence punishable under Section 474 of IPC had no role to play in this case and Ld. Chief Judicial Magistrate, Cooch Behar

ought not to have issued WP&A against the accused/petitioner.

21. Mr. Mandal has referred to an order dated 24.09.2021 passed by the Ld. Sessions Judge , Cooch Behar in Criminal Misc. Case No. 1457/2021 wherein Ld. Judge refused the prayer for anticipatory bail on the ground of issuance of WP&A against the accused.

22. Mr. Mandal has further referred to orders passed by the Hon'ble High Court in writ applications being no. WPA 783 of 2022 & WPA 2124 of 2022 wherefrom it is clear that accused petitioner was found absconding for long time and all attempts to arrest him were unsuccessful and accordingly direction was given to the Ld. CJM, Cooch Behar to follow up with warrant of arrest. Hon'ble Court also did not find any lapses on the part of the police authority in discharge of their duties.

23. Considering the aforesaid orders passed by the Hon'ble High Court, I find hardly any scope to interfere either with the order of issuance of WP & A on 23.08.2023 in connection with G.R. Case no. 1084 /2020 or the order dated 17.11.2022 passed by the Ld. Sessions Judge in connection with Criminal Revision No. 14 of 2022 affirming the order of issuing WP&A by the Ld. CJM, Cooch Behar.

Conclusion:-

- 24.** As a sequel, both the revisional applications, being no. C.R.R. 270 of 2022 with C.R.R. 299 of 2022 stand dismissed.
- 25.** All connected applications, if there be any, stand disposed of accordingly.
- 26.** Interim order, if there be any, stand vacated.
- 27.** Case diary be returned.
- 28.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 29.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]