

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2227 of 2017

**Jitendra Kumar Mishra
Vs.
The State of West Bengal & Anr.**

With

CRR 2417 of 2017

**Partha Bhattacharya
Vs.
The State of West Bengal & Anr.**

For the Petitioner : Mr. Satadru Lahiri
Mr. Rajib Mullick
Ms. Sonia Mukherjee

For the state : Mr. Madhusudan Sur
Mr. Monoranjan Mahata

Heard on : 10.01.2025

Judgment on : 28.01.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. Petitioners herein have prayed for quashing of the proceeding being GR Case no. 1037/2014 arising out of Electronic Complex Police Station

Case no. 118 under sections 420/409/467/468/471/120B of the IPC. The investigation has already been culminated into charge sheet.

2. The factual aspect of the present case is that the complainant and his partner accused no.1 took loan of Rs. 1,45,95,895/- in the name of their partnership firm Shri Bhagabati Infrastructure for financing two hydrolic special assets used for excavation vide a loan agreement dated 15.09.2011 wherein both the partners stood as guarantor. The assets were financed by the SREI Equipment Finance Pvt. Ltd. (in short SREI) against which the loan was advanced. It is alleged that after payment of few installments the complainant and his partner defaulted in payment and as such arbitration proceeding has been initiated and prior to that the loan agreement was terminated after due service of notice upon the complainant and his co-partner.

3. During pendency of the arbitration proceeding, pursuant to the representation of the borrower, the loan was re structured and the assets which were subject matter of earlier loan transaction also accepted as hypothecated assets under the restructured loan agreement. Even after restructuring of the loan, borrower again defaulted in payment of the monthly installments and consequently arbitration proceeding initiated which ultimately reached to this Court vide AP No. 567 of 2015, AP No. 568 of 2015, AP No. 569 of 2015 and AP No. 570 of 2015. Thereafter all the aforesaid arbitration proceedings have been disposed of by this Court and this Court was pleased to appoint receivers to direct the re-possession of the assets so hypothecated and the sell of the said re-posessed assets for recovery of the loan defaulted by the borrower.

4. The genesis of the prosecution case is against alleged re-structuring of the loan on the representation of the co-partner of the complainant namely Alok Kumar Mishra/accused no.1, who is not the petitioner herein. It is alleged that by way of misappropriation of hypothecated asset by the accused persons under the garb of re-structuring of the loan, advanced to the partnership concern of the complainant, they have caused wrongful loss to the complainant. It is alleged that said accused no.1 produced fake documents for re-structuring the loan accounts and for swindling the assets. It is further alleged that inspite of specific representation dated 25.08.2014 and 05.09.2014, issued by the complainant canvassing the grievance against the illegal act of his co-partner i.e. accused no.1, SREI and its employees did not take any steps. The petitioners herein are the salaried employee of said SREI.

5. It is alleged further that on 24th August, 2014 during telephonic conversation the present petitioner namely Jitendra Kumar Mishra confirmed and admitted the economic offence of more than 1 Crore including the illegal credit facility to reward the accused no.1, in hatching conspiracy and forgery using false document(fake dissolution draft) as genuine. It is further alleged that the complainant sent objection letter to get back his own invested amount of Rs. 62 lakhs on urgent basis but the said SREI did not respond to the letter of complainant and therefore, he sought for an investigation to recover his invested amount of Rs. 62 lakhs which is illegally blocked by the said finance company.

6. Being aggrieved by the impugned proceeding Mr. Lahiri on behalf of the petitioners of CRR 2227 of 2017 and CRR 2417 of 2017 contended that

the complainant is vociferous in complaining that the dissolution of partnership deed is forged one but on perusal of the letter dated 25.08.2014 and 05.09.2014, it clearly demonstrate execution of the dissolution of the partnership deed and such admission completely out-ways the charge of forgery and/or using any forged document as genuine one. Moreover, in view of order passed in parallel arbitration proceeding regarding re-structure of the loan, hypothecation of assets and disposal of the same by this High Court, the impugned proceeding cannot continue any further. He further contended that the orders passed by this High Court completely dislodges the criminality attached to the allegations levelled in the complaint. He further contended that once a civil suit have been initiated between the parties pertaining to same and identical cause of action, it would appear that the criminal proceeding has been initiated with a *malafide* intention and to abuse the process of the court. He further contended that the assets have been repossessed from different places by the receiver, pursuant to the respective orders passed in arbitration proceeding. The re-possessed assets were also disposed to recover the defaulted loan amount and as such the criminal breach of trust or any charge under section 467/468/471 of the IPC does not lie against the petitioners in both the applications, as everything was done as per direction of this Court passed in the arbitration, proceeding.

7. He further contended that the admission made by the complainant clearly demonstrate the execution of deed of dissolution of partnership firm by the complainant and as such the same cannot constitute offence of forgery. He also contended that once the charge of principal offences falls

flat the charge of conspiracy to commit the said offence also falls flat. Infact there was no factual basis or foundation based on which Magistrate can take cognizance of the alleged offence against the present petitioners.

8. Mr. Lahiri further argued that the concept of vicarious liability is foreign to Indian Penal Code and as such cannot be invoked for implicating persons as accused in absence of specific allegations. Therefore, the petitioners who are the employees of SREI cannot be implicated in this case invoking the concept of vicarious liability because such concept is permissible under certain specific statutes only subject to specific averments levelled against the individual accused person for commission of the alleged offence. In the present case neither in the FIR nor in the charge sheet, any specific role has been attributed against the present petitioners involving them with the alleged transaction.

9. Mr. Lahiri Strenuously argued that the impugned proceeding has been initiated just to circumvent the arbitration proceeding available to the company against the repeated default of the complainant and his partner namely accused No.1 in repayment of the loan, even after re structuring and therefore, the conduct of the complainant smacks from inherent malice and the criminal proceeding has been used as a tool for shielding their default. The facts narrated in the FIR and the charge sheet does not demonstrate the essential ingredients of the alleged offence. The contention in the FIR is completely dichotomous to the admitted documents which establishes the malice of the complainant and considering all these the petitioner has prayed for quashing the impugned proceeding.

10. Private Opposite party is not represented.

11. Mr. Sur learned Counsel appearing on behalf of the state placed the Case Diary and leaves the matter to the discretion of the court.

12. It is not in dispute in the present context and as also appearing from the averment made in the complaint that the complainant and his partner i.e. accused No.1 took loan from SREI for purchasing assets and ultimately defaulted in repayment of loan and the company's assets were hypothecated against the loan. Upon default the loan was recalled and arbitration proceedings were initiated and thereafter loan was restructured. Since even after restructuring the loan, the borrower failed to repay the loan in terms of arbitration proceeding, the hypothecated assets of the company have been repossessed and disposed of by the receiver appointed by the High Court. Accordingly misappropriation of company's asset by SREI does not arise. The main allegation levelled herein is that the partnership dissolution deed is a forged one. Ld. counsel for the petitioner in this context pointed out the letter dated 25.08.2014 and 05.09.2014 to demonstrate that the dissolution of partnership deed was duly executed.

13. It further appears from the arbitration proceedings that the said proceeding revolves around same factual aspect from which the present criminal proceeding has been initiated and as such there is hardly any scope for the defacto complainant to question the outcome of the parallel proceeding in connection with restructuring of loan, hypothecation of assets or disposal of the same in the present proceeding. In fact when the entire thing happened under the order passed by this High Court, in parallel arbitration proceeding, it is not understandable how the criminality attracts over the self same incident. Once the civil suit is pending and or

disposed of between the parties pertaining to same and identical cause of action, the pleadings in the civil proceeding, respective orders passed therein are documents of unimpeachable character and as such from those unchallenged documents, it hardly makes out any prima facie case against the petitioners.

14. In *Harman Preet singh Vs. State of Punjab* reported in **(2009) 7 SCC 712** the Apex Court had laid down that an offence of cheating cannot be said to have been made out unless the following ingredients are satisfied.

- (i)** Deception of a person either by making a false or misleading representation or by other action or omission,
- (ii)** Fraudulently or dishonestly inducing any person to deliver any property ;or
- (iii)** To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

15. The averments made in the FIR and materials collected during investigation, there is nothing to indicate either SREI or its management ever approached the complainant/partnership firm. Accordingly there cannot be any representation at the instance of the SREI or its employees and in absence of any representation on their behalf, the allegation of inducement or deception or practicing fraud on the complainant does not arise. Simultaneously since there is no representation, so there is no scope for the complainant to act on the basis of representation made by SREI and as such the question of suffering any wrongful loss by the complainant

does not arise. Ld. Counsel appearing for the petitioner in this context strenuously argued that SREI in reality suffered loss due to non-payment of the loan, for which arbitration proceeding has been initiated. Therefore, the basic ingredients of the alleged offence of cheating as mandated under section 415 of the IPC i.e. false representation and thereby practicing fraud or inducement at the inception and or deceiving a person to act on such false representation, does not stand against the present petitioners.

16. So far as the allegation of criminal breach of trust levelled against the petitioners, it appears that there is nothing to indicate that any asset belonging to the complainant was ever entrusted to the present accused persons or they ever had any custody or dominion over the same. Since the assets were hypothecated to loan agreement and there has been default in repayment of loan, pursuant to specific order passed by this High Court, the receiver repossessed the assets from different places as indicated by the borrower and thereafter it was disposed of to recover the defaulted loan amount. In view of this factual scenario, no charge for criminal breach of trust is maintainable and as such the allegation made under section 409 is completely misplaced.

17. So far as the allegation levelled against the petitioner under section 467/468/471 of IPC regarding charge of forgery are concerned. It appears that during investigation police could not seize any alleged forged document. Moreover as I have already indicated above that the petitioner has pinpointed two letters which does not speak that any kind of forgery was ever made in connection with the execution of the deed of dissolution, being letter dated 25.08.2014 and 05.09.2014. It is further pointed out

during hearing that complainant could not produce any fake partnership dissolution deed, though notice was served upon him. Unless the alleged forged document has to be in existence, the question of forgery does not find any substance. As it is the specific case of the petitioner that deed of dissolution of the partnership by the complainant was voluntary and it has not been challenged, the said dissolution of partnership deed does not come under the purview of '*making of false document*' as defined under section 464 of the IPC. Accordingly the charge of using the forged document as genuine also does not arise against the employee /petitioners. Since the charge of principle offences do not stand, the charge of criminal conspiracy to commit offence cannot survive.

18. It is not in dispute that the petitioners herein are merely salaried employee of SREI and they have been implicated as accused in this case invoking the concept of vicarious liability which is unknown to the criminal jurisprudence in this country. Moreover no specific allegation has been attributed against the said salaried employee/petitioners herein in the FIR nor the charge sheet discloses any specific role as to how and in what manner the petitioners are involved in the alleged transaction. The loan was sanctioned by the SREI to the complainant/ partnership firm, which was subsequently restructured by SREI. Accordingly all loan related documents was between the two firms and nowhere it has been disclosed as to how the present petitioners are involved in the execution and or restructuring process except casual reference of the name of the petitioner in the complaint. Infact, it is not even the case of the complainant that the petitioner is associated with the management and or day to day business

affairs of SREI. Accordingly the petitioner who are the mere salaried employee of SREI can hardly be entangled as an accused in the subject proceeding which revolves around dispute and differences by and between SREI and the complainant.

19. I have also gone through the materials available in the Case Diary, where I find during investigation the investigating officer has recorded statement of two persons under section 161 Cr.P.C. and those two statements does not disclose any criminal offence against the petitioners, far from the offences alleged in the FIR. The materials collected during investigation suggests that there is hardly any chance of conviction of the present petitioners, if the trial is allowed to be continued against them. The facts and circumstances of the present case and the materials collected so far indicate that the present criminal proceeding has been attended with *malafide* and with an ulterior motive. In the case of ***State of Haryana Vs. Bhajanlal*** reported in **1992 supp (1) SCC 335** the supreme Court has enumerated seven categories where the court will not hesitate to exercise of its jurisdiction under section 482 of the Code to quash the proceeding and category No. 7 in para 102 states, where a criminal proceeding is manifestly attended with *malafide* and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge, the proceeding is liable to be quashed.

20. In fact the case narrated in the FIR and the charge sheet, does not demonstrate the essential ingredients of the offences and the materials available so far even if are taken at their face value do not constitute any

offence against the present petitioners. As discussed above, since the offence alleged against the petitioners is not disclosed herein, the petitioners should be saved from frivolous criminal litigation. The admitted facts and documents relied upon by the complainant, without weighing or sifting of evidence, do not make out any case against the present petitioners. When the materials available in the record do not make out any case against the petitioners it will not be correct to say that the accused must still undergo the agony of trial. The High Court must ensure that criminal proceeding be not used as an instrument of harassment or to pressurize the accused.

21. From the aforesaid facts of the present case, I am satisfied that the present proceeding has been initiated by the complainant with an ulterior motive to create pressure upon petitioners herein for realization of alleged invested amount. The present case clearly attracts the categories mentioned in (including category No. 7) **Bhajanlal's Case (Supra)** and therefore, I am of the view that in permitting the criminal proceeding against the present petitioners shall amount to permitting a criminal proceeding which has been instituted with ulterior motive for realization of invested amount and permitting such criminal proceeding to go on, would be nothing but the abuse of the process of the court, and as such it needs to be interfered by this court.

22. In such view of the matter, the Applications being **CRR 2227 of 2017 & 2417 of 2017** are allowed. The impugned proceeding being GR Case no. 1037 of 2014 presently pending before Additional Chief Judicial

Magistrate, Bidhannangore, is hereby quashed, qua the petitioners namely **Jitendra Kumar Mishra** and **Partha Bhattacharya**.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)