

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 925 of 2018

Gajanan Highrise Private Limited

Versus

The state of West Bengal & Ors.

For the Petitioner : Mr. Pratyush Patwari, Adv.

For the Opposite Party No. 6 : Mr. Shiv Shankar Banerjee, Adv.
Mr. Siddtharth Chamria, Adv.

For the State : Ms. Faria Hossain, Ld. A.P.P.
Ms. Mousumi Sarkar, Adv.
Mr. Md. Adil Badr, Adv.

Heard on : 05.12.2025

Judgment on : 07.01.2026

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (in short CrPC) challenging the impugned order dated 12th February, 2018 passed by the Learned Judge, Bench-I, City Sessions Court at Calcutta in Criminal Revision No. 217 of 2016 whereby the Learned Judge affirmed the order of rejection of Narazi/protest petition filed by the de-facto complainant/petitioner herein against the final report submitted by the Investigating Officer before the Learned Chief Metropolitan Magistrate, Calcutta in G.R. Case No. 2741 of 2011 arising out of Hare Street Police Station Case No. 538 of 2011.

FACTS OF THE CASE:

2. The aforesaid Hare Street Police Station Case No. 538 of 2011 had been registered based on a written complaint lodged by the Director of the Company/petitioner herein, alleging, inter alia, that the petitioner, a private limited company engaged in real estate business, had participated in the auction sale as invited by the authorised officer, UCO Bank, and placed the bid of Rs. 70,00,000/- to purchase a mortgaged property measuring an area 56.97 Cottahs, comprising CSR-8, Khatian No. 396, L.R. Khatian No. 178 with structure therein.
3. Being the successful bidder in the bidding process, the Petitioner deposited a sum of Rs. 17,50,000/- as 25% of the total amount,

inclusive of earnest money, with the UCO Bank by way of 2 pay orders in terms and conditions of the notice of tender published in the newspapers.

4. Subsequently, the petitioner also paid the balance amount of Rs. 52,50,000/- by cheque dated 07.04.2010 and requested the authorised officer, UCO bank, to issue a certificate of sale in respect of the property, which is the subject matter of the auction sale.
5. The Assistant General Manager, UCO Bank, however, expressed his helplessness to conform the sale certificate in favour of the petitioner, even the payment of the whole consideration amount. He requested to bear the delay in the matter in view of the pendency of the proceeding before the learned Debt Recovery Tribunal. In the meantime, it is alleged that the officers of UCO Bank, acting in collusion and in furtherance of a criminal conspiracy with M/s. Parasnath Resorts & Hotels Pvt. Ltd. and M/s. Samadhan Mercantile Pvt. Ltd. began negotiating amongst themselves with a dishonest and fraudulent intent to return the property to the said entities, thereby causing wrongful gain to them. It is further alleged that pursuant to a compromise arrived at amongst themselves and in consideration of a substantial monetary benefit, the property was ultimately returned to the said entities. This was notwithstanding the fact that the bank had already taken possession of the property and published notice

inviting tenders in the open market in newspapers, namely, *The Indian Express* and *Aajkal*, pursuant to which the petitioner became the highest bidder and paid the entire bid amount to the Bank.

- 6.** During pendency of the proceedings before the DRT, the Bank employees, the borrowers and guarantors had secretly settled the matter behind the petitioner's back. According to the petitioner, the bank illegally and dishonestly released the auctioned property back to the borrower without refunding the amount deposited by the petitioner. Such acts are alleged to constitute fraud and criminal breach of trust as committed by the Bank officials in conspiracy with the borrower and guarantors, causing substantial loss to the petitioner. Based on such allegations, the accused persons are stated to have committed the offences punishable under sections 409/420/120B of the Indian Penal Code, 1860 (In short IPC).
- 7.** Allegedly, the investigating officer did not investigate the matter properly and submitted the final report contending therein that the case is wholly "civil in nature". Being aggrieved with the said investigation, the petitioner filed a protest petition before the Trial Court praying for further investigation and non-acceptance of the Final report. It is specifically contended that the mortgaged property had been released in favour of the borrower despite receipt on the entire bid amount from the petitioner, and that no part of the

deposited amount had been refunded, all of which was done behind petitioner's back. However, without duly considering these aspects, the learned Trial Court rejected the protest petition and accepted the final report.

8. Being aggrieved by and dissatisfied with the said order of rejection of protest petition, a Revisional application has been filed before the learned Sessions Judge by the petitioner, but the same was also dismissed and affirmed the order of the trial court. Hence, this Criminal Revisional application.

ARGUMENTS ON BEHALF OF THE PETITIONER:-

9. In course of the hearing, learned counsel appearing on behalf of the petitioner submitted that the allegation made by the petitioner is not civil in nature. Admittedly, the property in question was under mortgage as collateral for securing the loan amount granted by the Bank. When the borrower and guarantors failed to repay the loan amount together with other consequential amounts, UCO Bank took possession of the property under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act). Pursuant to possession-cum-sale notice, inviting tenders dated December 13, 2009, issued by the authorised officer of UCO Bank, in exercise of powers conferred under the Rules of SARFAESI Act, the petitioner participated and

succeeded as the highest bidder. The bid amount has admittedly been deposited into the concerned bank as per the terms and conditions. But, despite the deposit of the entire amount, the Bank authority requested the petitioner to wait for some time due to the pendency of the proceeding in the DRT. Accordingly, the petitioner waited for some time so that a certificate of sale could be issued in its favour. However, the Bank officers did not issue a certificate of sale in favour of the petitioner, though they were bound by statutory and contractual obligation.

- 10.** The learned counsel further contended that the petitioner later found that the opposite party no. 2, in collusion and criminal conspiracy with the opposite party nos. 3 to 6 for their wrongful gain, began negotiating among themselves, with fraudulent and dishonest intent, so as to return the mortgaged property to the borrower, avoiding paying the petitioner. Ultimately, the bank officers succeeded in their motive, and unlawfully disposed of and/or released the mortgaged property to the borrower in lieu of a huge amount of money. All the accused persons, particularly the Bank officers, received huge sums of money from the borrower and guarantors for such negotiation and settlement.
- 11.** Counsel for the Petitioner contends that even for the sake of argument, if the bank officials, borrower and guarantors negotiated

among themselves, it should have happened in the presence of the petitioner. However, the petitioner was kept in the dark. No amounts formerly deposited by the petitioner had been refunded. They committed the offence of criminal misconduct within the meaning of the Prevention of Corruption Act, 1988. Therefore, they should have been charge sheeted under Section 420/409/120B of the IPC.

- 12.** Finally, the learned counsel submitted that the investigating officer did not record any statements under section 161 or 164 of the Cr.P.C., and mechanically submitted the final report for closure “under orders of superiors”, showing a lack of independent and thorough investigation. The Bank had dominion over the property, and it unlawfully released the same to the borrower without refunding the consideration amount deposited by the petitioner. The petitioner is aggrieved that the written complaint discloses the ingredients of the offences punishable under section 409/420/120B of the IPC but the learned court below failed to appreciate the contents of the case diary and other materials, and accepted the final report after rejecting the protest petition filed by the petitioner mechanically and without applying judicious mind as such the same is liable to be set aside.

ARGUMENTS ON BEHALF OF THE OPPOSITE PARTY NO. 6:

- 13.** Learned counsel appearing on behalf of the Opposite party no. 6 vehemently opposed the prayer for setting aside the impugned orders passed by both the learned courts below. The Bank has already refunded the deposited amount to the petitioner. It is submitted by the counsel for the opposite party no. 6, that several communications have been made with the petitioner. The Petitioner is suppressing the actual facts. The Petitioner is very much aware of the negotiation and settlement going on between the borrower, guarantors and the Bank authorities. The matter was ultimately settled, and all the dues, as claimed by the Bank, have been paid by the borrower. Therefore, there was an option for the Bank to release the mortgaged property in favour of the borrower. The rule also says so. The Bank authorities are bound by the procedure as laid down in the Rules and regulations of the SARFAESI Act. The petitioner was well aware of all the facts but showed innocence and lodged a complaint against the accused persons. Several orders were passed by the DRT in favour of the accused persons, and the Trial Court also accepted the final report when it was found that the dispute is civil in nature. Learned counsel also drew the orders in support of his contention.

ARGUMENTS ON BEHALF OF THE STATE:

- 14.** Learned Counsel representing the State strenuously argued and further submitted that the Trial Court has rightly rejected the protest petition filed by the Petitioner as the case is purely civil in nature. If the Petitioner is aggrieved by any act on the part of the Bank employees, it may take recourse in accordance with the law before the competent forum. Both the courts below have rightly rejected the prayer of the petitioner as the case involves a purely Civil dispute, but the Petitioner tried to colour it as a criminal offence, as such same is liable to be dismissed.
- 15.** It was further submitted that the matter is pending before the High Court at Calcutta. Therefore, a criminal offence cannot be attracted when the borrower and guarantors have repaid all the dues of the secured creditor i.e. the Bank, together with all costs, charges, and expenses, before the property was transferred to the auction purchaser, and the same was duly accepted by the Bank as per their negotiation and settlement. The Kolkata Debts Recovery Tribunal-1 has disposed of all applications filed by the petitioner and allowed the prayer of withdrawal of the case vide order dated 20.04.2012 in S.A No.7 of 2010. Therefore, this revisional application has no merits and liable to be set aside.

FINDINGS AND ANALYSIS OF THIS COURT:

- 16.** Having heard the arguments and submissions made by the learned counsels appearing on behalf of the respective parties and upon perusal of the materials available on record, this Court finds that the following issues are involved in the present case to be determined as follows:
1. Whether both the courts below were justified in accepting the closure report by rejecting the protest petition?
 2. Whether the investigation was conducted in an improper manner, resulting in the filing of a closure report, and whether the facts and circumstances of the case warrant a direction for further investigation?
 3. Whether the accusation discloses commission of cognizable offence and fulfils the ingredients of offences made against the accused persons, including the Bank officers?
- 17.** It is not disputed by the parties that the property in question was under mortgage to the UCO Bank. When the borrower and guarantors failed to repay the loan amount to the Bank, the Bank authorities issued notice under Section 13 (2) of the SARFAESI Act and finally took over the possession of the property under the provisions of the SARFAESI Act.

- 18.** Whether negotiation and settlement are permissible under the SARFAESI Act prior to the stage of issuance of Certificate of Sale in favour of the highest bidder upon payment of the full consideration amount is required to be assessed, as the case filed by the borrower and guarantors challenging the auction sale was pending before the DRT for final adjudication.
- 19.** The SARFAESI Act provides a provision for redemption of the property at any time before the date fixed for sale or transfer.

Sub-section 8 of section 13 of the SARFAESI Act reads as follows:

“13. Enforcement of Security interest.- (8) *Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,—*

- (i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and*
- (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.”*

- 20.** In view of the aforesaid provision, the borrower had tendered the dues of the secured creditor together with all costs, charges and expenses before the property was transferred to the auction

purchaser and the amount was duly accepted by the Bank. When the borrower repaid the entire amount as claimed by the Bank, the latter is bound to release the property to the borrower and guarantors. If the property was released in favour of the borrower by the secured creditor, then there is no need for selling or transferring the property to the auction purchaser. There is no doubt, under the law that an auction purchaser has a right upon participation in the bidding process and being declared as successful bidder. However, this right is not absolute, and it cannot take away the mortgagor's right of redemption as provided in Transfer of property Act, 1872. A similar right is also conferred under section 13 (8) of the SARFAESI Act, and these rights cannot be impaired once they have exercised their right conferred on them.

- 21.** As per the terms and condition mentioned in the sale notice dated December 13, 2009, clause 8 specifically mentioned that *“..... authorised officer reserves the right accept or reject any bid or postpone or cancel the auction or opening of the tender without assigning any reason and also modify any terms and conditions of the sale without any prior notice.....”*. In such a situation, the Bank has every right to release the mortgaged property upon repayment of dues amount. Considering all these

facts, the DRT has disposed of the proceedings being S.A No.7 of 2010 vide order dated 20th April, 2012.

- 22.** Being aggrieved by and dissatisfied with the order dated 20th April, 2012, the petitioner preferred an appeal being Appeal No. 75 of 2012 under section 18 of the SARFAESI Act before the learned Debt Recovery Appellate Tribunal at Kolkata, but the same was dismissed on 07.05.2014, after hearing the parties.
- 23.** Feeling aggrieved by and dis-satisfied with the said order, a Civil revisional application has been filed by the petitioner being C.O. No.1779 of 2014, and the same is pending before the High Court at Calcutta. Therefore, the impugned order challenged by the petitioner is pending for adjudication before the High Court at Calcutta. This court under revision has no scope to scrutinise the merits of the case as raised by the petitioner herein.
- 24.** This Court is only concerned about the impugned orders under challenge by the petitioner in this instant revisional application under section 482 of the Cr.P.C.
- 25.** This court also does not find any disclosure of a cognizable offence as alleged by the Petitioner. Mere allegation that the Bank officers received a huge sum of money from the borrower and guarantors for such negotiation and settlement, without any sufficient material, is not sufficient to continue proceeding. Even after thorough

investigation, the investigating agency did not find any sufficient materials against the accused persons. The negotiation and settlement and/or repayment of the dues and/or acceptance of such amount tendered by the borrower or guarantors and/or release of the mortgaged property to the borrower are wholly based on documentary evidence and squarely fall under the SARFAESI Act. The deposited amount has already been returned to the petitioner by the Bank. Even for the sake of argument, if it is assumed that the amount has not been refunded to the petitioner till date, the same would come within the purview of a civil dispute.

- 26.** This Court also relies on a judgment of the Hon'ble Supreme Court in the case of ***The State of Kerala v. A. Pareed Pillai and Anr.***¹, where it was held as follows: -

"16. To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise."

- 27.** In the instant case, there is nothing on record to show that the accused person had illegally, dishonestly or fraudulently negotiated or settled amongst the borrower, guarantors and bank officers for the purpose of redemption of the mortgaged property. Rather it would be done in accordance with the law.

¹ 1972 Cri.L.J.1243

- 28.** In the light of above discussions together with averments contained in the petition of complaint, this Court finds that the ingredients of the offences alleged by the petitioner are absent. Merely because the Bank officers released the mortgaged property to the borrower upon repayment of the dues of the secured creditor, together with all costs, charges and expenses before the property was transferred to the auction purchaser, upon acceptance of dues amount does not constitute offences punishable under Sections 409 and/or 420 or 120B of the Indian Penal Code, 1860. The allegation in the complaint does not spell out any essential ingredients for the commission of an offence under Sections 409 and/or 420 or 120B of the Indian Penal Code, 1860.
- 29.** The disputes between the parties are purely civil in nature, and criminal proceedings in such a civil nature case should not be allowed to continue any further otherwise it would be an abuse of the process of law. The Hon'ble Supreme Court, time and again, deprecated the proceedings initiated or attempted to convert a civil dispute into a criminal matter, potentially aimed at pressurising the petitioner into settling the dispute, by way of filing the criminal complaint, should not be encouraged. Accordingly, the revisional application has no merit.

- 30.** Consequently, **CRR No. 925 of 2018** is **dismissed**. Connected application, if any, is, also thus, disposed of.
- 31.** The impugned order dated 12th February, 2018 passed by the Learned Judge, Bench-I, City Sessions Court at Calcutta in Criminal Revision No. 217 of 2016 thereby the Learned Judge affirmed the order of rejection of Narazi/protest petition filed by the de-facto complainant/petitioner herein against the final report submitted by the Investigating officer before the Learned Chief Metropolitan Magistrate, Calcutta in G.R. Case No. 2741 of 2011 arising out of Hare Street Police Station Case No. 538 of 2011 calls for no interference and, thus, concurrent finding of the learned courts below are hereby affirmed.
- 32.** Let a copy of this Judgment be sent to the Learned Trial Court for information.
- 33.** Interim order, if any, stands vacated.
- 34.** Case diary, if any, be returned to the learned counsel for the State.
- 35.** All parties shall act on the basis of server copy of this judgment duly downloaded from the official website of this Court.
- 36.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)