(2024) 04 CAL CK 0023

In the Calcutta High Court

Case No : Criminal Revision No. 1272 Of 2019

Central Bureau Of Investigation — APPELLANT

Vs

Subir Rudra & Anr. — RESPONDENT

Date of Decision : 09-04-2024

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 320(2), 482
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2024) 04 CAL CK 0023

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Chandreyi Alam (Gupta), Sanjay Banerjee

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred against an Order No. 118 dated 15.01.2019 passed by the Special Judge, CBI Court No. 2 at Alipore in Special Case No. 06/2005 Judge, arising out of RCBSK2005E0003 discharging the accused Subir Rudra and Alok Beriwala from the charge under Section 420 Indian Penal Code.

2. During the pendency of this revision, the opposite party no.1 expired.

3. The relevant portion of the order under revision is as follows:-

"Spl. Case No. 06/2005

RC BSK2005E0003

Order No. 118

Dated 15.01.2019

Decision With Reasons

Let us come to the questions raised by the accused persons by filing their petition. The crux of the contention of this petitioner is that M/s. Janmahal Agencies Pvt. Ltd. having cash credit loan account number 12146, repaid the entire the dues in favour of the bank on the basis of a compromise settlement with the bank on 01.12.2005 and bank in turn issued “No Dues Certificate” in it?s favour on 01.12.2005. So the disputes turn into a civil disputes with certain criminal facets. So these accused persons prayed for discharge. Therefore these two accused persons raised only question of law.

In the instant case written complaint was filed on 06.01.2005. FIR was registered on 31.03.2005 by the CBI. Charge sheet was submitted on 30.12.2005 against these two accused persons along with others. Ld. Advocate for these two accused persons filed the copy of No Dues Certificate dt. 01.12.2005 duly certified by the bank authority on 14.01.2019 by firisty. Which is very important and relevant. From this document it appears that UCO Bank Madhyamgram Branch issued one “No Dues Certificates” on 01.12.2005 in favour of M/s. Janmahal Agencies Pvt. This document clearly and undoubtedly reveals that M/s. Janmahal Agencies Pvt. repaid the entire amounts by way of settlement arrived at by this company and the bank on 01.12.2005 and on that day bank issued this certificate declaring that it has no outstanding dues against this company. Therefore settlement was done before filing of charge sheet since charge sheet was submitted on 30.12.2005. Prosecution investigated this case in depth. So obviously it can safely be presumed that this fact of settlement certainly had come to the knowledge of prosecution during the course of investigation. But unfortunately there is no whisper about this fact of settlement within the four corners of the charge sheet. However it is fact that company repaid the entire settlement amount to the bank on 01.12.2005, that is before the filing of charge sheet.

In view of the discussions referred above it is found that M/s. Janmahal Agencies Pvt. had no intention to cheat the bank. So this court comes to the conclusion that there is no prima facie materials to frame charge U/Sec. 420 IPC against these two accused persons in the context of the allegations brought by the prosecution against them.

That apart Section 420 IPC is compoundable in nature with the leave of the court as prescribed by Section 320 (2) Cr.P.C.

Again other charges punishable U/Secs. 120B/467/468/471 IPC brought against these accused persons by the prosecution are not compoundable and those are independent in nature. Further in the context of the allegation brought by the prosecution against them, prima facie materials exist to frame charge U/Secs. 120B/467/468/471 IPC against these accused persons.

Consequently the application U/Sec. 239 dt. 31.08.2018 filed by accused Sri Subir Rudra (A-2) and accused Alok Beriwala (A-3), is allowed in part on contest. Accordingly they are discharged only from the charge U/Sec. 420 IPC. But prima facie materials exist to frame charge U/Secs. 120B/467/468/471 IPC against these accused persons.

The above petition is hereby disposed off ………………

Sd/-

C.B.I. Court No. 2, Alipore,

South 24 Parganas”

4. The allegations in the petition of Complaint are as follows:-

a) By a complaint dated 06.01.2005, Shri Amal Kumar Sanyal, Assistant General Manager, UCO Bank, Regional Office, Salt Lake, Kolkata, informed Superintendent of Police, Central Bureau of Investigation about the perpetration of fraud that Kamal Chakraborty, while functioning as Senior Manager, UCO Bank, Madhyamgram Branch during the period from 31.07.2000 to 15.05.2003 entered into criminal conspiracy with different borrowers, middlemen, empanelled advocate, valuer etc. to defraud UCO Bank and in pursuance thereof by abusing his official position sanctioned & disbursed cash credit limits/advance under “UCO Trader Scheme” to several firms/companies, which were either non-existent or not carrying out any business activities. Kamal Chakraborty sanctioned & disbursed the loans flouting the laid down procedures of the bank and he even submitted false inspection report in respect of the borrowers, who also submitted false & fabricated documents. Kamal Chakraborty knowingly accepted false, defective, over-valued, non-existent, encumbered mortgages of immovable properties as collateral securities. He also allowed some of the borrowers to draw more funds from the bank than the sanctioned amount beyond his financial powers. The borrowers diverted the bank funds released by him for other purpose than for which the loans were sanctioned. The UCO bank suffered a wrongful loss to the tune of Rs. 3,13,79,000/- which the accused borrowers gained wrongfully.

b) The petitioner states that RCBK2005E0003 was registered on 31.03.2005 at CBI/SPE/BS&FC/Kolkata against (1) Shri Kamal Chakraborty (A-1), Ex-Sr. Branch Manager, UCO Bank, Madhyamgram Branch, and 35 other accused persons and others U/s 120-B IPCR/w 420, 467, 468, 471 IPC and Sec. 13(2) r/w 13(1)(d) of P.C. Act, 1988.

c) On completion of investigation total 11 charge sheets (7/05, 8/05, 9/05, 10/05, 11/05, 12/05, 8/07, 9/07, 10/07, 11/07 and 18/07) were filed, out of which 6 charge sheets (7/05, 8/05, 9/05, 10/05, 11/05 and 12/05) were filed on 30.12.2005 and all the six charge sheets were taken into one Court case No. 06/2005. Similarly, 05 charge sheets (08/07, 9/07, 10/07, 11/07 and 18/07) were filed on 15.11.2007 and 17.12.2007 which were taken into one court case No. 07/2014 by the Ld. Court.

d) Special Case No. 06/2005 was initiated upon charge sheet No. 07/2005 dated

30.12.2005 filed against Kamal Kumar Chakraborty and the Opposite parties herein i.e. Subir Rudra, Director to Jarmahal agencies and Alok Beriwala, Director of M/s. Paharimata Sales Pvt. Ltd. under Sections 120B read with Sections 420/467/468/471 of the Indian Penal Code read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

e) The petitioner states that as per the Charge Sheet, an application for credit facilities under UCO Trader Scheme was submitted to the UCO Bank, Madhyamgram Branch on 10.03.2013 under the signatures of S/Shri Subir Rudra (A-2), Tapan Das and Gobinda Lal Sarkar, Directors of M/s Janmahal Agencies Pvt. Ltd. mentioning line of business as trading in timber & allied products and address of company as "Holding No. 9, Sharada Sarani, East Udairajpur, Madhyamgram, 24 Parganas (North). The current A/c. in the name of M/s. Janmahal Agencies Pvt. Ltd. was opened on 20.03.2003 by Shri Kamal Chakraborty (A-1) as introduced by Shri Rajendra Bhoora Partner of M/s Arihant Trading and friends of Shri Aloke Beriwala (A-3), Director of M/s. Paharimata Sales Pvt. Ltd. Investigation revealed that Shri Kamal Chakraborty (A-1 prepared pre-sanction inspection report and stock inspection report of the loan proposal of the said company on the same day i.e 15.03.2003 mentioning inter alia that the unit has its office at 9, Sharada Sarani, on the same day i.e 15.03.2003 mentioning inter alia that the unit has its office at 9, Sharada Sarani, East Udairajpur, Madhyamgram and godown at Banaras Road, Howrah and found that the stock at Sharada Sarani as well as at godown at Banaras Road on physical verification to the tune of Rs. 65 lakhs. Investigation further revealed that there was no company in the name of M/s. Janmahal Agencies Pvt. Ltd. at the address mentioned in application form & current account opening from as Holding N. 9, Sharada Sarani, P.O. East, Udairajpur, Madhyamgram, 24 Parganas (North) at any point of time as well as there were no stocks at the company as mentioned by A-1 falsely in his pre-sanction inspection report and stock verification report.

f) That, the investigation further revealed that the copies of audited Balance Sheet of M/s. Janmahal Agencies Pvt. Ltd. as on 31.03.2001 and 31.03.2002 audited by Shri Chandrskhar Arasada, were submitted to the bank along with the loan application which were found false & fabricated and signatures appeared on these balance sheets were also forged and did not belong to Suresh Kr. Chaudhary and Smt. Asha Chaudhary, both Directors of M/s. Janmahal Agencies Pvt. Ltd. The copy of Income Tax Return of M/s. Janmahal Agencies Pvt. Ltd for the assessment year 2001 – 02 was also submitted along with loan application which was found forged by altering the values of the profit, nature of business, tax payable and the total income of the company.

g) That, investigation further revealed that the funds sanctioned to M/s. Janmahal Agencies Pvt. Ltd. were fraudulently diverted and were used by Shri Aloke Beriwala (A-3), Directors of M/s. Paharimata Sales Pvt. Ltd. accused director Shri Subir Rudra (A-2) was an employee of Shri Aloke Beriwala (A-3), Shri Subir Rudra signed all the cheques issued from the Case Credit Account no.

12197 of M/s. Janmahal Agencies Pvt. Ltd. A sum of Rs. 950 Lakhs was diverted through four cheques to the account of M/s. Paharimata Sales Pvt. Ltd. This diversion was done without any genuine business transactions between M/s. Janmahal Agencies Pvt. Ltd. and M/s. Paharimata Sales Pvt. Ltd. Three cheques totaling TRs. 15 Lakhs were issued to M/s. Shivang Trexix Pvt. Ltd. on the instructions of Shri Aloke Beriwala. Further, on the orders of Shri Alok Beriwala, one Cheque for Rs 9,01,800/- was issued in favour of ?yourself? through which a manager?s Cheque favouring M/s. Lovely International Pvt. Ltd. was purchased and given to Sri Samir Biyani, Director of M/s. Lovely International Pvt. Ltd. Shri Samir Biyani delivered the goods i.e. timber in the godown of M/s. Paharimata Sales Pvt. Ltd. Thus, the funds sanctioned to M/s. Janmahal Agencies Pvt. Ltd. was fraudulently used on the orders of Shri Aloke Beriwala. Thus accused persons namely Shri Subir Rudra (A-2) and Shri Aloke Beriwala (A-3) in connivance with Shri Kamal Chakraborty (A-1) cheated the said bank to the tune of Rs. 25.24 lakhs.

h) The aforesaid loan was availed by M/s. Janmahal Agencies Pvt. Ltd. on the basis of false & fabricated documents and forged signatures, the company repaid the entire loan outstanding to the bank after the registration of FIR.

5. In State of Madhya Pradesh Vs Yogendra Singh Jadon & Anr., AIR 2020 SC 911, decided on January 31, 2020, the Supreme Court held:-

“5. We find that the High Court has examined the entire issue as to whether the offence under Sections 420 and 120-B is made out or not at pre trial stage. The respondents are beneficiary of the grant of cash credit limit when their father was the President of the Bank. The power under Section 482 of the Code of Criminal Procedure, 1973 cannot be exercised where the allegations are required to be proved in court of law. The manner in which loan was advanced without any proper documents and the fact that the respondents are beneficiary of benevolence of their father prima facie disclose an offence under Sections 420 and 120-B IPC. It may be stated that other officials of the Bank have been charge sheeted for an offence under Sections 13(1)(d) and 13(2) of the Act. The charge under Section 420 IPC is not an isolated offence but it has to be read along with the offences under the Act to which the respondents may be liable with the aid of Section 120-B of IPC.”

6. In present case, the materials on record against the petitioners after investigation showing a prima facie case against the petitioners in respect of offences alleged are as follows:-

a) Investigation further revealed that there was no company in name of M/s. Janmahal Agencies Pvt. Ltd.

b) That, the investigation further revealed that the copies of audited Balance Sheet of M/s. Janmahal Agencies Pvt. Ltd. as on 31.03.2001 and 31.03.2002 audited by Shri Chandrskhar Arasada, were submitted to the bank along with the loan application which were found false & fabricated and signatures appeared on these balance sheets were also forged and did not belong to Suresh Kr. Chaudhary and Smt. Asha Chaudhary, both Directors of M/s. Janmahal Agencies Pvt. Ltd. The copy of Income Tax Return of M/s. Janmahal Agencies Pvt. Ltd. for the assessment year 2001 – 02 was also submitted along with loan application which was found forged by altering the values of the profit, nature of business, tax payable and the total income of the company.

c) The aforesaid loan was availed by M/s Janmahal Agencies Pvt. Ltd. on the basis of false & fabricated documents and forged signatures, the company repaid the entire loan outstanding to the bank after the registration of FIR.

7. Thus a prima facie case was made out against the petitioners in respect of the offences alleged under Sections 420, 467, 468, 471 IPC and Section 13(2) read with 13(1)(d) of P.C. Act, 1988, as prima facie the petitioners were the beneficiaries and the loan was advanced without proper documents. The Charge under Section 420 IPC is not an isolated offence but it has to be read along with the offences under the Act to which the petitioners may be liable with the aid of Section 120B IPC State of Madhya Pradesh Vs Yogendra Singh Jadon & Anr., (Supra).

8. Thus the order revision dated 15.01.2019 being not in accordance with law in liable to be set aside.

9. CRR 1272 of 2019 is allowed.

10. The Order No. 118 dated 15.01.2019 passed by the Special Judge, CBI Court No. 2 at Alipore in Special Case No. 06/2005 Judge, arising out of RCBSK2005E0003 discharging the accused Subir Rudra and Alok Beriwala from the charge under Section 420 Indian Penal Code, is set aside.

11. The trial Court to proceed expeditiously with the trial in respect of the offences as stated in the Charge Sheet which includes Section 420 of IPC.

12. All connected applications, if any, stand disposed of.

13. Interim order, if any, stands vacated.

14. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

15. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

