

(2023) 06 CAL CK 0066
In the Calcutta High Court
Case No : Criminal Revision No. 1809 Of 2019

Jigar Chinu Dalal

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 28-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 362, 482
Indian Penal Code, 1860 — Section 34, 79, 120B, 323, 448, 506
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(4), 32
Arms Act, 1959 — Section 25, 27

Citation : (2023) 06 CAL CK 0066

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

Bench : Single Bench

Advocate : Ayan Bhattacharjee, Varun Kedia, A. Jaiswal, Madhusudan Sur, Dipankar Paramanick

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing of proceeding in Uluberia Police Station Case No.27 of 2010 dated 14.01.2010, under Sections 448/323/506/120B of the Indian Penal Code, 1860 corresponding to G.R Case No.66 of 2010 pending before the learned Judicial Magistrate, 1st Court at Uluberia, Howrah.

2. The petitioner's case is that the petitioner is a Vice President of Asset Reconstruction Company (India) Limited (hereinafter referred to as ARCIL), a company incorporated under the Companies Act, 1956 having his office at 29, Senapati Bapat Marg, 10th floor, The Ruby, Dadar (W) Mumbai-400 028. ARCIL is a Securitisation Company established under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI act, 2002) and is registered with the

Reserve Bank of India to act as a 'Securitisation Company'.

3. Kanoria Jute and Industries Ltd. is a company incorporated in the year 1929 and is a company within the meaning of the Companies Act, 1956 (hereinafter referred to as KJIL). The said company was engaged in manufacture of traditional jute products.

4. In the year 1987, the said Company was referred to the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as SICA). The aforesaid reference was registered as Case No.11 of 1987. BIFR, by its order dated 15.09.1987, declared the said company to be a sick industrial company within the meaning of SICA.

5. KJIL had taken a loan from the Bank of India which remained unpaid by the said company. Such debts of KJIL was subsequently assigned to ARCIL by Bank of India.

6. On 17.03.2009, ARCIL issued a notice under Section 13(2) of the SARFAESI Act, 2002 to KJIL calling upon KJIL to repay the amount of Rs.2,30,08,31,501/- together with interest, against the loan taken from the Bank of India.

7. In response to the said notice under Section 13(2) of the SARFAESI

8. ARCIL replied to such response of KJIL by its letter dated 29.06.2009.

9. ARCIL thereafter proceeded under Section 13(4) of the SARFAESI Act, 2002 and took possession of the secured assets of KJIL being its mill situated at Sijberia, Uluberia, District Howrah on 12.01.2010. The possession was handed over by KJIL by preparing an Inventory and Panchnama. The factum of such possession was also informed to the Officer-in-Charge, Uluberia Police Station through a letter dated 12.01.2010.

10. As a retaliatory measure, KJIL acting through the opposite party no.2, filed a letter of complaint with the Officer-in-charge of Uluberia Police Station, therein alleging commission of offences punishable under Sections 448/323/506/120B of the Indian Penal Code and under Section 25/27 of the Arms Act, inter alia, by the Officers/Representatives of ARCIL, including the petitioner herein.

11. The allegations levelled against the petitioner in the complaint are :-

a) That on 12.01.2010, officers/representatives of ARCIL along with 30/40 hired hooligans equipped with deadly weapons and acting in collusion and conspiracy with each other have been committing various wrongful, illegal and criminal acts at and around the said jute mill.

b) That such persons broke open the lock at the mill and trespassed into the jute mill premises in an illegal manner by use of force and violence. That such persons committed unlawful assembly, intimidation, abuses, assault and trespassed into the property and the same was duly reported to the Uluberia

Police Station vide General Diary Entry No.951 dated 12.01.2010.

c) It was also alleged that the petitioner along with men and agents of ARCIL was accompanied by some gunmen and anti-socials who threatened to break open the padlock of the godowns and would take away the plants, machineries along with the stock of raw jute lying there at by use of force and violence for which there was serious apprehension of clash amongst the workers and the said associates and agents of the ARCIL.

That on 14.01.2010 a FIR was registered, inter alia, against the petitioner under Sections 448/323/506/120B of the Indian Penal Code and under Sections 25/27 of the Arms Act.

12. It is stated that the dispute between the petitioner and the opposite party no.2, being civil in nature, had been amicably settled by and between the parties outside court as the opposite party no.2 no longer wanted to continue with the instant case against the petitioner and the same was conveyed to the Uluberia Police Station vide letter dated 11.05.2011. The de-facto complainant also filed a petition to such effect before the learned Additional Chief Judicial Magistrate, Uluberia Court, Howrah.

13. On 18.05.2011 a final report was submitted by the Uluberia Police Station before the learned Additional Chief Judicial Magistrate, Uluberia Court, Howrah from which it is apparent that the arms which were seized by the police from persons unknown to the petitioners were licensed and such arms were returned to them on Zimma. The Final Report also records the fact that the matter was settled between the complainant and the petitioner. And after collecting the evidence, the concerned police station got to know that the matter of KJIL is pending before the Hon'ble High Court at Calcutta under SARFAESI Act, 2002 which is a civil dispute.

14. The opposite party no.2 filed a "Narazi" petition before the learned Additional Chief Judicial Magistrate at Uluberia only in respect of the Final Report given by the police against one Purusottam Bajaj. However, the learned court, without application of mind, vide its order dated 03.01.2013 held that further investigation of the case was required and hence, it could not discharge any of the accused persons (including the petitioner, against whom "Narazi" was not filed) of the case at that stage. Therefore, the case diary was sent back to the concerned police station for further investigation.

15. In furtherance of order of the learned court, the police filed a charge sheet dated 20.04.2013, inter alia, against the petitioner u/s 448/323/506/120B/34 of the Indian Penal Code, 1860. Such charge sheet has clearly been filed without any basis, without any re-investigation and without any evidence against the petitioner.

16. Mr. Ayan Bhattacharjee, learned counsel for the petitioner has submitted that the acts of the petitioner were done in good faith under the provisions of the

SARFAESI Act and the same do not constitute an offence in view of Section 32 of the SARFAESI Act.

17. The acts complained of, even if believed to be true, do not constitute a cognizable offence under Section 79 of the Indian Penal Code.

18. The alleged entry of the petitioner into the premises of KJIL in exercise of the rights provided under Section 13 of the SARFAESI Act cannot amount to an act of trespass, far less criminal trespass constituting an offence under Section 448 of the Indian Penal Code.

19. It is only just and proper and in the interest of justice to quash the proceedings as the same amounts to abuse of process of court. In the instant case the facts disclosed in the complaint do not make out any contravention of the provisions of Sections 448/323/506/120B of the Indian Penal Code by the petitioner and as such no offences under the aforesaid Sections can be said to have been made out. In such circumstances, it would only be just and proper to quash the impugned proceeding.

20. Mr. Madhusudan Sur, learned counsel for the State has placed a copy of the case diary.

21. In spite of due service there is no representation on behalf of the opposite party no.2.

22. The complainant/opposite party no. 2, Upendra Pratap Singh, is the Personnel Manager of Kanoria Jute & Industries Ltd.

23. The complaint in this case has been filed against the petitioner, Jigar Dalal, Authorised Officer, ARCIL and one Purshottam Bajaj and 30-40 others under Sections 448/323/506/120B of IPC and 25/27 of Arms Act on 14.01.2010.

24. During investigation the complainant filed a letter 18.04.2011 with the Police withdrawing their charge against the petitioner, as the licensed guns had been handed over in Zimma to the owners, the petitioner not being one of them. The dispute had also been amicably settled between the complainant and the petitioner. A petition with the same prayer was made before the court stating that the petitioner Jigar Dalal being an authorized officer of ARCIL, was protected under Section 32 of the SARFAESI Act. The investigating officer then filed Final Report No.402/2011 on 18.05.2011 praying for discharge of both the accused's.

25. The complainant filed a 'Narazi' petition only in respect of accused Purusottam Bajaj before the Court.

26. The learned Magistrate vide order dated 03.01.2013, directed further investigation in respect of both the accuseds including the petitioner, Jigar Dalal, on the ground that the investigating officer had not conducted any investigation in respect of the letter dated 18.04.2011.

27. Order dated 03.01.2013 is reproduced here:-

"Order dated 03.01.2013

Seen the petn. filed on behalf of D/C praying for re-investigation.

Seen the Narazi petition filed by the defacto complainant. It is seen from the C.D. that I.O. has been supplied a letter dated 18th April, 2011 by the defacto complainant in respect of accused Jigar Dalal.

The I.O. has not proceeded further move after receiving the said report. The I.O. has not gone through properly regarding the letter and thereafter submitted his final report.

In such fact, I am of the view that further investigation of this case is required. I cannot discharge any accused of this case at this stage.

So, let the C.D. be sent back to I.C. Uluberia P.S. with direction to make investigation further move without being influenced by the letter of defacto complainant, if he wishes may appoint competent officer not below the rank of sub-Inspector for investigation.

To 16.03.2013 for I.O.'s report.

Sd/-

A.C.J.M., Uluberia"

28. It is seen from the records that the learned Magistrate overlooked the 2nd and 3rd line of the final report dated 18.05.2011 at internal page 5, where it is clearly stated/written "received amicable settlement confession in writing" between the complainant and the accused. The said writing referred to is the letter dated 18.04.2011 addressed to officer-in-charge, Uluberia P.S., praying for withdrawal of the case against the petitioner (page 40 of the case diary) . A petition to that effect was also filed before the Court on 11.05.2011 praying for withdrawal of the case against the petitioner herein.

29. On further investigation as directed by the Court, charge sheet being No.312/2013 dated 20.04.2013 has been submitted against the petitioner and Purusottam Bajaj under Sections 448/323/506/120B/34 of IPC. The charge under Sections 25/27 of Arms Act was dropped, as the arms were recovered from the possession of one Bijoy Singh and returned in zimma to the licensed owners.

30. Considering the said materials on record, it is clear that:-

(i) The further investigation ordered by the Magistrate against the petitioner vide order dated 3.1.2013 was not in accordance with law as investigation in respect of letter dated 18.04.2011 was already on record in the final report, dated 18.05.2011.

(ii) Thus the final report dated 18.5.2011 was in accordance with law in respect of the petitioner.

(iii) The "Narazi Petition" filed by the complainant was only in respect of accused/Purusottam Bajaj and not in respect of the petitioner, Jigar Dalal, the authorized officer of ARCIL.

(iv) The petitioner was thus protected under Section 32 of the SARFAESI Act.

Section 32, SARFAESI Act:-

"32. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."

(v) The final report against the petitioner was submitted on the basis of the letter dated 18.04.2021 filed by the complainant in respect of the amicable settlement with the petitioner as he was protected under Section 32 of the SARFAESI Act. No "Narazi" was filed in respect of the petitioner. "Narazi" was filed only in respect of accused Purusottom Bajaj.

(vi) The order dated 03.01.2013 directing further investigation in respect of petitioner Jigar Dalal was on a wrong finding and is liable to be modified/set aside in respect of accused/petitioner Jigar Dalal.

(vii) Thus there being no prima facie case against the petitioner Jigar Dalal, the proceeding in Uluberia Police Station Case No.27 of 2010 dated 14.01.2010, under Sections 448/323/506/120B of the Indian Penal Code, 1860 corresponding to G.R Case No.66 of 2010 and charge sheet being no. 312 of 2013 pending before the learned Judicial Magistrate, 1st Court at Uluberia, Howrah, is liable to be quashed only in respect of the petitioner, Jigar Dalal being not in accordance with law. Charge sheet no. 312 of 2013 filed on further investigation, on the basis of a "Naraji petition" against the accused Purusottam Bajaj being in accordance with law, the case shall proceed towards trial in respect of accused Purusottam Bajaj.

31. The revisional application being CRR 1809 of 2019 is thus allowed.

32. The proceeding in Uluberia Police Station Case No.27 of 2010 dated 14.01.2010, and charge sheet being no. 312 of 2013 under Sections 448/323/506/120B of the Indian Penal Code, 1860 corresponding to G.R Case No.66 of 2010 pending before the learned Judicial Magistrate, 1st Court at Uluberia, Howrah, is hereby quashed in respect of accused/petitioner Jigar Dalal.

33. The proceedings in G.R. 66 of 2010 shall proceed in respect of accused Purusottam Bajaj.

34. All connected applications stand disposed of.

35. Interim order, if any, stands vacated.

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

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