(2024) 03 CAL CK 0038

In the Calcutta High Court

Case No : Criminal Revision No. 1862 Of 2019

Rowsan Ali @ Roasan Ali APPELLANT

Vs

Manager, Allahabad Bank, Siuli Branch & Anr. RESPONDENT

Date of Decision : 14-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 120B, 409, 420, 467, 468, 471, 472, 473
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482
Prevention of Corruption Act, 1988 — Section 13

Citation : (2024) 03 CAL CK 0038

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

Bench : Single Bench

Advocate : Partha Sarathi Das, Md. Hafiz Ali, Shanta Sarkar, Debojyoti De, Bitasok Banerjee

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing the proceeding being F.I.R. No. 331 of 2015 dated 11.07.2015 under Sections 468/471/420/409/120B of the Indian Penal Code, corresponding to G.R. Case No. 1721/2015 pending before the Learned Additional Chief Judicial Magistrate, Kandi, Murshidabad.

2. The petitioner states that the Manager of Allahabad Bank, Siuli Branch, filed a written complaint before the Officer-in-charge of Burwan Police Station stating inter alia that the petitioner and others in connivance with the then Branch Manager of the said Branch namely Uday Kumar Ghosh had availed huge amount of loan with the help of forged land documents which were given as security for sanctioning of those loan amount.

3. On the basis of the said complaint Burwan P.S. Case No. 331 of 2015 dated

11.07.2015 under Sections 468/471/420/409/120B of the Indian Penal Code against the petitioner and others.

4. The petitioner states that on 06.02.2018, the father of the petitioner wrote a letter to the Bank Manager, Allahabad Bank, Siuli Branch stating that a compromise was done between the bank and the petitioner against the loan amount as full and final settlement.

5. That thereafter on 16.02.2018, the said bank vide letter dated 16.02.2018 informed the petitioner that the compromise proposal advanced by the petitioner is under consideration by the appropriate authority of the bank.

6. The petitioner states that on 31.03.2018 the said bank issued a No Dues Certificate dated 31.03.2018 in favour of the petitioner, as the petitioner paid the amount in full.

7. The said Allahabad Bank, Siuli Branch also closed the aforesaid loan account on 31.03.2018, as a result there are no dues of the bank against the captioned loan amount.

8. It is stated that the said case was initiated before the Learned Additional Chief Judicial Magistrate Kandi, Murshidabad and the said case is still pending before the Learned Court and no Charge Sheet has been submitted till date.

9. It is submitted that the dispute has already been settled between the parties. Therefore the said proceeding should be dropped and the FIR should be quashed in view of the no dues certificate.

10. Hence the revision.

11. The written complaint in this case was filed on 11.07.2015 by the then Manager, Allahabad Bank, Siuli Branch stating interalia that:-

"………….. It is revealed from the office records that Sri Uday Kumar Ghosh S/o Late Shyampada Ghosh, resident of 22/1 Taramoni Ghat Road, Kolkata – 700 041 previously posted as (Branch Manager, Allahabad Bank, Siuli Branch) in his official capacity had sanctioned individual KCC loans to be borrowers named below total amounting to Rs. 16,65,000.00 in total. It has been observed that the borrowers have submitted fake land record and case of impersonisation is also visible. The said borrowers never paid any heed to repay the same of the interest. Now it is revealed that the security documents of immovable properties i.e. land record, etc. Submitted by the aforesaid borrowers towards the bank are forged and those properties. They had taken the loan amount for a wrong full gain with dishonest and fraudulent intention to cheat the bank by creating forged security with the illegal help of Sri Uday Kumar Ghosh the then manager……………."

"………….. We wish to report another incident of fraud that has taken place in our branch, the details of which are as under.

It is revealed from the office records that Sri Uday Kumar Ghosh (Same person as mentioned above) had also sanctioned individual loans to the borrowers named below total amounting to Rs. 300,00,000.00 in total. All the below named borrowers diverted the loan and therefore all accounts turned NPA and in spite of regular follow up said a borrowers never paid any heed to repay the same or the interest. Now it is revealed through investigation that no units were established through bank fund and full amount has been diverted. They had taken the loan amount for wrong full gain with dishonest and a fraud (torn) to cheat the bank by the illegal help of Sri Uday Kumar Ghosh the then Branch Manager of the bank during the period from 16.07.2011 to 12.08.2013………..”

“………….. It is submitted that the borrower with the dishonest intention of causing wrongful loss to our Bank and wrongful gain to themselves fraudulently committed the act of cheating and have committed offences of fraud and cheating and criminal breach of trust under Indian Penal Code.

Preliminary exercise at our end to find out the reason of fraud has indicated that Sri Uday Kumar Ghosh the then manager of the bank is prima facie involved in the fraud and role of Sri Ghosh in the fraud may also be looked at…….”

12. At page 16 of the revisional application is a copy the ‘No Dues Certificate’ dated 31.03.2018 issued in favour of the petitioner by the Bank/Opposite party no. 1.

13. The said Certificate is reproduced below:-

ALLAHABAD BANK

(Head Office, 2 N.S. Road, Kolkata – 700 001)

Branch - Siuli

Ref :Br/Siuli/No dues/2017-18/210 Date 31/03/18

Rouson Ali

S/o Abdul Ali

Vill+P.O.- Burwan

P.S. – Burwan, Dist- Murshidabad,

Pin – 742132 (W.B.)

Dear Sir,

No due Certificate

A/c…………….

Rouson Ali (A/c No. 50082236620)

We have to inform you that in pursuance to the acceptance of your offer towards one time settlement of captioned loan account by the Bank, you have deposited the compromised amount in full. Consequently, your above loan account with us stands closed in our books on 31.03.2018 (Date) and there is no dues of the bank against the captioned loan account.

Yours faithfully

Sd/-

(Branch Head)

14. The case diary along with a memo of evidence has been filed by the State.

15. It appears that the case ended in Charge Sheet being Burwan P.S. Charge Sheet No.397/20 dated 31.12.2020 for offence punishable under Sections 467/468/471/472/473/420/120B of IPC read with Section 13 of the Prevention of Corruption Act, 1988, against 33 accused persons including the petitioner, who is at serial number 33.

16. From the case diary and the memo of evidence it appears that:-

i) The prime accused being the then manager of Allahabad Bank, Siuli Branch, Burwan, Murshidabad, Uday Kumar Ghosh, S/o Lt. Shyamapada Ghosh R/O 22/1 Taramonighat road Kolkata- 700 041, had extended KCC loans to 24 borrowers (Sl. No. 1-24 in the list above) without cross-checking the credentials of the Collateral documents submitted (against those loans by the borrowers). The land documents submitted by all the 24 borrowers (as per the list given in column 12 of this charge sheet i.e. the first 24 names in the list) have been found to be FAKE.

ii) In addition to this, the voter-ID and Ration cards which have been submitted by 07 (seven) borrowers namely 1) Jayanti Mondal (vill- Chaitpur, Burwan) 2) Manika Ghosh (vill – Chaitpur, Burwan 3)Haradhan Mondal (Vill- Chaitpur, Burwan) 4) Biru Sheikh (vill- Chaitpur, Burwan) 5) Goutam Sarkar (vill- Chaitpur, Burwan) 6) Sahadeb Das (vill- Satitara, Burwan) and 7) Indranil Pramanik (vill- Gopipur, Burwan) have been found to be FAKE (as confirmed by BDO, Burwan vide Memo 2901 dt.- 19.11.2020 verification report.

iii) Regarding 2 nos. borrowers namely 1)Maniruzzaman, S/o Khalilur (vill. Satitara, Burwan) and 2) Santi Kumar Ghosh, S/o Lakshman Ghosh (vill- Gopipur, Burwan), the Bank has replied that they have not found any identification (such as voter-ID, ration card, PAN card etc.) of these 2(two) borrowers.

iv) Through a letter dt. 19.11.20, the bank manager has replied that the loaned amount (from the bank account of these four borrowers 1) Sahadeb Das (vill- Satitara, Burwan), 2) Indranil Pramanik (vill-Gopipur, Burwan) 3) Maniruzzaman, s/o Khalilur (vill-Satitara, Burwan) 4) Santi Kumar Ghosh, s/o Lakshman Ghosh (vill Gopipur, Burwan) was further transferred to the bank account of FIR named accused person Jiaul Rahaman, s/o Fazle Karim (he is the same Jiaul Rehman as Sl. No. 25 in column 12 of the charge sheet, this has been confirmed by the bank in the same letter dated 19.11.2020 addressed to SDPO Kandi, Murshidabad at the footnote.

v) The Borrowers never paid any heed to repay the same or interest.

17. In Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). ……… of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022), the Supreme Court held:-

"15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369 decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:

"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

"7. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

“102. (7) Where a criminal proceeding is manifestly attended with mala fides and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.” Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335 as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315."

18. From the said materials on record, it appears that prima facie there is no material against the petitioner namely Rowsan Ali @ Roasan Ali in respect of the offences alleged. The specific findings in the charge sheet as noted above also are not against the petitioner herein. The petitioner has submitted a document being a 'No Dues Certificate' issued by the bank. The loan account of the petitioner has also been closed by the Bank. There is also no materials in the case diary implicating the petitioner of the offences alleged. Nor are there any specific allegations against him in the charge sheet.

19. The present case thus falls under category 3 of Para 102 of Bhajan Lal (Supra).

20. CRR 1862 of 2019 is thus allowed.

21. The proceedings being F.I.R. No. 331 of 2015 dated 11.07.2015 under Sections 468/471/420/409/120B of the Indian Penal Code, corresponding to G.R. Case No. 1721/2015 pending before the Learned Additional Chief Judicial

Magistrate, Kandi, Murshidabad, is hereby quashed in respect of the petitioner Rowsan Ali @ Roasan Ali.

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

23. Interim order, if any, stands vacated.

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

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