(2019) 03 CAL CK 0115

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 3481 Of 2017

?Sangeeta Sahal & Ors APPELLANT

Vs

State Of West Bengal & Anr RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 401, 482
Indian Penal Code, 1860 — Section 34, 120B, 420, 468, 471
Constitution Of India, 1950 — Article 226

Citation : (2019) 03 CAL CK 0115

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Ashim Kumar Routh, R.C.Prusti, Balaram Pandit, Somopriyo Chowdhury

Final Decision : Dismissed

Judgement

Madhumati Mitra, J

The petitioners have filed an application under Section 401 read with Section 482 of the Code of Criminal Procedure for quashing the proceedings initiated by the opposite party No.2 being Baguihati P.S.Case No.193 of 2015, corresponding to G.R.Case No.902 of 2015 under Section 420/468/471/120B/34 of the Indian Penal Code pending before the Court of learned Chief Judicial Magistrate at Barasat,24 Parganas (North), District-24 Parganas (N). Dr.G.Ravi Shankar (Deputy Zonal Head) of Corporation Bank on 3rd May, 2014 made a written complainant to the Additional Director General, Criminal Investigation Department, Economic Offence Wing, Bhawani Bhavan, Belvedere Road, Kolkata-700 027, against the present petitioners for having committed alleged offence of fraud, criminal breach of trust and misappropriation of public fund. It was alleged in the said written complaint that the Corporation Bank sanctioned 4(four) individual Cash Credit Loans aggregated to Rs.218.10 Lakhs to four borrowers. It was alleged that one of the borrowers viz Mrs. Sangeeta Sahal was sanctioned loan (petitioner no.1) to limit of 62.80 Lakhs on 4th May, 2011 against security of LIC Policies having surrender value of Rs.69.79 Lakhs as per the surrender value certificate dated 26th March, 2011 furnished to the Bank by the said borrower. Another individual CCIL Loan was sanctioned to petitioner no.2 Vivekanda Sahal to the limit of Rs.68.90 Lakhs on 24th May, 2011 against security of LIC Policies having surrender value of Rs.76.58 Lakhs as per the surrender value certificate dated 26.03.2011 furnished to the Bank by the said borrower i.e. petitioner no.2. Individual CCIL loan was also sanctioned to Mr. Suresh Kumar Sahal the present petitioner no.3 to the limit of Rs.52.50 Lakhs on 24th May, 2011 against security of LIC Policies having surrender value of Rs.76.58 Lakhs as per the surrender value certificate dated 26th March, 2011, furnished to the Bank by the said borrower. Individual CCIL loan was also sanctioned to Mr.Abhishek Sahal to the limit of 33.90 Lakhs on 25th May, 2011 against security of LIC Policies having surrender value of Rs.37.70 Lakhs as per surrender value certificate dated 26th March, 2011 furnished to the Bank by the said borrower. It was specifically alleged in the said written complaint that the surrender value certificates as furnished by the borrowers to the Bank were not genuine.

Mr. Abhishek Sahal was one of the borrowers as mentioned in the said complaint. He is not a petitioner before this Court. It was alleged in the complaint that four surrender value certificates each dated 26th March, 2011 furnished to the Bank by the borrowers were not genuine as the LIC Polices under Jeevan Samridhi Plus Scheme as stated by the LIC of India, have no provision for issuing surrender value certificates within one year of issuance of policies. It was the specific allegation made in the complaint that the actual aggregate surrender value of all the above mentioned policies offered as security for the four CCIL loans was only for Rs.19.93 Lakhs but surrender value certificates dated 26th March 2011 which were furnished to the Bank by the borrowers showed the aggregate valu of Rs.242.39 Lakhs. It was also alleged in the written complaint that the actual surrender value of the LIC Policies was much less than what was furnished to the Bank by the borrowers through their surrender value certificates. It was further alleged that the borrowers with a view to get loan from the Bank had given false information to the Bank by furnishing surrender value certificates which were not genuine and had committed the offence of fraud, criminal breach of trust and misappropriation of public fund.

On 9th March, 2015 Special Superintendent of Police (South), CID, West Bengal, forwarded the said written complaint of the Corporation Bank to the Commissioner of Police, Bidhannagar Commissionerate. Inspector in-charge of Baguihati P.S. was directed by Deputy Commissioner of Police Detective Department on 10th March 2015 to take necessary action as per law and directed him to start a case under Section 420/468/471/120B/34 of Indian Penal Code. Thereafter, complaint was received on 19th March, 2015 at 20:45 p.m. by Baguihati P.S. and started Baguihati, P.S. Case No.193 of 2015 dated 19th March, 2015 under Section 420/ 468/471/120B/34 of Indian Penal Code. Accordingly, Baguihati P.S.Case No.193 of 2015 dated 19.03.2015, was started against the present petitioners along with one Abhishek Sahal for commission of alleged offences punishable under Section 420/468/471/120B/34 of Indian Penal Code.

The petitioners in their application for quashing the proceedings of G.R Case No.102 of 2015 arising out of Baguihati P.S.Case No.193 of 2015 have specifically stated that the sanctioned amount of the loan was disbursed to them by different dates as reflected in 'Annexure-P-1' collectively. It is the specific case of the petitioners that at the time of availing individual CCIL Loans no security was created by them in respect of their LIC Policy Certificates but they had to deposit several policy certificates with the bank i.e the opposite party no.2 on 26th March, 2011 as per the demand of the officials of opposite party no.2, Petitioners have claimed that they repaid the entire loan amount along with interest to the bank on 23rd September 2011 and accordingly the loan accounts of the petitioners were closed by the opposite party no.2. 'Annexure P-2', showed the repayment of the loan amount along with the interest by the petitioners to the opposite party no.2.

The claim of the petitioners that they had repaid the loan amount along with the interest to the bank and said loan accounts were closed by the Bank has not been controverted by the opposite party no.2 i.e. the Corporation Bank.

From the contentions of the parties, it appears that the allegation of the opposite party no.2 i.e Corporation Bank against the petitioners is that the petitioners practised fraud upon the Bank by giving false information to the Bank by way of furnishing false surrender value certificates of the LIC Policies and the surrender value of each of the LIC Policies was much less than what was furnished to the Bank by the petitioners as borrowers. The contention of the petitioners is that the allegations made by the Bank in the F.I.R of the case are baseless, imaginary and are not based on actual facts and as such the prosecution against them is unwarranted. Learned Advocate appearing for the petitioners has vigorously argued that the present criminal proceeding is maliciously instituted with some ulterior motive and should not be allowed to continue. In support of his contention he has further submitted that several other loans were granted to the petitioners by the opposite party no.2 and several recovery proceedings have been initiated by the Bank i.e opposite party no.2 for recovery of those loans amounts before the appropriate forum. According to the Learned Advocate for the petitioners the present criminal proceeding has been started by the petitioners with a mala fide intention to create pressure upon the petitioners for recovery of those loans which have not yet been recovered by the Bank. Learned Advocate for the petitioners has placed his reliance on the decisions in State of Haryana and others, Appellants Vs. Ch. Bhajan Lal and others reported in AIR 1992 Supreme Court 604 and International Advanced Research Centre For Power Metallurgy And New Materials (ARCI) & Ors, Appellants Versus Nimra Cerglass Technics (P) Ltd. & Anr., Respondents reported in 2015(7) Supreme 154. Learned Advocate for the petitioners has vehemently argued that the continuation of the criminal proceedings against the present petitioners would amount to an abuse of the process of the Court and it is a fit case to quash the entire criminal proceedings pending against all the petitioners.

Case diary has been produced by the Learned State Counsel. From the case diary it appears that investigation ended in submission of charge sheet against the present petitioners for commission of alleged offences punishable under Section 420/468/471/120B/34 of the Indian Penal Code. The present petitioners were granted anticipatory bail by the Learned Sessions Judge. Learned Counsel appearing for the State has submitted that the inherent power under Section 482 of the Code of Criminal Procedure has to be exercised with caution and such power can be exercised only for either of three purposes specifically mentioned in the section. He has contended that those three purposes are i) to give effect to an order under the code; and ii) to prevent abuse of the process of the Court; and iii) to otherwise secure the end of justice. It has been urged by the Learned Counsel for the State that the allegations made in the complaint disclosed the commission of cognizable offence and after completion investigation charge sheet has been submitted against all the petitioners indicating prima facie case against them. According to his contention, it is not a fit case to exercise inherent jurisdiction under Section 482 of the Code of Criminal Procedure.

I have carefully gone through the decisions so cited at Bar and the materials placed on record. I have also considered the rival submissions of the parties.

In paragraph 108 of the judgment in State of Haryana Vs. Bhajan Lal gave illustrations wherein the extraordinary power under Article 226 or the inherent power under Section 482 can be exercised by the High Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The illustrations are as follows:-

1. Where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused;

2. Where the allegations in the FIR 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. Whether 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 case against the accused;

4. Where the allegations in the FIR do not constitute a cognizance 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 man can even 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 continuation of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress, for the grievances of the aggrieved party;

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

While making his submission in favour of quashing the criminal proceeding pending against the petitioners, the Learned Advocate for the petitioners has laid emphasis on illustration no.7 of paragraph 108 of the judgment in State of Haryana Vs. Bhajan Lal and submitted that the criminal proceeding pending against the present petitioners comes within the purview of illustration no.7 mentioned above and the criminal proceeding pending against the petitioners should not be allowed to continue. He has further submitted that the criminal proceeding pending before the petitioners is harrasive one as the Bank lodged the complaint after expiry of about three years from the date of repayment of the loan amount along with interest and closure of the loan accounts. He has continued to say if the petitioners had dishonest intention then the petitioners would have refused to make payment of the loan amount and as such dishonest intention of the accused could not be inferred from their conduct. According to his contention the Bank authorities in spite of the repayment of the dues did not return the LIC Policies to the petitioners and as such the petitioners were compelled to file writ petition for taking back the LIC Policies.

It is true that F.I.R was lodged after lapse of more than 2 ½ years from the date of closure of the loan accounts on repayment of the dues. Delay in lodging the F.I.R ipso facto operates not as a reason for quashing the criminal proceeding.

It is well settled that while considering an application under Section 482 of the Code of Criminal Procedure for quashing any criminal proceedings, the Court has ordinarily to proceed on the basis of the averments made in the written complaint or the F.I.R. The defence of the accused however, strong it may be, has very little scope for consideration at this stage.

From the averments of the F.I.R lodged by the Bank it appears that individual Cash Credit Loans were sanctioned in favour of the present petitioners and one Abhishek Sahal on 26th March, 2011 on the basis of surrender value certificates furnished to the Bank by the borrowers. It is the specific allegation of the Bank that said surrender value certificates were not genuine one as in the LIC Policies under Jeevan Samridhi Plus Scheme (as stated by the LIC of India) there is no provision for issuing surrender value certificates within one year of issuance of the policies. In the instant case the investigation ended in submission of charge sheet against the present petitioners. From the contents of the charge sheet it appear that Abhishek Sahal expired during investigation. The main allegation against petitioners as per the F.I.R/complaint is that the petitioners obtained individual Cash Credit Loan from the Bank on the basis of LIC Policies as security but surrender value certificates in respect of the said LIC Policies were not genuine. It has been alleged that the petitioners for the purpose of getting loan from the Bank gave false information to the Bank by furnishing false surrender value certificates.

After investigation charge sheet has been submitted in the instant case. The first information report and the charge sheet indicate prima facie case for proceedings against the petitioners for commission of alleged offences. The petitioners have contended that ingredient of cheating or dishonest intention was lacking as the petitioners repaid the entire loan amount with interest. The first information report as well as the charge sheet filed in the instant case, indicate furnishing of false surrender value certificates for obtaining loans by the petitioners. Moreover, quashing of prosecution by the High Court by appreciating evidence is not proper when allegations in the F.I.R and the materials referred to in the charge sheet make out offence charged.

The Court while considering the prayer for quashing should not delving deep into the merit of the case or adjudicate upon a disputed question of fact.

The jurisdiction of the High Court under Section 482 of the Criminal Procedure Code is to be used sparingly only in rare cases.

Considering all these aspects, I am of the view, that the allegations as made in the F.I.R prima facie constitute the offence alleged and subsequent submission of charge sheet against the petitioners also prima facie indicate the ground for proceedings against the petitioners. It cannot be said from the materials placed on record that the continuation of the criminal proceedings pending against the petitioners would amount to an abuse of the process of the Court. In my opinion, it is not a fit case to quash the criminal proceeding pending against the petitioners. As such the application under Section 482 of the Criminal Procedure Code is dismissed.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, shall be supplied expeditiously after complying with all necessary legal formalities.

True copy of the case diary produced by the State be handed over to the Learned Advocate for the State immediately.

