(2023) 08 CAL CK 0029

In the Calcutta High Court

Case No : Criminal Revision No. 3582 Of 2019, CRAN 1 Of 2020, (Old No. CRAN 892 Of 2020)

Shyam Sundar Padhi & Ors. APPELLANT

Vs

State Of West Bengal & Anr. RESPONDENT

Date of Decision : 07-08-2023

Acts Referred:

Companies (Incorporation) Rules, 2014 — Rule 29
Indian Penal Code, 1860 — Section 114, 354, 506

Citation : (2023) 08 CAL CK 0029

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

Bench : Single Bench

Advocate : Debangan Bhattacharya, Ranjit Singh, Narayan Prasad Agarwala, Pratick Bose

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing of the proceeding being No. ACGR 47/18 arising out of Haridevpur Police Station Case No. 01 of 2018 dated 3rd January, 2018 under Sections 354/506/114 of the Indian Penal Code, 1860, pending before the Learned Additional Chief Judicial Magistrate, Alipore.

2. The petitioners’ case is that the petitioners herein are employees of IDFC First Bank Limited (Formerly known as M/s. Capital First Limited). Subsequently in terms of the order dated 6th December, 2018 passed by Hon’ble National Company Law Tribunal, Mumbai Bench in connection with Company Petition No. 3925 of 2018 the said M/s. Capital First Limited and M/s. Capital First Home Finance Limited were merged with M/s. IDFC Bank Limited.

3. The Deputy Registrar of Company pursuant to rule 29 of the Companies (Incorporation) Rules, 2014 issued the Certificate of Incorporation dated 12th

January, 2019 and accordingly the name of the petitioners' company was changed from M/s. IDFC Bank Limited to M/s. IDFC First Bank Limited.

4. That Haridevpur Police Station Case No. 1 of 2018 dated 3rd January, 2018 has been registered for investigation on the basis of a letter of complaint filed by the opposite party no. 2 before the Officer-in-Charge of Haridevpur Police Station therein alleging the commission of offences by the petitioners punishable under Sections 354/506/114 of the Indian Penal Code.

5. The petitioners' case is that the husband of the opposite party no. 2, i.e. Mr. Kaushik Chatterjee, son of Nanda Dulal Chatterjee, residing at 12/1, Aurobinda Nagar-1, P.O. – Joka, P.S. Haridevpur, Kolkata-700 104, availed of personal loan being personal Loan Account No.10071376 from M/s. Capital First Limited. That the total amount sanctioned to him was Rs.4,00,000/- (Rupees Four Lakhs) only dated 25th February, 2017.

6. After paying few instalments, Mr. Kaushik Chatterjee failed to honour the agreement and his total outstanding dues stood at Rs.3,73,256/- as on 12th January, 2018. The personal loan had been advanced to him, upon being induced by his credibility which he projected through certain financial documents and the said facility was advanced to him upon his representations that all liabilities as accrues upon him shall be discharged by him as per the loan agreement.

7. However, he has refused to discharge his liabilities as had accrued upon him with respect to the abovementioned personal loan on various occasions irrespective of request by the officers of M/s. Capital First Limited and throughout refused to pay any heed to meet his liability. On the contrary, he has threatened the officers of the company with dire consequences.

8. On 17th December, 2017, the petitioners who are the officers of M/s. Capital First Limited, visited the residence of Mr. Kaushik Chatterjee and tried to persuade him, to make payments with an earnest hope that he would discharge his liabilities but unfortunately the wife of Mr. Kaushik Chatterjee, i.e. Opposite Party no. 2 along with one unknown person namely, Sanjeev joined the discussion and started a heated debate with regard to the outstanding payment regarding the personal loan. It was during this time, that the complainant threatened the petitioners that they will not pay a single of farthing and will harass them by lodging false complaint against the petitioners.

9. Mr. Debangan Bhattacharya, learned counsel for the petitioners has submitted that the petitioners herein are the officers of M/s. Capital First Limited, a non banking financial institution providing debts financing to its customers. The petitioners are personnels having requisite qualification and maturity to handle the sensitive situations. Even, when the fraudulent defaulters fail to pay the instalments, the petitioners duly follow the guidelines for recovery which contemplates that no use of force or abuse is used in recovery proceedings. The Opposite Party No. 2, taking advantage of her gender, has initiated the proceedings in order to shroud her husband's misdeeds.

10. The Opposite Party No. 2, in order to evade the loan has initiated the instant complaint and arbitrarily tagged the petitioners with the sole intention to harass them. In such circumstances, the instant proceedings being a gross abuse of law is liable to be quashed.

11. It is stated that the alleged date of incident occurred on 17th December, 2017 and the FIR has been lodged on 3rd January, 2018 which is almost after 17 days of the date of incident. However, on scrutinizing the letter of complaint as well as the other document on record, it will be evident that the Opposite Party No. 2 has initiated the criminal proceedings just to harass the petitioners with a malafide intention and/or with ulterior motive of wreaking vengeances.

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

13. Mr. Narayan Prasad Agarwala, learned counsel for the State has placed the case diary.

14. From the materials on record, the relevant statements in the written complaint are as follows:-

(i) The complainant is the borrower's wife.

(ii) The loan availed of is admitted.

(iii) Legal notice was served upon the borrower.

(iv) In the petition of complaint it is stated that:-

"…………On 17.12.2017 at about 11.30 A.M. while I was alone at our residence and my husband Kausik Chatterjee was pre-occupied at his official job at that time four male persons came to our residence and at the top of their voice they called my husband by name & on hearing the same when I opened the entrance door of our residence and enquired about their identity then those persons suddenly got infuriated and without any instigation & provocation created a vain of terror in & around my premises and in course of conversations with me those persons personified themselves to be the official & recovery agents of Capital First Limited & without any rhymes & reasons they demanded a calloral amount of money from me and even threaten me as to dire consequences unless their demanded sum is not made.

Virtually, those person namely Shayam Sundar Pari, Jitendar, Santosh and another person who did not disclose his name created such a tearful and horrible situation at my premises. Then having no other alternative I contacted with my husband over phone & represented him everything on visualizing my stand so taken at that time those above named person appeared to be antisocials & hooligans without pondering any evil effects in mind even outraged my modesty by pulling my hand from outside of the premises and while said Jitendar pulled my hand and tried to touch the upper part of my person. At that time the person named Santosh tried to hug me up and as a consequence this my wearing apparels got heaped off. The aforesaid detrimental incident did not subdue their rage and while those persons left our premises at that time they openly declared that they will come again very soon and at that time they will abduct me and our minor female children and commit rape in presence of my minor children…………."

15. Formal FIR shows that 17.12.2017 was a Sunday.

16. Admittedly, the petitioners are the authorized officers of the Bank.

17. To ensure that a borrower is treated fairly, during the recovery process, the following steps is to be kept in mind:-

1. Adequate Notice is to be served. (Notice has been served in this case).

2. Humane Treatment:-

The authorized officers must ensure that the borrowers are treated fairly and respectfully. They must not harass or intimidate borrowers and are only allowed to meet with borrowers at a convenient time and place. They must schedule their visits between 7 am and 7 pm and must not violate any standards of decency.

If borrowers feel that they or their family member have been harassed physically or mentally, they can file a complaint with the lender or banking ombudsman officers. The lender must take action to ensure that borrowers are treated humanely and that their rights are protected.

In the present case the officer visited the complainant's house on a Sunday at 11.30 a.m.

18. The Supreme court in Manager, ICICI Bank Ltd. vs. Prakash Kaur & Ors., in Appeal (Crl.) 267 of 2007, on 26.02.2007, held:-

"Additional inputs considering the difficulties of the customers as well as banks, the concept to be developed is to create distinct and separate department for recovery. This should be manned by persons who will not resort to violence or force when they are in the process of recovery of the dues. While the fraudulent defaulters can be dealt with by taking the Police help for such action, it is only when law is taken into the hands of the so called recovery agents, who are appointed on contract basis, the issue gets aggravated. A separate wing, wherein appropriate training is given in accordance with RBI guidelines would facilitate the bank in its recovery process and also would provide more responsibilities to the persons so engaged.

Yet another suggestion would be that of loans whether they are Personal Loans or Credit Cards or Housing Loan with less than Rs.10 lakhs exposure, can be referred to Lok Adalat which can be specially created for resolving the issues between the banks and the borrowers. In fact, the Lok Adalat would be used as an effective machinery to resolve the issues and concentrate with reference to keeping the fine balance between Banks and Borrowers.

If the Agency System is inescapable, then the Agency must be coupled with a license issued after conducting examination. Appropriate training should be given to the agents who should have requisite qualification and maturity to handle delicate and sensitive situation. Merely because the Agency System is convenient to the banks, and has been approved by RBI, it should not lead to lawlessness and conduct resulting in challenge to rule of law.

While performance of the banks are always co-related with reference to its growth, its assets utilization and finally profit in the balance sheet, that and that alone cannot be relied upon, with reference to a country like India, where there is enormous disparity in respect of various sections of the society. These are all positive steps that would bring in the overall balance in the working of all these institutions.

Whether it is bank, which concentrate on higher segment of banking or it is a bank which concentrate upon middle class, lower middle class and such other segment of the Indian Public who look to and requires the banking comfort, it is not mere question of lending the money that matters, but also the consequences thereafter. The social responsibility is larger than the banks profit and growth ratio alone."

The said act of the petitioner is part of his job and the time of going to the complainant's house is also appropriate. Considering the time to be 11.30 A.M. and the day being a Sunday, it is apparent that the petitioner did not intend to act in an unlawful manner. The complainant's husband was also present as it was with him that the officers were talking, when the complainant intervened.

19. The outstanding dues of the complainant is admitted. Thus, the conduct of the petitioner was in due course of his official duty and he has been empowered to do so as per RBI Guidelines.

20. The allegation of outrage of modesty as stated prima facie is without any substance as the complainant has stated that the alleged acts were done from outside the premises. If every Authorised Officer of a bank/institution has to face criminal charges leveled by a defaulter, for acting in accordance with law, then it is clearly an abuse of the process of law and such proceeding should not be allowed to continue in the interest of justice.

21. The revisional application being CRR 3582 of 2019 is accordingly allowed.

22. The proceeding being No. ACGR 47/18 arising out of Haridevpur Police Station Case No. 01 of 2018 dated 3rd January, 2018 under Sections 354/506/114 of the Indian Penal Code, 1860, pending before the Learned Additional Chief Judicial Magistrate, Alipore, is quashed in respect of the petitioners.

23. No order as to costs.

24. All connected applications, if any, stands disposed of.

25. Interim order, if any, stands vacated.

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

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