

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1072 of 2020

Tushar Manna

Vs.

Ananda Sarkar

For the Petitioner

: Mr. Dipanjan Dutt,
Mr. Surojit Saha,
Ms. Sonia Nandy,
Mr. Rajiv Kumar.

Heard on

: 20.06.2023

Judgment on

: 11.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding of Complaint Case No.AC-5937 of 2019 under Sections 447/448/384/504/509/506/34 of the Indian Penal Code, pending before the Court of the learned Judicial Magistrate, 7th Court, Alipore, South 24 Parganas, and all orders passed therein.

2. The petitioner's case is that the petitioner is working with ICICI Bank Limited, as Debt Manager, from its office at 31, Chowringhee Road, Kolkata-

700 016 under the personal loan department. ICICI Bank Limited, a public listed company, is a leading private sector bank in India.

3. That Complaint Case No.AC-5937 of 2019 was registered on the basis of a petition of complaint filed by the opposite party before the court of the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, therein alleging commission of offences as alleged by the petitioner and others being an Agency personnel and three purported employees of HDFC Bank Limited, punishable under Sections 447/448/384/504/509/506/34 of the Indian Penal Code.

4. **The allegations leveled in the said complaint are, inter alia, to the effect that:-**

(a) The opposite party is a Credit Card holder of **ICICI Bank** and his Credit Card Number is 5241933213358005, in respect whereof the opposite party had been paying necessary monthly EMI to ICICI Bank till October, 2019.

(b) The opposite party is also a Credit Card holder of HDFC Bank and his Credit Card number is 5523650102878377, in respect whereof the opposite party had been paying necessary monthly EMI to HDFC Bank till October, 2019.

(c) Since long the opposite party had been suffering from acute financial crunch, so it is allegedly difficult for the opposite party to make payment of the due amount within the stipulated period to ICICI Bank and HDFC Bank, respectively, in respect of his aforesaid Credit Cards.

(d) That ICICI Bank and HDFC Bank have debited overdue charges, late fees, interest etc., from the opposite party illegally by violating the guideline of the Reserve Bank of India for which the opposite party has suffered loss.

(e) The father and mother of the opposite party are 78 years old and 68 years old, respectively, and are suffering from various ailments.

(f) The accused persons, being aided and abetted with each other hatched a criminal conspiracy and **on 17.12.2019 at 2 p.m.**, the accused persons allegedly criminally trespassed into the house of the opposite party and demanded extortion money of Rs.1,20,000/- and on protest by the opposite party, the accused persons became furious and abused the opposite party. Allegedly, hearing hue and cry, other persons came and then the accused persons fled away from the place by giving threats to the opposite party.

(g) By their unfair trade practice, the accused persons put the opposite party in serious hardship and mental pain and agony.

(h) Thus, the accused persons have committed offences punishable under Sections 447/448/384/504/509/506/34 of the Indian Penal Code.

5. **Mr. Dipanjan Dutt, learned counsel for the petitioner** has submitted that upon due enquiries made with the office of ICICI Bank Limited, the petitioner has been apprised of the following facts which are germane to a proper adjudication of the instant application:-

a) The opposite party had applied for a Credit Card with ICICI Bank and inter alia, pursuant to such application and the representations and

warranties made by the opposite party, ICICI Bank Limited issued to the opposite party a Credit Card bearing Number 5241933213358005.

b) The opposite party had unvaryingly utilised the said Credit Card bearing Number 5241933213358005, to borrow money from ICICI Bank Limited and to make payments for purchases made or services obtained by the opposite party from third parties. However, while on one hand the opposite party carried on spending money through his aforesaid credit card, by utilising the credit afforded to him by ICICI Bank Limited, on the other hand, the opposite party systematically neglected to make payment towards huge due amounts in respect of his aforesaid credit card account and instead on occasional months, paid only a fraction of the outstanding dues.

c) The opposite party has on an afterthought, sought to foist a malicious criminal prosecution in a frivolous attempt to evade the payment of the outstanding dues against his credit card account with ICICI Bank Limited. It is apparent that the opposite party has instituted the impugned criminal proceedings with an ulterior motive for wreaking vengeance on the lender, ICICI Bank Limited and its employees. It is also apparent that the instant impugned proceeding is a product of manifest belated afterthought by the opposite party, falsely improvised in an attempt to create a smokescreen against the huge outstanding dues of the opposite party towards ICICI Bank Limited. In the circumstances, it is apparent that the instant impugned proceeding is informed with malice and has been lodged by the opposite party solely with an ulterior motive for wreaking vengeance and to afford a cover to the opposite party to further stall the payment of his dues to ICICI Bank Limited. In such circumstances, it is humbly submitted that the

impugned vexatious proceeding initiated by the opposite party is a manifest abuse of the process of law and is liable to be quashed.

d) The statement on solemn affirmation of the opposite party as recorded under Section 200 of the Code of Criminal Procedure, 1973, do not disclose any allegation which constitute the ingredients of the offence alleged against the present petitioner.

6. **In spite of due service there is no representation on behalf of the opposite party.**

7. The offences alleged are under Sections 447/448/384/504/509/506/34 of the Indian Penal Code.

8. **In paragraphs 4 and 5 of the petition of complaint it is stated:-**

(i) That since long the complainant has been suffering from acute financial crunch due to present financial recession and the complainant is going through tremendous financial crisis. So, it is very difficult for him to make proper monthly payment of the dues within stipulated period to ICICI Bank and HDFC Bank in respect of his above mentioned two Credit Cards.

(ii) That ICICI Bank and HDFC Bank have debited huge charges such as over dues charges, over limits fees, late fees, finance charges retail, finance charges cash, interest, processing fees and others from the complainant illegally and unlawfully by violating the guidelines of Reserve Bank of India for which the complainant has suffered serious financial loss due to such charges which was debited from the complainant's account.

9. **The petitioner is employed as Debt Manager.** The job profile is as follows:-

“Debt Manager is an employee with a Bank attached to a separate wing as per guidelines of the Bank.

Role : *Debt Manager*

Reports to : *Area Debt Manager/Regional Debt Manager*

Job Role and Responsibilities:-

- *Engage with delinquent customers for collections of legitimate dues.*
- *Manage various channels/partners used for debt servicing.*
- *Ensure compliance of the laid down processes by the regulators and the bank debt for debt servicing.*
- *Provide timely feedback to superiors on the market dynamics and scenarios to enable business decisions.”*

10. **The complainant has admitted his dues. His defence is financial crisis and high extra charges, such as overdue charges, over limit charge, late fee etc. etc.**

11. **The statement of account annexed shows the complainant has used the card at various kinds of outlets, including hotel/resort etc.**

12. 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.”

- 13. In the present case the petitioner being the Debt Manager of the bank's separate wing, with appropriate training as per RBI guidelines to facilitate the bank in its recovery process, allegedly went to the house of the complainant on 17.12.2019 at 2 pm to recover the bank's dues.**

14. The said act of the petitioner is part of his job and the time of going to the petitioner's house is also appropriate. **Considering the time to be 2pm, it is apparent that the petitioner did not intend to act in an unlawful manner.**

15. **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.

16. Master Circular on Credit Card Operation of bank being No.RBI/2009-10/64 dated July 1, 2009 of Reserve Bank of India, clause 5 lays down:-

“5. Use of DSAs/DMA's and other agents:-

a. When banks/NBFCs outsource the various credit card operations, they have to be extremely careful that the appointment of such service providers does not compromise with the quality of the customer service and the banks'/NBFCs' ability to manage credit, liquidity and operational risks. In the choice of the service provider, the banks/NBFCs have to be guided by the need to ensure confidentiality of the customer's records, respect customer privacy and adhere to fair practices in debt collection.

b. In terms of the BCSBI's Code of Bank's Commitment to Customers, banks which have subscribed to the Code are required to prescribe a Code of Conduct for their Direct Sales Agents(DSAs) whose services are engaged by banks for marketing their products/services. Banks should ensure that the DSAs engaged by them for marketing their credit card products scrupulously adhere to the banks'/NBFCs' own Code of conduct for Credit Card operations which should be displayed on the individual bank's/NBFC's website and be available easily to any credit holder.

c. The bank/NBFC should have a system of random checks and mystery shopping to ensure that their agents have been properly briefed and trained in order to handle with care and caution their responsibilities, particularly in the aspects included in these guidelines like soliciting customers, hours for calling, privacy of customer information, conveying the correct terms and conditions of the product on offer, etc.”

17. 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.

18. **The revisional application being CRR 1072 of 2020 is accordingly allowed.**

19. The proceeding of complaint case No.AC-5937 of 2019 under Sections 447/448/384/504/509/506/34 of the Indian Penal Code, pending before the court of the learned Judicial Magistrate, 7th Court, Alipore, South 24 Parganas, and all orders passed therein, is quashed.

20. No order as to costs.

21. All connected applications stand disposed of.

22. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)