

26.05.2026

Item No.VB53
Court No. 07
Asraf, AR(Ct.)
Sudipta

In the High Court at Calcutta

Criminal Revisional Jurisdiction
Appellate Side

Case No.

CRR 1677 of 2026

In the matter of :

SUMIT DABRIWALA

.....Petitioner

For the Petitioner:

Mr. Md. Sabir Ahmed

Mr. Ezaz Ahmed

Mr. Suman Sarkar

...Advocate

For the Opposite Party no.2 :

Mr. Abhrajit Roy Chowdhury (via VC)

...Advocate

1. The present application has been preferred seeking quashing of Bowbazar Police Station Case No. 216 of 2024 dated 01.10.2024 under Sections 61(2)/318(4)/316(5)/336(2)/338/336(3)/340(2) of the Bharatiya Nyaya Sanhita, 2023, corresponding to G.R.N.S. 626 of 2024, presently pending before the Court of the learned Additional Chief Judicial Magistrate, 2nd Court, Calcutta.
2. Mr. Ahmed, learned Advocate appearing on behalf of the petitioner, submits that the present petitioner is one of the directors of a company, namely, Riverbank Developer Private Ltd., which develops and promotes various buildings. He submits that the company developed a housing complex, namely, Hiland Greens Phase-II, and that the opposite party no. 2 expressed interest in purchasing two flats therein and accordingly entered into an agreement with the company.

Subsequently, the opposite party no. 2 failed to make payments in terms of the agreed payment schedule, as a result whereof the allotment stood cancelled. However, thereafter, upon repeated persuasion by the opposite party no. 2, a fresh allotment letter was issued in his favour.

3. Mr. Ahmed further submits that State machinery forced the petitioner to construct a flyover and the petitioner constructed the same. Owing to such event, the petitioner ultimately fall in shortage of fund and the petitioner's loan account was declared as "NPA".
4. He also submits that the secured creditor also initiated an insolvency proceeding before the competent forum and the moratorium was issued under Section 14 of the Insolvency and Bankruptcy Code, 2016 (in short, IBC, 2016).
5. He submits that in the meantime, the opposite party no.2 approached the West Bengal Real Estate Regulatory Authority (in short, "WBREERA"). On being approached, WBREERA directed the petitioner to pay a sum of Rs.70,54,034/-.
6. Suddenly, the opposite party lodged this criminal proceeding on the allegation that one of the erstwhile employees of the present petitioner's company entered into a Memorandum of Agreement with the petitioner and forged certain signatures of the complainant.
7. He further submits that the dispute cropped up between the parties is purely civil in nature and the same has been initiated to exert pressure in pending civil litigation. Mr.

Ahmed further submits that continuation of this proceeding would amount to abuse of due process of law.

8. Mr. Roy Chowdhury, learned advocate, submits that he has been instructed to represent the opposite party no.2 and prays for a direction upon the petitioner to serve a copy of this application upon him.
9. In response to this, Mr. Ahmed submits that initially one Mr. Basu entered appearance on behalf of the opposite party no.2 and a copy of the application was served upon him. To that effect, he produces a document showing service of a copy of this application upon Mr. Basu. The said document filed by the petitioner is taken on record. He submits that today a new advocate has entered appearance on behalf of the opposite party no.2.
10. Mr. Ahmed further submits that the petitioner had been arrested in connection with the instant case. He submits that no notice under Section 35(3) of the BNSS, 2023 was served upon him and that the concerned investigating agency is exerting pressure upon the petitioner to pay the amount directed by the WBRERA to the opposite party no. 2, despite the fact that the opposite party no. 2 has already filed an application for enforcement of the order passed by the WBRERA. He argues that a criminal prosecution cannot be used as a tool to exert pressure for settlement of a civil dispute or for recovery of money allegedly due in a property-related transaction. He contends that mere failure to pay a certain amount of money does not automatically give rise to

an inference of dishonest intention. He further asserts that the present criminal prosecution is tainted with malice.

11. Mr. Roy Chowdhury informs the Court that an application for cancellation of bail has been filed and is presently pending consideration. He further contends that the pendency of insolvency proceedings does not create any bar to the continuation of criminal proceedings initiated on allegations of fraud.
12. Heard the learned advocates appearing for the petitioner and the opposite party no.2.
13. The company and the opposite party no.2 entered into an agreement and as per the terms and conditions, the company was to allot two flats in favour of the opposite party no.2. However, due to certain reasons, ultimately the flats could not be handed over to the opposite party no.2.
14. It is admitted position that the opposite party no.2 had approached WBRERA and the said authority has directed the petitioner to pay a sum of Rs.70,54,034/-.
15. It further appears that admittedly an insolvency proceeding has been initiated against the company, in which the petitioner is one of the directors. One moratorium was issued under Section 14 of the IBC, 2016 and a Resolution Professional has also been appointed.
16. Therefore, it is prima facie appears that a property dispute has surfaced between the petitioner's company, its directors and the opposite party no.2 which is civil in nature.

17. Admittedly, it is also well settled that, in a catena of decisions, the Hon'ble Supreme Court of India has held that criminal proceedings cannot be resorted to as a mechanism for recovery of money when the dispute is essentially civil in nature, and that a mere breach of promise or inability to repay a loan constitutes a civil dispute and does not amount to a criminal offence, such as cheating or criminal breach of trust, unless dishonest intention is established from the very inception of the transaction. However, the question that requires consideration in the present case is whether, upon applying the aforesaid propositions of law to the facts of the present case, the instant criminal prosecution ought to be allowed to continue.
18. However, having noted the submissions made on behalf of the respective parties and upon perusal of the materials on record placed before me, I am of the view that the petitioner has made out a good arguable case and that the issues raised in the present revisional application require consideration. In my opinion, unless an interim order is granted before the issues raised by the petitioner are addressed, any coercive steps taken against the petitioner in the meantime would cause serious prejudice to him.
19. In view of this, there shall be a stay of all further proceedings arising out of Bowbazar police station case no.216 of 2024 dated 01.10.2024 under Sections 61(2), 318(4), 316(5), 336(2), 338, 336(3) and 340(2) of the Bharatiya Nyaya Sanhita, 2023 corresponding to G.R.N.S. 626 of 2024,

presently pending before the Court of learned Additional Chief Judicial Magistrate, 2nd Court, Calcutta till 30th June, 2026 or until further order, whichever is earlier.

20. The petitioner is directed to serve a copy of this application to Mr. Roy Chowdhury, learned advocate appearing for the opposite party no.2 and shall file an affidavit of service to that effect on the returnable date.
21. Let the matter be placed before the Regular Bench two weeks after reopening of the Court after summer vacation.
22. All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.
23. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(ParthaSarathiChatterjee, J.)