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THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23.03.2012

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Crl.M.C. No.3866/2008

Sh. M.A. Rashid

.... Petitioner

Through: Mr. Anshu Mahajan with Mr.
Karan Arora, Advocates

Versus

Sh. Gopal Chandra & Anr.

.....Respondents

Through: Respondent in person

With

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Crl.M.C. No.1222/2009

Sh. M.A. Rashid

.... Petitioner

Through: Mr. Anshu Mahajan with Mr.
Karan Arora, Advocates

Versus

Sh. Gopal Chandra & Anr.

.....Respondents

Through: Respondent in person

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The petitioner is accused under section 448/ 506 IPC and Section 3(1) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Act”). Vide these petitions, the petitioner prays for quashing of the complaint No. 2052/2006 as also the summoning order dated 1.10.2008 of M.M. and order dated 28.1.2009 of the learned ASJ.

2. The petitioner at the relevant time was posted as Chief Manager of Corporation Bank. This bank had advanced a housing loan of Rs.5 lac to Mrs. & Mr. M.S. Sidhu for purchase of a flat. The borrowers as a security for the loan had deposited the title deeds of the said flat by way of equitable mortgage. As they failed to repay the loan, the account of Mr. M.S. Sidhu was declared NPA on 6.3.2004, whereupon a notice under Section 13(2) and 13(13) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the ‘SARFAESI Act’) was served upon them as also the respondent no.1/complainant Mr. Gopal Chandra who was the guarantor of the borrowers. Since the loan was not repaid, a notice under Section 13(2) and 13(13) of the SARFAESI was published in newspapers on 3.12.2006. The petitioner, being the authorized officer of the bank, took possession of the said flat on 10.1.2006 through their authorized agents. It is averred that before taking possession of the said flat, an intimation was also given to Police Station Seema Puri. The possession of the flat was taken after

preparing an inventory and panchnama, copies of which were delivered to the SHO of concerned Police Station.

3. The complainant/respondent no.1 addressed a letter dated 16.3.2006 to the Deputy General Manager of the bank requesting him to give time of 15 months to repay the loan and to return the possession of the flat. In the said letter, it was alleged that the possession had been taken illegally by the bank officials. The said letter was replied by the bank denying all the allegations. Thereafter, the complainant sent a legal notice dated 31.3.2006 alleging that during taking over the possession of the aforesaid flat by the bank officials, he and his family members were threatened of dire consequences, if they interfered in taking of possession. It was alleged that the said possession was illegal, amounting to criminal trespass. It was also alleged that the petitioner knew that he (complainant/respondent) is a Scheduled Caste and despite knowing so, he hurled casteist remarks against him and his family. The facts further revealed that an application dated 27.5.2006 under Section 17 of the SARFAESI Act was filed before Debt Recovery Tribunal (DRT) seeking various reliefs including possession of the said flat. The said application came to be dismissed by DRT vide its order dated 23.4.2008. On 19.4.2006, the complainant/respondent no.1 filed a criminal complaint under Sections 448 and 506 IPC before the Court of MM, who after recording pre-summoning evidence, ordered for issuance of summons against the petitioner under Sections 448,506 IPC. The petitioner challenged the said

order vide Crl. M.C. 3866 of 2008, in which vide order dated 10.12.2008, the petitioner was granted exemption from personal appearance before the Court of MM. In the meantime, the complainant/respondent no.1 also preferred a revision petition against the summoning order of learned MM which came to be heard and disposed of by learned ASJ, who vide his impugned order dated 28.1.2009 also ordered for issuance of summons against the petitioner under Section 3 (1) (v) of the Act. The instant petition is filed for quashing of complaint pending in the court of MM under Section 448, 506 IPC and under Section 3 (1) (v) of SC/ST Act.

4. The learned counsel for the petitioner submitted that the complaint is frivolous, concocted and an after-thought inasmuch as there was neither any allegation levelled against the petitioner in the complaint under the Act nor did he know that the complainant was a scheduled caste and also there was no occasion or reason for him to have used casteist remarks against the complainant and his family. It is submitted that his summoning by ASJ under Section 3 (1) (v) of the Act is illegal since the ingredients of this Section were not attracted. He submitted that the possession of the flat in question was taken by them in the discharge of their official duty after following the required procedure including the issue of notice of publication. He also submitted that the complainant has taken contradictory stands at different places as regards to his presence in the flat at the time of taking possession. It was submitted that the learned

M.M. also failed to take cognizance of the enquiry report dated 19th July, 2006 of the ACP, who had categorically recorded about the complainant being not present at the flat at the time of their taking possession. In this regard, it was also submitted that the learned Magistrate also ignored the fact that the premises was lying vacant as per the panchnama and the inventory report submitted to the SHO after the taking of possession at 3.30 p.m. The learned counsel relied upon the cases of **Gorige Pentaiah v. State of Andhra Pradesh & Ors** (2008) 12 SCC 531 and **Smt. Nagawwa v. Veeranna Shivalingappa kanjalgi** (1976) 3 SCC 736.

5. It was next submitted by the learned counsel for the petitioner that the complainant had no locus standi inasmuch as he was only a guarantor of the loan advanced to borrowers Mrs. & Mr. Sidhu and that flat in question had been equitably mortgaged by them with the bank. It was submitted that by execution of the power of attorney by Mr.Sidhu in respect of the said flat could not be said to transfer of title to the complainant and that in any case, that was neither to knowledge or with the consent of the bank, which had the first charge over the flat. It was submitted that the dispute, if any, was of civil nature and the present complaint has been filed just to put pressure on the bank to succumb to the demand of the complainant. In this regard, reliance was placed on the judgment **Indian oil Corporation v. NEPC India Ltd & Ors**, (2006) 6 SCC 736.

6. It was also submitted by learned counsel for the petitioner that the possession of the flat in question was taken by the petitioner in the course of his duties under the Act as attorney and officer of the bank and Section 32 of the SARFAESI Act provided the complete immunity to the officials of the bank. In this regard, reliance was placed on ***Goodla Venkateswarlu v. State of A.P. & Anr 2008 (11) SCALE 707***. Based on the above premise, it was submitted that there was also no offence made out under Section 448/506 IPC against the petitioner.

7. The complainant/respondent appeared in person and contended that the possession of the flat taken by the petitioner was illegal since the requirement of the court order under Section 14 of the SARFAESI Act, was not complied. In other words, his submission was that no permission of the court was taken under Section 14 of the SARFAESI Act before taking the possession.

8. I have heard learned counsel for the petitioner as also the respondent/complainant in person and perused the record.

9. The admitted facts come out to be that Mrs. & Mr.Sidhu had taken loan of Rs. 5 lakhs from the Corporation Bank for purchasing the flat in question and had created equitable mortgage of the said flat in favour of the bank. They had failed to repay the loan and their accounts were

declared NPA on 06th March, 2004. The basis of the complaint and the present proceedings is the General Power of Attorney, which was allegedly executed by the borrowers Sidhus in favour of the complainant. The complainant's case was that since Sidhus were in financial difficulty, he as their friend had rendered them financial help to repay the loan to the bank and that Sidhus had executed a power of attorney, authorizing him to deal with the bank.

10. The complainant got issued legal notice dated 31.3.2006 to the bank taking the same stand and setting out the same averments as made by him in the complaint that was filed in the court of M.M. on 19.4.2006. The complaint was filed against the petitioner and three other unnamed persons in the court of MM under Section 448/506/34 IPC read with Section 3 of the Act on 19th April, 2006. Based on the allegations in the complaint and the statements of the pre-summoning witnesses of the complainant, learned MM passed the following order:

“Since the complaint has been filed invoking the Section 3 of SC & ST Atrocities Act along with other provisions of IPC, perusal of the complaint (sic) of the complainant shows that no such allegations have been made in the complaint regarding any filthy language or insulted words had been uttered by the accused knowing fully well that the complainant belong to a schedule caste community. Even prior to filing the present complaint case, the complainant made a complaint to the commissioner of police dated 17.4.2006, the aforesaid facts do not find mentioned.

Besides, the complainant CW3 Gopal Chandra, and his wife Smt. Leelawati have made improvement in their statements as stated by Gopal Chandra that the accused abused and told them “Bhangi”

chamar you cannot live in that house, whereas Leelawati stated that "Chuda Chammar Kahan se aagae" which show that the utterance of the foul language or abuses have been after thought".

11. The complainant (respondent herein) challenged the summoning order of the MM dated 01.10.2008 vide CrI.Rev.P. 04/2008 in the court of ASJ, Karkardooma Courts, which came to be disposed of vide the impugned order dated 28.1.2009. While maintaining the order of summoning under Section 448/506 IPC of the MM, the learned ASJ vide the impugned order also directed the petitioner to be summoned under Section 3 (1) (v) of the Act. The learned ASJ while passing this order reasoned as under:

"The perusal of the complaint and statements of witnesses shows that while the Revisionist was present in the flat C-1/1 2nd Floor, Dilshad Colony, the Respondent had entered in the said flat and thrown out the wife of the complainant and some house hold articles including cash and valuables etc. were also thrown out and Respondent locket the flat. From the allegations made in the complaint and statement of the witnesses, it emerges that the Respondent had interfered with the enjoyment of the rights of the Revisionist in respect of the premises i.e. flat bearing No. C-1/1 2nd Floor, Dilshad Colony, Delhi. Thus, in my view, there is sufficient ground to summon the Respondent for the offence punishable U/s 3 SC & ST (POA) Act. The Revision is accepted and accordingly, the Respondent be also summoned for the offence punishable U/s 3 SC & ST (POA) Act".

12. Before proceedings to deal with the rival contentions of the parties, it may be pertinent to note that a petition under Section 17 of the SARFAESI Act was filed by the complainant/respondent in his name and Mr. M.S.Sidhu before the Debt Recovery Tribunal (DRT) on 31st May,

2006 and that the said petition came to be dismissed by DRT vide its order dated 23.4.2008. The appeal against that order also came to be dismissed by the Appellate Tribunal, DRT.

13. It is seen from the proceedings which were taken before the DRT that in the memo of parties, the name of M.S.Sidhu is mentioned along with the complainant, but the signature on the petition are only of the complainant. The supporting affidavit that was filed along with this petition is also only that of the complainant. As per the averments as set out in this petition, the complainant being friend of M.S.Sidhu agreed to render financial help and deposit the remaining installments of loan with the bank. It was averred therein that he had deposited some installments on behalf of M.S.Sidhu and first installment was of Rs. 11,000/- on 29th June, 2005. It has been noted above that the GPA was executed only on 20.7.2005 and that being so, it is contrary as per the complainant's own showing that he had deposited Rs. 11,000/- on 29th June, 2005 as attorney of M.S.Sidhu. Be that as it may, it was averred in the petition that when the possession was taken on 10.1.2006 at about 8.00 p.m., the complainant/respondent No.1 was not at home and about 7-8 persons came from the bank and took the possession by throwing their articles. It was specifically stated that he came to the house on that day at about 11.00 p.m. and learnt about the fact of dispossession and then he visited the office of the bank on 11.1.2006 and then on 12.1.2006.

14. The complaint was filed by him in the court of MM on 19.4.2006. In the complaint, his version was that he along with his wife were present in the flat when possession was taken by the bank officials on 10.1.2006 at about 7.00 p.m. The allegations which have been levelled against the petitioner are that he (complainant) told the petitioner that he is the attorney of the flat and so, his possession should not be disturbed. It was alleged that the petitioner ignored his request and committed the offence under Section 3 of the Act by publically insulting him and his wife in the presence of his family members and relatives, who had come to see his ailing wife. The rest of the averments are regarding his being attorney of M.S.Sidhu and having taken the responsibility of repayment of loan. It was also alleged that the petitioner had compelled him to pay heavy installments as mentioned therein and further that, he had given a complaint in writing in this regard to the DCP on 17.4.2006 and also to the SHO. From the allegations as made by the complainant in the complaint, it is seen that there is no specific allegation of either of Section 448 and 506 IPC and much less of Section 3 of the Act. All the allegations which have been levelled are apparently vague and after-thought.

15. It is noted that as per the complainant's own case, he had met the petitioner on 12.1.2006 and given him a letter. In the letter addressed to

the DGM of the bank, all that the complainant stated was about his being a power of attorney and having taken the liability of the repayment of loan. Here also, he stated having already paid Rs. 11,000/- on 29.6.2005. The only allegation that was levelled by him is that the bank has forcibly got vacated the flat on 10.1.2006 and that, thereafter, he met the petitioner, who advised him to deposit the sum of Rs. 88,994/- and granted him 15 days time for depositing the same. He also stated that he belonged to SC community and requested for return of the flat and sought time of minimum 15 months for the payment in installments. In this letter, there is also neither any allegation under Section 448 and 506 IPC or that under Section 3 of the SC & ST Act. The mere use of the word forcible possession would not bring the case within the ambit of Section 448 in the backdrop of the facts to be discussed hereinafter that possession that was taken by the petitioner was lawful in discharge of his official duty.

16. Also, in the complaint that was made to the Commissioner of Police on 17.4.2006, the averments were same as were there in the legal notice and also the complaint filed before the M.M.

17. The enquiry was got conducted by ACP and it was found that on 10.1.2006, the complainant was not present at the flat in question, which was lying vacant. It was also reported that the petitioner had submitted

panchnama and inventory to the police after taking possession, which would testify the flat to be vacant at the time of taking possession.

18. From the above, it would be seen that no complaint of any kind was made by the complainant to the police immediately after the dispossession or till 17.4.2006. The letter that was written to the bank on 12.1.2006 did not contain any allegation of the casteist remarks made by the petitioner. The complainant and his wife have also further tried to make improvements in their statements recorded at the pre-summoning stage in the said complaint. Then, different and inconsistent versions have been given as regard to the presence of the complainant/respondent No.1 in the flat at the time of incident i.e. 10.1.2006. This inconsistency is very vital and shakes the very basis of the complaint. Though, Rajinder was not named as witness by the complainant but he was examined. He, in his statement, also gave entire inconsistent statement stating that he saw persons beating the complainant and his family members. It is noted that nowhere there has been any allegation of beatings. This witness nowhere stated about any casteious remarks by the petitioner. This would all demonstrate that despite that there was no allegation against the petitioner under Section 3 (1) (v) of the Act, the learned ASJ has proceeded to summon him. The reasoning that has been given by the ASJ for summoning the petitioner under Section 3 (1) (v) of the Act is that the complainant was dispossessed from his premises and

so, the petitioner was liable to be summoned under Clause (v) of the Section 3 (1) (v) of the Act. This reasoning of the learned ASJ is apparently misconceived. Clause (v) of Section 3 (1) reads thus:

“Punishment for offences of atrocities:- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:-

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;”

19. From the above, it would be seen that it was only wrongful dispossession of a member of Scheduled Caste or Scheduled Tribe from his land or premises or interference with the enjoyment of his rights over any land, premises or water, that was within the ambit of Clause (v). The learned ASJ has presumed the dispossession to be wrongful and the flat in question as belonging to complainant/respondent. This finding was based on the wrong appreciation of facts and law. It was nowhere the case of the complainant that the flat in question belonged to him. On the other hand, his case was that he was the attorney of M.S.Sidhu and had taken the liability of repayment of loan as his friend. In any case, the dispossession from the flat in question could not be said to be wrongful in view of the fact that it was taken by the bank through the petitioner as its authorized representative. In this regard, it may also be noted that in the petition that was filed before the DRT, the complainant had also sought amongst others, the relief of possession of the flat. The said relief was declined by the DRT and the appeal against that order was also dismissed

by Debt Recovery Appellate Tribunal. It was specifically observed by the DRT that the petitioner No. 1 M.S.Sidhu and his wife had acquired the right under Sub-Section (7) of Section 13 of the SARFAESI Act and in that view of the matter, were entitled to the refund of Rs. 1 lakh of the sale proceeds of the flat, being more than the outstanding amount due from them towards loan.

20. The applicability of Section 3 of the SC & ST Act came up for consideration of this court in case of **Deepa Baweja & State & Ors.**, 115 (2004) DLT 202, wherein this court held as under:

“After considering the submissions made by learned counsel for the parties, this Court is of the considered view that a complaint, on the basis of which the complainant seeks registration of an F.I.R., must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement and thereafter proceed to register the F.I.R. If such a course is permitted, it would give undue latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that their initial complaint does not make out the offence complained of. Such a course would be utter abuse of the process of law. First version as disclosed in a complaint is always important for adjudicating as to whether an accused has committed or not an offence. In the complaint dated 19th April, 2001, the Complainant himself alleged that the Councillor Chhannu Mal was introducing him to the petitioner. If that was the case, how could he say later that on that day the petitioner knew that he was a Scheduled Caste. This statement, Therefore, was a crude falsity introduced at the behest of the police to implicate the petitioner under Section 3 of the Act. This effort on the part of the police to supply the deficiency and cover up a lacuna

in the complaint in view of legal opinion was totally unwarranted and an abuse of the process of law”.

21. This issue again came before this court in the case of ***Mukesh Kumar Saini & Ors. Vs. State (Delhi Administration)*** 94 (2001), DLT 241, wherein it was held thus:

“The basic ingredients of the offence under clause (x) of Sub-section 1 of Section 3 of the SC/ST Act are: a) that there must be an "intentional insult" or "intimidation" with "intend" to humiliate SC/ST member by a non-SC/ST member; (b) and that insult must have been done in any place within the "public view". The use of expression "intentional insult or intimidation" with "intention" to humiliate, makes it abundantly clear that the means read is an essential ingredient of the offence and it must also be established that the accused had the knowledge that the victim is the SC/ST and that the offence was committed for that reason. Merely calling a person by caste would not attract the provisions of this Act. There must be specific accusation alleged against each of the accused. Section 34 of the Indian Penal Code cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating word may not be enough. This being a penal provision has to be given a strict interpretation. If any of the ingredient is found lacking, it would not constitute the offence. Reference in this regard can be made to the various decisions referred to at the bar, reported in Satya Narain Vs. State of Rajasthan RLW 1991(1) 573, Chandra Poojari vs . State of Karnataka 1998 CrL.L.J. 53, Haridas vs . State of Maharashtra, 1997, CrL.L.J. 122, Ramesh Prasad Bhanja vs . State of Orissa, 1996, CrL.L.J. 2743, Munir Khan vs. State of Rajasthan 1991(2) RLW 309, Pankaj D Suthar vs . State of Gujarat, (1992)1GLR405 , and Karan Singh vs . State of MP, 1992 CrL.L.J. 3054.”

22. The plea of the complainant that the possession that was taken by the petitioner was illegal on account of non-compliance of Section 14 of

the SARFAESI Act is also misconceived. Section 14 of this Act reads thus:

“14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.:-

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority”.

23. Section 14 stipulates providing of assistance to the secured creditor in taking the possession of secured assets. It simply provides that in case, the secured creditor required any assistance, it may “seek assistance from the Chief Metropolitan Magistrate or the District Magistrate”. It nowhere mandates of seeking of permission or intimation of the CMM or the

District Magistrate. Thus, the provisions of Section 14 of the above Act are not attracted.

24. I am in entire agreement of the learned counsel for the petitioner that Section 32 of the SARFAESI Act provides complete immunity to the petitioner. This Section reads as under:

“32. Protection of Action taken in Good Faith- No suit, prosecution or other legal proceeding shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditors or borrower for anything done or omitted to be done in good faith under this Act.”

25. From the sequence of events as have been unfolded and discussed hereinabove, there does not appear to be any doubt that the petitioner had taken the possession of the flat in question as authorized representative of the bank and in discharge of his official duty. There does not appear to be any element of doubt in his good faith. He is completely protected of his acts under Section 32 of the Act.

26. In view of my above discussion, I do not find any basis in the complaint that has been made by the complainant/respondent against the petitioner. The same is nothing but a frivolous one and has been filed just to settle the score and to put pressure upon the bank as also the petitioner to negotiate as regard to the flat in question. The complaint manifests gross abuse of judicial process and I find it a fit case to exercise the

powers under Section 482 CrPC and Article 227 of the Constitution to quash the complaint and the impugned order of the MM as also of ASJ.

27. Ordered accordingly.

28. Petitions stand disposed of.

M.L. MEHTA, J.

MARCH 23, 2012/akb