

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 6436 of 2023

Petitioner :- Hdfc Bank Ltd. Thru. Suyash Naarayan Senior Manager
Deptt. For Special Operations With Hdfc Bank

Respondent :- State Of U.P. Thru. Secy. Home Lko. And Others

Counsel for Petitioner :- Chandra Shekhar Sinha, Gaurav Verma

Counsel for Respondent :- G.A., Aishwarya Pratap Singh, Sandeep
Kumar (Trivedi)

Hon'ble Rajan Roy, J.

Hon'ble Rajeev Singh, J.

Rejoinder affidavit filed by the learned counsel for the petitioner is taken on record.

Heard.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs.

"(i) to issue a writ, order or direction in the nature of certiorari to quash/set aside the impugned notice U/s 91 Cr.P.C. dated 28.7.2023 & 5.8.2023 given in F.I.R. at Crime No. 0403 of 2022 U/s 147, 323, 504, 506, 419, 420 I.P.C. P.S. Hazratganj, Lucknow dated 16.11.2022 contained in Annexure No. 5 & 7 to this petition.

(ii) to issue a writ, order or direction in the nature of mandamus directing the investigation in F.I.R. at Crime No. 0403 of 2022 U/s 147, 323, 504, 506, 419, 420 I.P.C. P.S. Hazratganj, Lucknow dated 16.11.2022 to be conducted by some senior police officer in a fair and impartial manner.

(iii) to issue a writ, order or direction in the nature of mandamus directing the investigating officer not to insist for original documents unless specifically required for which are public documents in the custody of the petitioner bank."

Earlier, writ petition was filed bearing Criminal Misc. Writ

Petition no. 454 of 2023 quashing the F.I.R. bearing No. 0403 of 2022 lodged on 16.11.2022 by the informant-O.P. No. 3 under Sections 147, 323, 504, 506, 419, 420 I.P.C., Police Station Hazratganj, District Lucknow. The said petition was disposed of 19.01.2023 in the following terms:

"Heard Sri Chandra Shekhar Sinha, learned counsel for the petitioner and learned A.G.A.

This petition under Article 226 of the Constitution of India makes a prayer for quashing of the First Information Report No.0403 of 2022, lodged on 16.11.2022, under Sections 147, 323, 504, 506, 419, 420 I.P.C., Police Station Hazratganj, District Lucknow. Another prayer made in the writ petition is that the respondents-police personnels may be directed not to take any coercive action against the employees of the petitioner-Bank, specially its Managing Director and other senior officials pursuant to the impugned First Information Report. Petitioner has also made a prayer for issuing direction to the Commissioner of Police, Lucknow to change the Investigating Officer and entrust the investigation to some senior police official for ensuring fair and impartial investigation of the First Information Report in question.

So far as the first prayer made in the writ petition is concerned, the learned State Counsel, on the basis of instructions received, has clarified the position and has stated that in fact it is not the second First Information Report in relation to the same incident; rather the earlier First Information Report No.0245 of 2022, lodged on 13.07.2022, under Sections 147, 323, 504, 506, 419, 420 I.P.C., at Police Station Bakshi Ka Talab, District Lucknow has been transferred to Police Station Hazratganj, where it has been renumbered as First Information Report No.0403 of 2022. After transfer of the First Information Report from Police Station Bakshi Ka Talab to Police Station Hazratganj, the First Information Report has been registered at the aforesaid number, namely, 0403 of 2022, dated 16.11.2022 and accordingly it is this First Information Report No. 0403 of 2022 which is now being investigated by the police personnel of Police Station Hazratganj, Lucknow. He has further stated that no investigation is now being conducted in respect of the First Information Report lodged by the police personnel of Police Station Bakshi Ka Talab.

In view of the aforesaid, the grounds raised by the petitioner for quashing of the First Information Report No.0403 of 2022, lodged on 16.11.2022, under Sections 147, 323, 504, 506, 419, 420 I.P.C., Police Station Hazratganj, District Lucknow are not tenable.

Accordingly the fourth prayer made in the writ petition also cannot be granted.

So far as the change of Investigating Agency is concerned, we permit the petitioner to make an appropriate application/representation to the Commissioner of Police, Lucknow within a week, taking all the pleas which may be available to the petitioner and enclosing therewith all the documents on which the petitioner intends to rely.

Once any such an application/representation is made by the petitioner, the Commissioner of Police, Lucknow shall consider the grievance of the petitioner and take appropriate action thereon which may be permissible

under law within next 10 days.

With the aforesaid observations/directions, the writ petition is disposed of finally."

In view of the observations/directions therein, on an application being submitted by the petitioner to the Commissioner of Police, the Investigating Officer was changed. This fact has been recorded in the earlier order passed in these proceedings on 18.08.2023. The said order reads as under:

"1. Heard learned counsel for the petitioner at length and learned A.G.A. for the State.

2. This petition has been filed with the following main prayers:-

"i) to issue a writ, order or direction in the nature of certiorari to quash/ set aside the impugned notice U/S 91 Cr.P.C. dated 28.7.2023 & 5.8.2023 given in F.I.R at Crime No. 0403 of 2022 U/s 147, 323, 504, 506, 419, 420 I.P.C. P.S Hazratganj, Lucknow dated 16.11.2022 contained in Annexure No. 5 & 7 to this petition.

(ii) to issue a writ, order or direction in the nature of mandamus directing the investigation in F.I.R at Crime No. 0403 of 2022 U/s 147, 323, 504, 506, 419, 420 I.P.C. P.S. Hazratganj, Lucknow dated 16.11.2022 to be conducted by some senior Police officer in a fair and impartial manner.

(iii) to issue a writ, order or direction in the nature of mandamus directing the Investigating Officer not to insist for original documents unless specifically required for which are public documents in the custody of the petitioner Bank."

3. It has been submitted by the learned counsel for the petitioner that the petitioner is HDFC Bank, which has come through Sri Suyash Naarayan, Senior Manager, Department of Special Operations, praying for the aforesaid prayers on the ground that initially the petitioner had filed one Criminal Misc. Writ Petition No.454 of 2023: HDFC Bank versus State of U.P. and others, challenging the F.I.R. lodged against them by the private respondent no.3 in Case Crime No. 0403 of 2022 dated 16.11.2022, under various Sections of the I.P.C at Police Station-Hazratganj, District Lucknow. Another prayer was made for issuance of direction to the Commissioner of Police, Lucknow, to change the Investigating Officer and to entrust the investigation to some senior Police official to ensure fair and impartial investigation of the F.I.R. in question.

4. The ground taken in the said writ petition was that for the same incident, two F.I.R.s were lodged. The first F.I.R No. 0245 of 2022 was lodged on 13.07.2022, at Police Station- Bakshi ka Talab. Another F.I.R. was lodged in Case Crime No. 0403 of 2022 on 16.11.2022 at Police Station, Hazratganj.

5. The Court had disposed of the petition by observing that the investigation that was initiated at Bakshi ka Talab in pursuance of the first F.I.R. has been transferred to Hazratganj and re-numbered as FIR No. 0403 of 2022, and it is not a case of two F.I.R.s being registered for the same incident. The prayer for change of investigating agency was disposed

of with the direction to the petitioner to make an appropriate application/representation to the Commissioner of Police, Lucknow within a week taking all pleas, which may be available to the petitioner, and all the documents which the petitioner intended to rely on and such representation of the petitioner would be considered by the Commissioner of Police Lucknow and his grievance may be redressed in an appropriate manner as permissible under the law.

6. After this order was passed by this Court, the petitioner made the representation on 25.07.2023 to the Commissioner of Police. The Investigating Officer was changed by the Commissioner of Police after three months without any communication to the petitioner-Bank.

7. The new Investigating Officer who has been arrayed in person as respondent No.6 in the writ petition has repeatedly issued notices to the petitioner-Bank, which have been challenged in this petition on the ground that each of such notice has been replied in detail along with relevant documents, yet the respondent no. 6 in collusion with the respondent no.3 is asking for original documents regarding the loan amount taken by the respondent no.3- Mahakal Enterprises/ Smt. Sadhna Singh, which documents have to be submitted by the petitioner-Bank as evidence in Original Application Nos.1107 of 2019 & 1354 of 2015, moved by it before the Debt Recovery Tribunal for recovery of loan amount of more than Rs.1.5 crores due against the two Firms, namely, M/s Sadhna Singh and M/s Mahakal Enterprises.

8. It has been submitted that Smt. Ishita Singh, Yash Vikram Singh and Smt. Sadhna Singh, had taken a loan from HDFC Bank by mortgaging land and building situated at plot no.I-33, I-44, I-35 and I-36, situated at Industrial Area, Sandila, Hardoi, which they failed to repay in time. The aforesaid three persons thereafter convinced the P.N.B. Housing Finance Ltd. to sanction a loan of Rs.1 Crore and 26 lakhs on the same mortgaged property.

9. For taking a second loan on the mortgaged property and for removal of charge of the HDFC Bank, they applied to the petitioner-Bank, but before their loan account could be closed, they withdrew several lakhs of rupees from the same petitioner-Bank, as a result, loan account could not be closed.

10. The F.I.R. was lodged thereafter by the respondent No.3 alleging that the officials of the Bank in collusion with the officials of P.N.B. Housing Finance Ltd. had approached the respondent no.3 at their office at Parmar Tower, above Aryavrat Bank, near Bakshi Ka Taalab, Sitapur Road and beat up the informant and other employees of M/s Mahakal Enterprises.

11. It has been submitted by learned counsel for the petitioner that the allegation against the petitioner-Bank is that its employees has beaten up the informant and not of playing any fraud. Whereas, the allegation against the P.N.B. Housing Finance Ltd. relates to the fraudulent creation of charge over the properties belonging to M/s Mahakal Enterprises and M/s Sadhana Singh. The petitioner-Bank has submitted certified copies of all documents that are required by the respondent No.6, but he has insisted upon original documents regarding loan account, which the petitioner cannot give as it could weaken its case before the Debt Recovery Tribunal in Original Applications pending before it.

12. It has been submitted that the respondent No.6, in collusion with the respondent No.3 is trying to weaken the case of the Bank before the Debt Recovery Tribunal in pending two Original Applications, by insisting upon

original documents relating to the loan account to be submitted to him.

13. Learned A.G.A., on the other hand, has pointed from the F.I.R, a copy of which has been filed as annexure 9, that the allegation against the petitioner-Bank and its employees is that they took two Bank drafts of Rs.35 lakhs and Rs.55 lakhs from the informant on 20.06.2018 in lieu of closure of loan account, which they willfully did not close thereafter causing loss to the informant of two E.M.I.s amounting to Rs.8 lakhs and odd.

14. This Court has considered the F.I.R. and the relevant extract of which was read out by the learned A.G.A, but it finds therefrom that there is no requirement of original loan documents to be submitted by the Bank to the Investigating Officer, as demanded by the Investigating Officer in the two impugned notices before us. The informant has admitted that he had taken loan in the accounts of M/s Mahakal Enterprises and M/s Sadhna Singh from HDFC Bank in 2017. It is also admitted that they could not repay the loan in time and took a loan on the same property from M/s P.N.B. Housing Finance Ltd., perhaps on an oral agreement that P.N.B. Housing Finance Ltd. shall give them money to repay their liabilities against the loans taken in 2017 from the HDFC Bank.

15. It is not clear as to why the Investigating Officer is asking for original term loan papers of 2017 from the petitioner- Bank. The certified copies of such term loan papers have already been given by the Bank.

16. Prima facie, the petitioners have made out a case to show interference in the two notices dated 28.07.2023 and 05.08.2023. The two impugned notices as aforesaid are stayed.

17. Issue notice to the respondent Nos.3 and 6, as notices for respondent nos. 1, 2, 4 and 5 have already been served upon the office of the Government Advocate.

18. The petitioner shall take steps within one week.

19. List this case on 10.10.2023. "

Against the said order, the informant-O.P. No. 3 filed a Special Leave Petition before Hon'ble the Supreme Court, which has been disposed of on 13.12.2023 in the following terms:

"Heard learned senior counsel for the petitioner.

We are not inclined to entertain this Special Leave Petition. However, it is well open to the petitioner to approach the High Court to expedite the hearing. We hope and trust that the High Court will make an endeavour to dispose of the matter at the earlier, especially when the scope involved thereunder is very limited.

The Special Leave Petition is disposed of in above terms.

Pending application(s), if any, also stand disposed of."

As is evident from the relief clause in the writ petition, challenge has been raised herein to notices issued by the Investigating Officer under Section 91 Cr.P.C. dated 28.07.2023 and 05.08.2023.

Provisions of Section 91 Cr.P.C. are as under.

"91. Summons to produce document or other thing.- (1)
Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

This is precisely, what has happened in the context of F.I.R. No. 0403 of 2022 dated 16.11.2022.

We have perused the impugned notices, which are annexed as Annexures 5 and 7 to the writ petition. By the said notices, certain documents have been demanded from the petitioner, which according to the Investigating Officer, are relevant and required for investigation. In fact, such notices under Section 91 Cr.P.C. have been issued to the petitioner even prior to it, one of which is contained as Annexure No. 3 and response thereto

(Annexure 4) was filed by the officers of the petitioner. In the reply, it was, inter alia, submitted that the original documents were required to be submitted as evidence in two Original Applications filed by the petitioner-Bank against M/s. Sadhna Singh and M/s. Mahakal Enterprises.

At this very stage, counsel for the informant says that M/s. Sadhna Singh is the proprietorship firm of the mother of the informant and M/s. Mahakal Enterprises is the proprietorship firm of the informant.

From the documents on record including the reply submitted, we find that certified copies of the relevant documents were submitted in respect of both the firms, as is evident from para 13 of the reply dated 15th July, 2023, but the Investigating Officer thereafter has issued the impugned notices demanding the original documents, for obvious reasons the originals are evidence and which can be scrutinized and got examined by the said Investigating Officer. In this view of the matter, the contention of Shri Sinha that the documents pertaining to M/s. Sadhna Singh are not relevant to the F.I.R., cannot be accepted as the petitioner itself has provided the certified copies of said documents to the Investigating Officer. In any case, the relevance or irrelevance thereof will have to be seen by the Investigating Officer and there is no way that the High Court under Article 226 at this stage can determine the relevance of such documents in the context of the F.I.R. aforesaid.

Another plea raised by Shri Sinha, on the basis of the reply dated 15th July, 2023, is that the originals are required to be submitted in evidence in the two Original Applications filed by the petitioner before the D.R.T., however, in the same vein, he has informed us that as regards the O.A. against M/s. Sadhna Singh is concerned, the decree has already been passed on

24.01.2022, a fact which is mentioned in para 6 of the aforesaid reply, therefore, once the decree has been passed, there is no question of the originals being required to be filed before the D.R.T. The decree obviously has been passed in favour of the petitioner-Bank, as claimed. As regards the other O.A. pertaining to M/s. Mahakal Enterprises, there is an averment in the said reply dated 15th July, 2023 itself that the case bearing No. 1354 of 2019 is fixed before D.R.T., Lucknow for delivery of judgment on 27.07.2023. During course of argument, it has been stated that the judgment has not been delivered as yet.

Be that as it may, even if it has not been delivered then obviously at least at this stage, there is no requirement of filing the original documents pertaining to the said firm, i.e., M/s. Mahakal Enterprises before the D.R.T. Learned counsel, in fact, fairly submitted that the originals relating to M/s. Mahakal Enterprises would be provided by the petitioner to the Investigating Officer, but he expressed inability to do so with respect to M/s. Sadhna Singh as, according to him, the said documents were not relevant. However, he had no satisfactory reply to give that if it was so, why certified copies of such documents pertaining to M/s. Sadhna Singh had been provided to Investigating Officer.

Considering the nature of the relief sought, which is a challenge to notices issued under Section 91 Cr.P.C., which, in fact, are issued to facilitate investigation and the limited scope of judicial review in the context of such notices, we are of the opinion that the ends of justice would suffice if the petitioner, as offered by its counsel, provides the original documents pertaining to M/s. Mahakal Enterprises and M/s. Sadhna Singh to the Investigating Officer at the earliest. In fact, the DCP concerned should monitor the investigation so that injustice does not take place, but investigation is conducted in a fair

manner. Petitioner may approach the Deputy Commissioner of Police concerned in this regard to facilitate the aforesaid. But, this shall not be made a ground by the petitioner for not cooperating in the investigation or stalling the same in any manner. The DCP shall look into the matter and do the needful.

As regard relief No. 2 in the writ petition, the investigation has already been transferred to some other Officer, but if the Commissioner of Police so desires, he can consider this request of the petitioner and take a decision thereon, but only within 15 days from the receipt of a copy of this order.

Shri Sinha says that he will file an application before the Commissioner of Police seeking transfer of the investigation within three days. We leave it open to the petitioner to approach the Commissioner of police, accordingly.

As regards relief No. 3, we see no reason to grant the same, subject of course to what we have observed hereinabove.

With these observations, the petition is ***disposed of***.

(Rajeev Singh, J.)

(Rajan Roy, J.)

Order Date :- 4.3.2024

VKS