

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28911 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHAGALPUR

Amal Kumar Choudhary S/O Late Chandra Bhushan Prasad Choudhary Resident
Of Village- Gauripur, P.S.- Bihpur, Dist.- Bhagalpur

.... Petitioner/s

Versus

1. Sri Sushri Savnam Narayan, The Then Agm, (Dbd) Main Branch, Sbi, Bhagalpur
2. Mr. Safi Ahmed, Agm, Rasmecc Sarc, Administrative Office Building, 3rd Floor, Khanjarpur, Bhagalpur- 812001
3. Sri Surendra Prasad, The Then (Agm), Authorized Officer Rasmecc Sarc, Administrative Office Building, 3rd Floor, Khanjarpur, Bhagalpur- 812001
4. Sri Sanjay Jha, The Then Branch Manager (Dbd), Main Branch, Sbi, Bhagalpur
5. Sri A.K. Choudhary, The Then Branch Manager (Dbd), Main Branch, Sbi, Bhagalpur
6. Mr. Vishwajeet Mishra, The Then Field Officer (Dbd), Main Branch, Sbi, Bhagalpur
7. Mr. Arun Kumar Singh S/O Late Udit Narayan Singh Resident Of At & P.O.- Jamshi, P.S.- Lodipur, District- Bhagalpur
8. Mr. S.K. Roy, Authorized Agent Of M/S Aaa Capital Services Private Limited, J-1 Kailash Colony, New Delhi- 10048
9. Sri Lakshmi Kant Mallik S/O Late Jai Lal Mallik Resident Of Village- Choti Khanjarpur, P.S.- Barari, District- Bhagalpur
10. Shri Murari Mohan Verma, Deputy Manager, Sarc, Bhagalpur
11. Shri Nitya Nand Sah, Deputy Manager, Sarc, Bhagalpur

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.
For the Opposite Party/s : Mr.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 30-03-2015

1 . Heard the parties.

2. The petitioner seeks initiation of a proceeding under Section 340 Cr. P.C against the private opposite parties for having allegedly produced a false and fabricated document before the Court annexed as Annexure 3.

3. The background fact of the case is that M/s Prachi

Exim India Ltd filed C.W.J.C. No. 6500 of 2007 against the undated notice under Section 13 (2) of the SARFAESI Act which was disposed off on 11.07.2007 by this Court with a direction to the Bank to consider the representation of the petitioner and till disposal of the representation no coercive action be taken. This order was passed on 11.07.2007 at 01.15 P.M.

4. However, the premises were sealed by the Bank officials on the same day and hence another writ application i.e. C.W.J.C No. 9527 of 2007 was filed by the petitioner on 01.08.2007 against the illegal locking of the factory premises.

I find from the pleadings of C.W.J.C No. 9527 of 2007 that the petitioner had raised the point that despite a direction of this Court that no coercive steps be taken against the firm which order had been communicated to the Bank, it had sealed the premises.

5. A Counter affidavit was filed in C.W.J.C No. 9527 of 2007 on behalf of the respondents in which the stand of the Bank was as follows :

“ 19. That in this connection, it may be out of place of mention that after the action of the bank on 10.07.2007 at the office of the petitioner in Bhagalpur, the Managing Director of the Petitioner appears to have intimated his advocate at Patna to mention the case suppressing the fact that action had already been taken. However, on 11.07.2007 after the possession the writ petition which was

filed earlier bearing C.W.J.C. No. 6500/2007 was heard & disposed of under the impression that the action is likely to commence as it was not disclosed by the Petitioner to his advocate that the action has already been taken place and this Court passed the order not to take any coercive action and enable the petitioner to file its objection u/s 13 (a) of the SARFESI Act.”

In course of hearing of C.W.J.C. No. 9527 of 2007 counsel appearing on behalf of the Bank produced documents before the Court revealing that the seizure had started at 12 noon on 11.07.2007 i.e. before orders were passed by this Court at 01.15 P.M in the earlier round and concluded till after the orders were passed. This fact was taken note of by the Court as the order dated 22.01.2008 page 2 reveals.

6. On hearing the parties the Court allowed the writ application on 22.01.2008 on the ground that the Bank had proceeded to seal the premises without disposing of the representation and hence the action was without jurisdiction. It then directed the Bank to unseal the premises and hand it over as it was unsealed, within one week from the date of production of the copy of the order. Some ancillary reliefs were also granted.

7. The Bank officials as against the order dated 22.01.2008 passed in C.W.J.C. No. 9527 of 2007 preferred LPA No. 129 of 2008 annexing the documents which is presently annexed at Annexure 3

which was allowed by an order dated 17.08.2008.

8. The petitioner during the pendency of LPA filed I.A. No. 4643 of 2010 for initiation of a proceeding under Section 340 Cr. P.C on the ground that the Bank had interpolated the records in regard to timing of taking over possession and sealing of the assets but the L.P.A Court refused such a prayer on the following ground:

“ we may note here that the issues raised before us were not urged before the learned Single Judge nor the supporting materials were brought on record. The issues raised by Mr. Singh are disputed questions of fact which could not have been entertained in a petition under article 226 of the Constitution, nor in the present appeal.”

The petitioner then went before the Apex Court in S.L.P No. 30758 of 2010 against the order of L.P.A but the same was also dismissed.

9. Learned counsel for the petitioner submits that since the Bank has repeatedly produced a document interpolating the timing of the seizure, an enquiry be initiated in terms of Section 340 Cr. P.C. She submits that the Bank officials had been telephonically informed about the order of this Court despite which they had executed the sealing of the premises and subsequently in order to protect themselves from contempt of this Court, they had interpolated the

timing of the seizure list and produced the same before this Court.

10. On the other hand the counsel for the Bank submits that the petitioner had obtained the order of no coercive action suppressing the fact that action had already been taken against it by the Bank officials. Further submission is that the possession notice which is accompanied with Panchnama as inventory/possession notice shows the time of seizure between 12 noon to 2 P.M. Under which circumstances, the stand of the petitioner that there is interpolation in timing in Annexure 3 was unjustified. Also that the security responsibility document had been prepared by the son of the petitioner in his hand but nowhere has he written that despite of the order of the High Court passed on the same day at 01.15 P.M such an action was being taken by the Bank at 2.00 P.M. No complaint also made to the Magistrate who was present in the operation.

11 In reply the Petitioner submits that these documents i.e. possession notice, Panchnama and inventory were prepared by the Bank officials themselves and therefore the noting of timing in the respective columns were within their control. More so, since his son's signature are not present on the aforesaid documents he is not in a position to explain the same. Further submission is that these documents appear to have been manufactured by the Bank officials in order to save their skin. They have not been prepared as per the rules according to which they should have been part of the security

documents. Also since the Executive Magistrate was in collusion with the Bank officials his son could not have protested.

On hearing the parties the admitted facts are :

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- (i) There is no doubt that there is interpolation in the timing noted in the two copies of security responsibility. Whereas one copy shows seizure between 12 noon to 4 P.M the other copy shows it to have taken place 2 P.M to 4 P.M.
 - (ii) This document was firstly produced by the counsel for the Bank in the proceedings of C.W.J.C. No. 9527 of 2007 as noted in the order dated 22.01.2008. It was not an affidavit. It was only later in L.P.A. No. 129 of 2008 that this document was filed on an affidavit of the Bank officials.
 - (iii) An order was passed by this Court in C.W.J.C. No. 6500 of 2007 on 11.07.2005 at 01.15 P.M in presence of both the parties that no coercive steps be taken against M/s Prachi Exim India Ltd. till the disposal of the representation.
 - (iv) The sealing procedure continued till 4 P.M. i.e. much after the order of interim protection.

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- (v) The document with regard to the sealing was prepared after the operation on the same day in the hand of the son of the petitioner.
 - (vi) There is no mention that the authorities were informed about the order of this Court in the said documents.
 - (vii) If at all the authorities were informed of the interim protection granted by this Court in C.W.J.C No. 6500 of 2007 they were duty bound to stop the sealing at least after 01.15 P.M but they did not do so.
 - (viii) No contempt was filed in C.W.J.C. No. 6500 of 2007 in regard to non-compliance of this Court's order.
 - (ix) The plea that despite information to the authorities they had conducted the operation was raised only on 01.08.2007 i.e. 20 days later when the next writ i.e. C.W.J.C No. 9527 of 2007 was filed.
 - (x) Whether the operation had started at 12 noon, the authorities were definitely enjoined to stop the same mid way after communication of the

Court's order passed at 01.15 P.M but they did not do so.

12. Undoubtedly it was the counsel appearing for the Bank in C.W.J.C. No. 9527 of 2007 who had firstly produced the document containing interpolations. However, the bigger question is whether it is in the interest of justice to hold an inquiry in terms of Section 340 Cr.P.C.

13. In the circumstances mentioned above, the point is, what is the benefit one would derive from changing the time of 2. P.M. to 12 noon when no contempt was filed. It was all along open to the Petitioner, in any case to raise an objection with regard to continuance of the operation even after the order of interim protection at 01.15 P.M. Certainly no purpose would be served to the Bank by bringing down the time from 02. P.M to 12 noon since in any view they were susceptible to being hauled up contempt of this Court by continuing with the operation after 01.15 P.M

14. It is a well known principle of law that even though Section 340 prescribes that it is open to the Court to hold an enquiry under certain circumstances but importantly it should be of the firm opinion that it is expedient in the interest of justice to hold such an enquiry.

15. In the present case I find that neither the Writ Petition i.e. C.W.J.C. No. 6500 of 2007 nor L.PA No. 129 of 2008 was decided

on timing of sealing asserted by the Bank. Since the interpolation did not prejudice the petitioner in any manner, there is no reason for holding such an enquiry.

Hence I am not inclined to proceed any further in the matter.

16. The application stands rejected.

(Anjana Prakash, J)

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