

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 475 OF 2006

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|--|---|
| 1. M/s. GIC Housing Finance Ltd. | } |
| a Public Limited Company | } |
| incorporated under the Provisions | } |
| of Companies Act, 1956 having its | } |
| corporate office at Universal | } |
| Building, 3 rd floor, Sir P. M. Road, | } |
| Fort, Mumbai 400 001 | } |
| | } |
| 2. Mr. Ashim K. Guha | } |
| Managing Director and Chief | } |
| Executive of M/s. GICHF Ltd. | } |
| | } |
| 3. Mr. Srinivas Mahishi | } |
| Asstt. Vice President of | } |
| M/s. GICHF Ltd. | } |
| | } |
| 4. Mr. V. R. Joshi | } |
| Area Incharge – Bombay of | } |
| M/s. GICHF Ltd. | } |
| | } |
| 5. Mr. Hasmukh Thakkar | } |
| Group Head of M/s. GICHF Ltd. | } |
| | } |
| 6. Mr. M. N. Basutkar | } |
| Executive of M/s. GICHF Ltd. | } |
| | } |
| 7. Mr. Chandra M. Veera | } |
| Executive of M/s. GICHF Ltd. | } |
| 2 to 7 are the Executives of | } |
| M/s. GICHF Ltd. having their office | } |
| at Universal Building, 3 rd floor, | } |
| Sir. P. M. Road, Fort, | } |
| Mumbai 400 001 | } |
| | } |
| 8. Mr. Krishnakumar | } |
| Armadas Consultants, | } |
| Navsari Chambers of D. N. Road, | } |
| Mumbai – 400 001 | } |
| | } |

9. Mr. R. K. Joshi	}	
Chairman-cum-Managing Director	}	
of M/s. General Insurance	}	
Corporation of India having its	}	
office at Suraksha	}	
Opp. Mantralaya, Mumbai 400 032	}	
	}	
10. Mr. B. Chakrabarty	}	
Chairman-cum-Managing	}	
Director of M/s. New India	}	
Assurance Co. Ltd. having its	}	
office at 87, M. G. Road,	}	
Mumbai – 400 001	}	
	}	
11. Mr. M. Ramdoss	}	
Chairman-cum-Managing Director	}	
of M/s. Oriental Insurance Co. Ltd.	}	
having its office at Oriental House,	}	
A-25/27, Asaf Ali Road	}	
New Delhi – 110 002	}	
	}	
12. Mr. M. K. Garg	}	
Chairman-cum-Managing Director	}	
of M/s. United India Insurance	}	
Co. Ltd. having its office at	}	
H. O. - 24, Whites Road,	}	
Chennai – 600 014	}	Petitioners
versus		
1. The State of Maharashtra	}	
through Azad Maidan Police	}	
Station and M. R. A. Police Station,	}	
Mumbai	}	
	}	
2. Mr. C. Anthony Louis	}	
residing at 2/A/203, Hema Park	}	
Bhandup (East), Mumbai 400 042	}	Respondents

Mr. B. K. Barve with Mr. Sandeep Barve and
Mr. Ajit Salunke i/b. M/s. B. K. Barve and Co.
for the Petitioners.

Mr. C. Anthony Louis-Respondent No. 2 in
person.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- AUGUST 12, 2015

ORAL JUDGMENT :- (Per S. C. Dharmadhikari, J.)

By this Petition under Articles 226 and 227 of the Constitution of India and invoking section 482 of the Criminal Procedure Code, 1973 as well, the Petitioners are seeking to quash a criminal complaint being M. E. R. C. No. 7 of 2006 and an order passed therein, under section 156(3) of the Criminal Procedure Code, pursuant to which, a FIR has been registered at Azad Maidan Police Station, Mumbai.

2) The Petitioners are *inter alia* M/s. General Insurance Corporation Finance Limited (M/s. GIC Finance Limited). It is a public limited company incorporated under the provisions of the Indian Companies Act, 1956 and having its corporate office at the address mentioned in the cause title. Petitioner No. 1 is promoted by General Insurance Corporation of India and other insurance companies being M/s. United India Company Limited, M/s. Oriental Insurance Company Limited, M/s. New India Assurance Company Limited etc. Petitioner No. 2 is the managing director and Petitioner No. 3 is the Assistant Vice President. The other Petitioners are the executives and high level officers including Chairman and Managing Directors of the aforementioned insurance companies.

3) The first Respondent is the State and the second Respondent is the original complainant.

4) At the outset, it must be stated that this Petition was not assigned to us and as per our current Roster. It was assigned to a Division Bench presided over by Her Ladyship Hon'ble Mrs. Justice V. K. Tahilramani. However, the record indicates that this Petition could not be taken up by the Bench presided over by Her Ladyship and equally by the other Bench which is presided over by Hon'ble Mr. Justice Ranjit More.

5) On a request and submission in writing of the Registrar (Judicial – I) dated 15th July, 2015, this Writ Petition was assigned to our Bench by the Hon'ble the Chief Justice.

6) Pursuant to such a direction, Respondent No. 2 – party-in-person made repeated requests that this Writ Petition which was placed for hearing and final disposal on our Weekly Board, is not being taken up. He being a party-in-person and aged about 70 years, he finds it inconvenient to attend the Court frequently. Therefore, we accepted and granted his request and that is how the Writ Petition was placed before us for hearing and final disposal out of turn. Accordingly, it was heard extensively by us on 11th August, 2015 and today we placed it for Judgment.

7) The facts and briefly stated in the memo of the Writ Petition are that the second Respondent, along with his wife Norma Louis approached Petitioner No. 1 and requested to advance a housing loan of Rs.4 lacs. That is stated to be for purchasing of a flat/residential property at Mumbai. The application in writing is dated 20th November, 1995. The second Respondent to this Writ Petition being co-applicant executed all the documents and furnished a guarantee as well. Accordingly, Petitioner No. 1 agreed and sanctioned the loan and issued a letter of offer dated 22nd March, 1996 to that effect. That incorporates several terms and conditions. They were accepted by Respondent No. 2 and his wife and that is how their signatures were subscribed thereto. Thereafter, the second Respondent and his wife issued a letter dated 3rd April, 1996 to the Sub-Registrar of Assurances, Mumbai with a request to handover the original agreement for sale dated 15th November, 1995 executed with M/s. Laxmi Corporation for purchase of the flat in order to create a equitable mortgage of the flat. That is how the security interest was created and the asset is termed as a “secured asset” by the Petitioners. The further documents and receipts acknowledge the receipt of the housing loan.

8) According to the Petitioners, there was a default committed in the payment of the housing loan. Therefore, demand was raised and

in writing. There was an offer, which was made on 27th September, 2005 by Respondents to pay a sum of Rs.1,32,962/- in full and final settlement of the loan liability. The request was made to accept this proposal, but there is a correspondence, namely, reply by Petitioner No. 1 dated 27th October, 2005 and thereafter, there are further letters.

9) The Petitioners have pointed out that there was no settlement and as the second Respondent and his wife failed to make the payment, a notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the “SARFAESI Act”) came to be issued and that was duly served. Thereafter, there was a demand notice by the Petitioners, through their Advocates. The second Respondent replied to this letter on 22nd November, 2005, whereafter also there was a further letter on 4th January, 2006. This correspondence continued, but in the meanwhile, the Petitioners stated that Respondent No. 2 approached the Court of Metropolitan Magistrate, namely, Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai and filed a private complaint alleging offences punishable under sections 409, 418, 420 read with section 34 of the Indian Penal Code. A copy of this complaint is at Annexure 'Q' to this Writ Petition from pages 85 to 97 of the paper book. The Petitioners also state that initially this complaint

was not entertained and an order was passed thereon on 13th December, 2005, copy of which is at page 98 of the paper book. Thereafter Respondent No. 2 preferred Criminal Revision Application No. 1723 of 2005 in the Sessions Court.

10) However, the Second Respondent also filed a criminal complaint on 5th January, 2006 being C. C. No. 2/M/2006 before the learned Additional Chief Metropolitan Magistrate, Esplanade Mumbai alleging offence punishable under section 500 read with section 34 of the Indian Penal Code.

11) Even on this complaint, there is an order passed on 21st February, 2006, copy of which is at Annexure 'S' to the Writ Petition.

12) The second Respondent then filed the subject complaint and alleging offences punishable under section 383, 384 and 385 of the Indian Penal Code. The Metropolitan Magistrate, by an order dated 3rd February, 2006, directed the Azad Maidan Police Station to investigate the complaint, by exercising its powers under section 156(3) of the Criminal Procedure Code. The Metropolitan Magistrate therefore and in pursuance of his earlier orders, directed the Azad Maidan Police Station to register a FIR. The order to that effect was passed on 21st February, 2006 and the FIR has been registered on 22nd February, 2006.

The order dated 21st February, 2006 and the FIR which has been registered pursuant thereto are sought to be quashed in the present Petition.

13) Mr. Barve appearing for the Petitioners submits that the complaint as a whole does not disclose commission of any offence. All the materials that are referred in the complaint taken as a whole at their face value do not disclose commission of a cognizable offence. The argument of Mr. Barve is that the Petitioners being public financial institutions were performing their statutory duties and, under the statute, issued the notice at page 53 of the paper book. If the notice and its contents are perused, it does not indicate that offence punishable under section 383 of the Indian Penal Code has been committed. The notice has been issued under the powers conferred on the Petitioners by the SARFAESI Act. That there was a “security interest” and that a “secured asset” both within the meaning of the SARFAESI Act would empower the Petitioners to issue the subject notice. The notice therefore called upon the Petitioner to pay the sum. It is in these circumstances it is submitted that there is no offence committed much less punishable under section 383 of the Indian Penal Code. There is no dishonest inducement for delivery of property and therefore none of the ingredients of section 383 of the Indian Penal

Code are satisfied. The complaint is thus a gross abuse of the process of the Court. The Petitioner No. 1 and all the senior officials of the Petitioner No. 1 have been arrayed as accused. The Chairman and Managing Directors of the insurance companies and in public sector have also been arrayed as accused. There is absolutely no role attributed to them. In the circumstances, this is nothing but an attempt to pressurise these Petitioners not to perform their statutory functions and duties or to exercise their statutory powers. In such circumstances, this Court should exercise its inherent power and equally powers under Articles 226 and 227 of the Constitution of India to quash this complaint and the FIR. Heavy reliance is placed on a recent Judgment of the Hon'ble Supreme Court of India in the case of *Mrs. Priyanka Srivastava and Anr. vs. State of U. P. and Ors.* in **Criminal Appeal No. 781 of 2012** dated 19th March, 2015. Reliance is also placed on a Judgment of the Division Bench of this Court, which held that so long as there is no actual delivery of valuable security or property, no offence can be said to have been committed under section 383 of the Indian Penal Code, which is punishable under section 384 thereof.

14) On the other hand, Respondent No. 2 appearing in-person has submitted that there is no merit in the Writ Petition and it must be dismissed. He submits that this Court cannot proceed to quash the

criminal complaint or the FIR on a possible and probable defence of the accused. The powers conferred in this Court are of extraordinary nature and ought to be sparingly exercised. They cannot be exercised as a matter of course. Once there is no coercive action on the part of the second Respondent and his wife and all that they have done is to take recourse to law, then, the FIR cannot be quashed. More so, there is nothing extraordinarily absurd about the FIR. Equally, the learned Metropolitan Magistrate has applied his mind and passed the order directing police to carry out further investigation, pursuant to which the FIR has been registered. In these circumstances, this Writ Petition deserves to be dismissed. Respondent No. 2 has read out sections 383 to 385 of the Indian Penal Code and relied upon section 511. He would submit that the crucial word in section 383 of the Indian Penal Code is 'injury'. In the present circumstances and when the complaint discloses commission of offence and the first Petitioner which is seeking to recover an amount much more than what was advanced or sanctioned and in any event what has been settled and agreed upon, then, all the more this Court should not interfere in its Writ Jurisdiction. The second Respondent has handed over cheques to the Petitioner in repayment of the loan but on the specific understanding that they would not be deposited. Therefore, such an agreement and understanding having been confirmed by the officers of the Petitioner

No. 1, all the more the ingredients of section 383 of the Indian Penal Code are attracted. They are satisfied *prima facie*. This Court is only concerned with a *prima facie* case and if the cheques handed over constitute a valuable security, then, the complainant must be given an opportunity to prove the allegations made in the complaint and the FIR. The Petitioners will have all opportunities to defend the charge at the trial. Hence, at this stage, this Court should not interfere in its Writ Jurisdiction and the petition be dismissed.

15) With the assistance of the both, the learned Counsel appearing for the Petitioners and the party-in-person, we have perused the complaint and the subject FIR. The Petitioner No. 1 is a public financial Corporation and covered by the SARFAESI Act. By a notice issued on 15th December, 2005, copy of which is at page 53 of the paper book, the Petitioners accorded sanction to the housing loan on the condition of creation of an equitable mortgage in its favour and on other terms and conditions incorporated in the loan agreement. Then, the notice refers to the account details and states that the account of Respondent No. 2 has been classified as a non performing asset. That is in accordance with the directions/guidelines relating to assets classification issued by the National Housing Bank. In the light of the default committed in repayment of the principal debt and interest, the

notice calls upon the second Respondent and the guarantors to pay to the Petitioner No. 1 the amount stated to be the outstanding dues of Rs.3,61,030/- as on 31st December, 2005 within a period of 60 days from the date of service of the notice, failing which, the Petitioner No. 1 stated that it is free to invoke sub-section (4) of section 13 of the SARFAESI Act.

16) What has transpired is that this notice was duly served. Thereafter, the second Respondent addressed a letter and this was replied but thereafter on 3rd February, 2006, the second Respondent's Advocate's letter was addressed to the Petitioners. The same refers to some offers and proposals.

17) We are clarifying that we are not concerned in this Petition with what is outstanding and payable and whether any offer or proposal for settlement was made, accepted and agreed and subsequently whether there are any steps taken in furtherance thereof. We are here only concerned with the allegations in the complaint. The allegations in the complaint would have to be assumed to be true and correct. The complaint, copy of which is at page 116 of the paper book proceeds to allege that the housing loan was taken by Norma Louis and the Respondent No. 2 jointly. In para 1, it has been stated that the loan was obtained from accused No. 1/Petitioner No. 1 and accused Nos. 2 to 12

are functionaries of the accused company. It is alleged that they are responsible for the day to day functioning and accused Nos. 6 to 11 are directly participating events leading to the cause of action in the complaint. Then, role of accused No. 11 is referred to in signing and sending notice dated 15th December, 2005 under the SARFAESI Act and making the extortionary demands forming subject matter of the complaint. After making reference to the other accused, it is averred in para 2 that monthly installments were paid by way of a total 9 post dated cheques which were handed over to the then Manager at Bombay of the Petitioner No. 1, Mr. Makrand Paranjpe. That is under cover of letter and Mr. Paranjpe while acknowledging the carbon copy had admitted the receipt of the said letter. That letter records that the cheques should not be deposited prior to a confirmation from the second Respondent. Each of these cheques and up to cheque No. 7 dated 30th October, 2002 came to be deposited after checking with the second Respondents and they were duly encashed by the accused company. The deposit of cheque No. 8 dated 30th November, 2002, however, was without informing the second Respondent and behind his back. Since there was a temporary shortage of funds, the cheque was dishonoured. Then, initiation of legal proceedings and invoking section 138 of the Negotiable Instruments Act is referred and such averments continue in paras 5 and 6 of the complaint. Then, the second

Respondent in para 7 alleges that adding injury to insult, Petitioner No.1 demanded overdue interest and arising out of the cheque not having been realised. In para8 once again there is a reference to how the second Respondent did not issue a fresh cheque unless the first Petitioner accused was ready and willing to give assurance in writing that they will not charge any overdue interest on the dishonoured cheques. Para 9 of the complaint expresses disappointment of the second Respondent in the Petitioner No. 1 taking allegedly unfair, unjust and unreasonable stand by insisting upon overdue interest on the said cheque amount. It insisted on the overdue interest. Thereafter, in para 10, the complainant alleges that the cheques were issued and signed by Second Respondent and they were drawn on the account with Canara Bank. This means that threat to seize his flat over which his wife has no title is an unlawful threat. Thereafter, in para 11, there is a reference to a dispute and with regard to non payment of Equal Monthly Installments (EMIs) unless Petitioner No. 1 giving up its demand for overdue interest. In para 12, there is reference to several meetings on different occasions at the residence of the complainant and the attempts made to settle the claim of the Bank/Petitioner No. 1. Then, in paras 13 and 14, there is a reference to the same letter and issued in May, 2005. From para 15 onwards, it is alleged that the company has not clarified a discrepancy in the records and accounts. Such allegations continue up

to para 19 and then reference is made to further correspondence and in which, specifically a letter dated 27th September, 2007 is referred at para 21 of the complaint. Para 22 contains the allegations and pertaining to the issuance of notice and the two paragraphs 22 and 23 reads as under:-

“22. I say that it was in the face of the said facts that, suddenly and without disputing or denying what is stated in Exh. 'L' below – I received a notice dated 15.12.2005 from the accused company, signed by accused No. 11 above, claiming this fantastic and frightening amount of Rs.3,61,030/- as outstanding and payable, failing which I was threatened that u/s 13(4) of the Securitisation Act, my said flat will be seized, taken over and auctioned by the accused company. A true copy of this notice is placed below, marked Exh. 'M'. I say that my wife (or I) owe no such amount to the accused company.

23. I say that whereas the said notice gave us 60 days to pay the said amount as prescribed by the Securitisation Act also it was followed by another notice dated 21.12.2005, this time from M/s. B. K. Barve and Co. advocates on behalf of the accused company, this time calling upon us to pay the said amount with 18% interest, which was not demanded in the earlier notice within 7 days. This notice, however, did not specify under which law or laws the demand was being made or the threat of public auction sale of my flat was extended. A true copy of this notice is placed below, marked Exh. 'N'.”

18) Para 24 refers to the offer made and the alleged correct outstanding amount and it is stated that what is demanded by Petitioner No. 1 is extortionary. That is how in para 26, the allegations are summed up and it is specifically alleged that the offence of extortion has been committed in the manner set out in the complaint. Para 27 also refers to the notice. It is on such a complaint that the Metropolitan Magistrate, namely the Additional Chief Metropolitan Magistrate, 8th

Court, Esplanade Mumbai passed an order on 3rd February, 2006 under section 156(3) of the Criminal Procedure Code, directing the Senior Police Inspector of Azad Maidan Police Station to investigate and submit a report. Thereafter, the detailed order on 21st February, 2006 has been passed holding that the police have failed to take necessary steps and therefore they must record and register the FIR. The FIR, copy of which is at page 134A of the paper book reiterates these allegations and at page 134D, the same allegations about the loan availed of, the handing over of the cheques and some of the cheques being deposited and behind the back of the complainant are set out. Thereafter, the notice under section 13(2) of the SARFAESI Act is referred to.

19) Section 383 of the Indian Penal Code defines extortion.

The same is reproduced hereinbelow:-

“S.383. Extortion. – Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”

20) A bear reading of this section would indicate that the offence is committed when somebody intentionally puts any person under fear of any injury to that person or to any other and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which

may be converted into a valuable security. Such an act is stated to be extortion. Therefore, the essential ingredients are intentionally putting any person in fear of any injury to that person or to any other and thereby dishonestly inducing the person so put in fear to deliver to any person any property or any valuable security.

21) From a reading of the allegations in the complaint and as a whole, we do not find any offence under section 383 being even *prima facie* made out. The reliance placed by Mr. Barve on the Judgment of the Hon'ble Supreme Court and on a Judgment of a Division Bench of this Court is therefore accurate. None of the allegations, and which we have referred extensively in order not to leave any room for doubt or a complaint for injustice, would make out the offence of extortion. The first Petitioner was acting in furtherance of a contractual stipulation, whereunder it sanctioned the loan. It is a public sector corporation and rather a public financial institution. It is in the business of advancing and lending moneys. In terms of the contract, it was entitled to call upon the second Respondent and his wife to make payment of the loan amount sanctioned and disbursed. That the liability in that behalf is not disputed is clear from the complainant's version. That there were cheques handed over and towards repayment of the loan is further undisputed. That there may have been an understanding or otherwise

with regard to the deposit of these cheques and that intimation to the second Respondent/complainant but it is the complainant's version that only some of the cheques were deposited without intimation, whereas, at least 7 cheques were deposited with intimation to the complainant. We do not see how by such an act and which is alleged to have been committed, namely of deposit of cheques behind the back of the complainant in order to prosecute the complainant lawfully and for offence punishable under section 138 of the Negotiable Instruments Act can be said to be an act within the meaning of section 383 of the Indian Penal Code. A completely voluntary act of handing over the cheques and in due discharge of a admitted liability of the complainant and his wife is not out of any fear of injury to either. Nor this act of handing over post dated cheques for being deposited in Petitioner No. 1's account is because of dishonest inducement to deliver a valuable security. Similarly, the creation of a equitable mortgage in favour of the Petitioner No. 1 is also in return of a loan facility, duly sanctioned and the amount thereunder disbursed and received by the Respondent No. 2 and his wife. This is also a voluntary and contractual act, *prima facie*. That the cheques on due presentation were not honoured is apparent from the allegations in the complaint itself. Therefore, there is no question of intentionally putting the complainant or the second Respondent in any fear of any injury. Secondly, by issuance of notice

under section 13(2) of the SARFAESI Act, we do not see how the offence of extortion is committed. The legal rights and vesting in the Petitioner No. 1 under the parliamentary statute having been exercised, the offence of extortion is not committed *prima facie*. Precisely, this was the issue before the Hon'ble Supreme Court and in the case of *Mrs. Priyanka Srivastava* (supra). One Prakash Kumar Bajaj son of Pradeep Kumar Bajaj had availed housing loan from Punjab National Bank Housing Finance Limited. The loan was taken in the name of Respondent No. 3 and his wife, namely Jyotsna Bajaj. As there was default in payment of the installments, the loan account was treated non performing asset in accordance with the guidelines framed by the competent authorities. Thereafter, the financial institution issued notice to the borrower under section 13(2) of the SARFAESI Act and in pursuance thereof, submitted an application on 5th June, 2007 before the District Magistrate, Varanasi for taking appropriate action under section 13(4) of the SARFAESI Act. Thereafter, the Writ Petition of Respondent No. 3 before the High Court was dismissed with liberty to him to approach the Tribunal under section 17 of the SARFAESI. That is how the complaint came to be filed and against all the officers and managers of the financial institution and the allegation was that the offences punishable under section 163, 193 and 506 of the Indian Penal Code are committed. The criminal complaint was dismissed and a

Criminal Revision Application was preferred and the Additional Sessions Judge, Varanasi set aside the order passed and remanded the case to the Trial Court. Then, what is transpired is that the Hon'ble Supreme Court referred to the manner in which the Magistrate proceeded to take cognizance. Once the Hon'ble Supreme Court discussed that part of the controversy, what it has referred to are the proceedings before the Tribunal under the SARFAESI Act. Thereafter, a criminal case was filed and series of them and which are referred to in para 7 of the Judgment of the Hon'ble Supreme Court, pursuant to which FIR No. 298 of 2011 was registered. The FIR and then the allegations therein, the offer of one time settlement are all referred in the Hon'ble Supreme Court Judgment and subsequently what the Hon'ble Supreme Court cautioned is that the powers conferred vide section 156(3) of the Criminal Procedure Code cannot be exercised as a matter of course and mechanically by the Magistrates. They are expected to apply their mind and consider as to whether any offence under the penal Act has been committed for the Court to take note of the same. It is in these circumstances that the reliance that has been placed on paras 24 and 25 of this judgment is appropriate. These paras read as under:-

“24. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that

sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr. P. C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

25. Issuing a direction stating “as per the application” to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no. 3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, he had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the appellant No. 1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant No. 1. We are only stating about the devilish design of the respondent No. 3 to harass the appellants with the sole intent to void the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr. P. C. is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the

compliance of Section 154(3), indicating it has been sent to the Superintendent of police concerned.”

22) From a perusal of these paragraphs, it is apparent that by issuance of notice under section 13(2) of the SARFAESI Act, no offence is committed by a public financial institution or a Bank and which can be said to be punishable under the IPC or a penal law. Once issuance of notice is in furtherance of the powers and vested by the statute, then, nothing that is punishable as an offence can be attributed to the public financial institution and its officers.

23) In the present case as well, we find that the position is that the second Respondent/complainant has approached a criminal court with a complaint and essentially based on the notice under section 13(2) of the SARFAESI Act and the act of the Petitioner No. 1 in issuing the same. We do not see any offence being committed much less punishable under section 383 of the Indian Penal Code. The notice is not intended to extort money but to recover public funds by exercise of powers under the law enacted by the Parliament and found to be constitutionally valid. In these circumstances, the criminal complaint is a gross abuse of the process of the Court. The learned Magistrate ought to have applied his mind and not mechanically pass an order under section 156(3) of the Criminal Procedure Code. He does not stop there and proceeded further to direct registration of FIR. In his entire order,

we do not see that he has adverted to the allegations in the complaint and concluded whether they disclose *prima facie* commission of any offence. That is how he had to proceed in law. He having not proceeded in this manner, we do not find any justification to sustain his order.

24) We are left only to deal with the Judgments and authorities brought to our notice. To be fair to him, even if he is not a practicing Advocate, Respondent No. 2 seems to be familiar with principles of law. He has tried to persuade us in applying the tests laid down in the case of *State of Haryana vs. Bhajan Lal and Ors.* reported in **1992 SCC Supl. (1) 335**. It is precisely these tests that we have applied. It is the further test that though inherent powers have to be sparingly exercised, but they have to be exercised to secure the ends of justice that we have held as above. We do not think that we have deviated from any of the principles that have been delineated and summarised in this case. We have also taken note of the decision relied upon by the complainant to the effect that the powers in this Court are extraordinary in nature and should not be a normal and mechanical exercise. We have applied our mind independently and after referring to the complaint and reading it as a whole and taking all the allegations therein at their face value that we are of the firm opinion that no *prima facie* case of commission of any offence has been disclosed therein.

24) As a result of the above discussion, the Writ Petition succeeds. Rule is made absolute in terms of prayer clause (a). We however clarify that we have not expressed any opinion on the liability and the outstanding amount due and payable by the second Respondent. That is a matter which must be resolved by both and by approaching competent Courts. We are only concerned with the request of the Petitioners, a financial institution and its officials for quashing of a criminal complaint. Our order and Judgment is based on the allegations in the complaint and taking note of them alone. It is unfortunate that parties like the complainant take recourse to criminal prosecution despite the caution and warning from the Hon'ble Supreme Court. Such pressure and coercive act takes them nowhere leave alone enabling them to avoid a admitted liability to repay a loan sanctioned by a Bank or public financial institution. There are proper legal remedies available to dispute and challenge the recovery. There civil proceedings can be resorted to for resolving contractual disputes. Any vexatious criminal prosecution of the above is bound to recoil or rebound on the complainant.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)