IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1149 OF 2015

Rajesh Ganpat Kamat & Ors. … Petitioners

V/s.

The State of Maharashtra & Anr. … Respondents

Mr. Sanjay Anabhawane for the Petitioners.
Mr. Milind Achyut Kale for Respondent No.2.
Mr. S.H. Yadav, A.P.P. for the State.

CORAM : A. V. NIRGUDE, J.

DATE : 21st NOVEMBER, 2015.

P.C. :

1. This Petition challenges the judgment and order dated 27.02.2015 passed by the learned Additional Sessions Judge, Thane, dismissing Criminal Revision Applications Nos.141 of 2013 and 160 of 2013 filed by the petitioners challenging the order of issuance of process.

2 The facts leading to the filing of the complaint are as under :

3 Respondent No.2 is a business man who had obtained loan from a Bank. Petitioner Nos.1 to 4 are officers of

the Bank. Respondent No.2 failed to repay the loan therefore, proceedings were taken against him before Debt Recovery Tribunal, Mumbai under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth referred to "the SARFAESI act"). Respondent No.2 owned a factory premises in Thane which was mortgaged to the Bank. It was agreed between the Bank and Respondent No.2 that the factory premises would be sold by 'private sale'. Accordingly, on 09.12.2011 a meeting between the bank officers, respondent No.2 borrower and prospective purchaser one Mr. Patel was held. In this meeting it was agreed between the parties that the property would be sold for sum of Rs.8.19 crore to Mr. Patel, who would deposit entire amount before 31.12.2011.

4 Thereafter, Mr. Patel pursuant to the agreement, deposited certain amount towards stamp duty in Office of the Sub-Registrar on 26.12.2011. The Bank issued certificate of sale in favour of the purchaser on 27.12.2011. Admittedly on that day the bank had not received entire consideration from Mr. Patel. Yet the Bank Officer authorized for exercising power of sale issued the certificate of sale.

5 Respondent No.2 in January, 2012, learned that the amount of consideration was so far not deposited in his loan account. He, therefore, started asking the Bank Officers as to

why the amount was not deposited in his account. He suggested to them that he would search and find a new purchaser who could offer better price. In March 2012, he also informed in writing to the Bank that he had found a purchaser who would pay higher consideration for the same property. The Bank ignoring all this, allowed Mr. Patel to deposit Rs.8.19 crore in the loan account of respondent No.2 on 26.03.2012.

6 Respondent No.2 felt cheated. He thought that his property was snatched away from him with false representation that Mr. Patel would deposit agreed amount by 31.12.2011. The question is whether the allegation as they stand and as narrated above, would amount to 'cheating'.

7 The term cheating define in Section 416 of I.P.C. which reads as under :-

> "416. Cheating by personation.—A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is. Explanation.—The offence is committed whether the individual personated is a real or imaginary person. Illustration
> (a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
> (b) A cheats by pretending to be B, a person who is deceased. A cheats by personation."

8 The crux of the allegation is the petitioners (Bank Officers) and Mr. Patel fraudulently induced respondent No.2 for delivering to them his 'no objection' for sale of his property through private negotiations. Indeed the representation was that entire consideration would be deposited by 31.12.2011 and admittedly the amount did not come to the account of respondent No.2 till that day. On the contrary, they relaxed this strict term of payment. Petitioner No.1, as the Officer authorized for issuing sale certificate issued in advance.

9 On 20.03.2012 respondent No.2 moved an Appeal under Section 17 of the SARFAESI Act, challenging the transaction but his Appeal was dismissed on 10.08.2012.

10 It is only after that on 04.09.2012 the complaint was lodged. The question as to whether the petitioners and Mr. Patel deceived respondent No.2 for giving no objection for sale of the property. The answer is in negative.

11 As stated above, as per provision of Rule 8 of Sub-Rule 8 of SARFAESI Act, this was a sale by any method other than public auction or public tender, and, therefore, this sale should be completed as per the terms that may be settled

between the parties in writing. The terms between the parties were settled on 09.12.2011.

12 Despite of the fact that the consideration for sale was required to be deposited by the purchaser on 31.12.2011, the petitioner No.1 thought it fit to issue certificate of sale. He thereby sealed the transaction in favour of the purchaser. He, thereafter, permitted him to deposit the amount of consideration after about three months. The question is whether this concession amounted an offence under I.P.C. The answer is in negative. Reasons: first and foremost reason is that the Appeal filed by respondent No.2 under Section 17 of the SARFAESI Act, came to be dismissed on 10.08.2012 in which it was specifically held that the sale could not have been cancelled because of delay in remitting the payment. In that proceeding, no allegation of criminal conspiracy was made. Second reason is that petitioner No.1 took a risk in issuing certificate. As an Officer of the Bank he was certain that the purchaser would deposit the amount sooner or later. Had this decision to issue sale certificate been proved erroneous, the bank would have suffered loss of the amount of consideration. The concession given by the bank to the purchaser thus, was not a fraudulent act even when the same was taken without taking the complainant in confidence. It was a business decision. So it can not be said it was a deception practiced on complainant.

All that can be said in this situation is that the complainant/respondent No.2 was deprived of the amount of consideration in his loan account on 27.12.2011. Instead of getting such amount credited to his account on that day it came there on 22.03.2012. He deserves interest on this amount. think the Bank should pay interest on the amount at the rate which was agreed between the Bank and the borrower.

The learned counsel for the petitioners agreed that such amount would be deposited in the account of the borrower immediately.

13 In view of this no offence is made out against the petitioners and so the Petition is allowed. The order of issuance of process is set aside.

(A.V.NIRGUDE, J.)

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