IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8637 of 2014

Arising Out of PS.Case No. -926 Year- 2012 Thana -KATIHAR COMPLAINT CASE District- KATIHAR

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1. Ghan Shyam Prasad Shrivastava, S/O Late Nagendra Prasad, the then Regional Manager, State Bank of India (Region- iii) Regional Office Purnea, at present posted as Asst. General Manager, State Bank of India, Centralized Pension Processing Centre, Judges Court Road, Patna
2. Bindhyachal Prasad Lal, alias Bhagwan Prasad Lal, S/O Shri Ramesh Chandra Lal, the then Branch Manager of the State Bank of India, Sonaili Branch, Sonaili, P.S.- Kadwa, District- Katihar
3. Dayal Singh, S/O Shri Balwant Singh, the then Branch Manager, State Bank of India, Sonaili Branch, P.S.- Kadwa, District- Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Kumar Gupta, S/O Lat Chandra Prasad Gupta, R/O Village- Sonaili, Harsona Road, P.S. Kadwa, District- Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kaushlendra Kumar Sinha, Advocate
For the Opposite Party/s : Mr. Abhay Kumar Roy, APP

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
C.A.V. JUDGMENT
Date: 01-12-2016

Heard learned counsel for the petitioners and learned APP for the State.

2. On 21.02.2014 notices were issued to opposite party no. 2 under both process (registered cover with A/D as also ordinary process). Again on 02.09.2014 notices were issued to opposite party no. 2 under both process and notices through ordinary process was directed to be served on the counsel appearing on behalf of opposite party no. 2 in the court below. In pursuance thereto, notice

has been received by opposite party no. 2 on 10.10.2014, but as per the service report, he has chosen not to appear.

3. Petitioners have filed this application under Section 482 of the Code of Criminal Procedure, 1973 (for short the Cr.P.C.) for quashing of the order dated 27.07.2012, passed by learned Chief Judicial Magistrate, Katihar in Complaint Case No. 926 of 2012, corresponding to Trial No. 750 of 2012, by which processes were directed to be issued against the petitioners after taking cognizance for the offences punishable under Sections 384, 406 and 420 of the Indian Penal Code.

4. The complaint case, as lodged by the complainant, is that being a proprietor of M/s Bhawani Galla Stores, he availed loan facilities from the State Bank of India, ADB Sonaili Bazar Branch, P.S. Kotwali, District Katihar for Rs. 3,50,000/- on 09.08.2006 and an agreement was executed between the complainant and the Bank. The complainant alleged that on 31.01.2011 accused petitioner no. 3, Dayal Singh, the then Branch Manager, State Bank of India of the aforesaid branch demanded *rangdari* as well as loan amount with interest of Rs. 3,84,288/- and also sealed his shop in order to sell out to some private agency. The complainant further alleged that petitioner no. 3 in connivance with petitioner no. 2, the present Branch Manager of the said branch, in order to extract

rangdari, created a forged document and sealed his shop, which was the only means of his livelihood. It is further alleged that from the statement of accounts only Rs. 3,74,940/- was due against him, but the petitioners have not acted under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the SARFAESI Act) nor the guidelines laid by the Reserve Bank of India. The complainant went to the Janta Darbar of the District Magistrate-cum-Collector, Katihar regarding extortion of money by petitioner nos. 2 and 3. The complainant further alleged that all the petitioners being Bank officials, through a forged document, tried to extort more money from the complainant and, thus, filed the complaint against the petitioners.

5. It has been submitted by the leaned counsel for the petitioners that they being Bank officials, have discharged their public duties in accordance with the provisions laid down under the SARFAESI Act and as the credit facilities granted to the complainant was declared a non-performing asset, proceedings under Section 13(2) of the SARFAESI Act was initiated against the complainant and petitioners being officials of the Bank in discharge of their public duties have acted in accordance with law. The complainant had been granted cash credit facilities for his business by sanction letter dated 09.08.2006/ 06.03.2007 wherein the complainant's wife Smt. Dolly

Rani executed equitable mortgage by deposit of title deed in respect of her immovable properties. Several letters and reminders were sent to the complainant to repay the loan amount with interest and ultimately legal notice was sent on 06.06.2007 asking the complainant and his wife to repay a sum of Rs. 3,61,630/- along with accrued interest. The complainant having failed to regularise his loan account, his account turned NPA and a notice under Section 13(2) of the SARFAESI Act was sent to the complainant and his wife on 27.10.2007 to repay Rs. 3,84,388/- along with accrued interest and incidental expenses within 60 days as postulated under the said Section. The complainant did not file his objection under Section 13(3-A) of the SARFAESI Act nor liquidated the Bank's dues and having waited for 18 months the authorised officer of the Bank issued possession notice under Section 13(4) of the SARFAESI Act on 21.04.2009. Simultaneously, possession notice was also published in two daily newspapers on 25.04.2009. Thereafter the Authorised Officer- cum- Chief Manager, who is the Regional Manager, Region-III, Purnea of the State Bank of India (petitioner no. 1), approached the District Magistrate- cum-Collector under Section 14 of the SARFAESI Act for providing legal assistance for taking physical and constructive possession over the lands in question being mortgaged by the complainant in favour of the Bank in security, for repayment of loan amount. The District

Magistrate- cum- Collector thereafter vide letter No. 13 dated 06.01.2011 deputed the Circle Officer along with armed force for providing assistance to the Bank officials for taking possession of the mortgaged property on 31.01.2011. Thereafter the authorised officer of the Bank along with the Circle Officer prepared inventory and *Panchnama* and took over physical possession of the mortgaged land in presence of two independent witnesses. The complainant thereafter approached the Bank and liquidated the entire dues of the loan amount on 03.10.2012 and no dues certificate was issued in favour of the complainant and the property mortgaged was restored to the wife of the complainant Smt. Dolly Rani on 10.10.2012 duly acknowledged by wife of the complainant. The account statement along with interest and all incidental charges were also furnished to the complainant on 22.04.2013. The complainant has liquidated the dues of the Bank and after possession of the mortgaged property to the wife of the complainant has been restored on 10.10.2012. However, the complaint has been filed on 17.04.2012.

6. Learned counsel for the petitioners submits that the petitioners being the senior officers of the Bank have discharged their public duties in accordance with the provisions of the SARFAESI Act and after the loan account was settled and no dues certificate was issued in favour of the complainant and mortgaged

property was restored to the complainant's wife, the complaint case is not maintainable against them, although at the relevant time all the petitioners were transferred to different places. He submits that continuation of criminal proceedings against the petitioners would be an abuse of the process of the court as the allegations are inherently improbable and absurd, lodged maliciously with ulterior motive.

7. In this connection, learned counsel for the petitioners relied on the judgment of the Apex Court in the case of ***Priyanka Srivastava and another Vs. State of Uttar Pradesh and others***, since reported in ***(2015) 6 Supreme Court Cases 287*** wherein the Apex Court dealing with the action taken against the borrower by the Bank authorities under SARFAESI Act, the borrower had taken recourse to filing of criminal case against the petitioners of that case merely to harass the Bank authorities. He submits that when a citizen avails loan, it is his obligation to pay back the same and not play truant. He further submits that Section 32 of the SARFAESI Act protects the Bank officials/ secured creditor or authorised officer of the Bank for action taken in good faith. No prosecution, suit or legal proceedings shall lie against them for taking action in good faith.

8. Having heard the learned counsel for the petitioners and after having examined the judgment passed by the Apex Court in the case of ***Priyanka Srivastava*** (supra), the relevant

part of which has been said in para 19, which is quoted hereinbelow :

"19. ………That apart, the proceedings initiated and the action taken by the authorities under the SARFAESI Act are assailable under the said Act before the higher forum and if, a borrower is allowed to take recourse to criminal law in the manner it has been taken, it needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. It is clearly noticeable that the statutory remedies have cleverly been bypassed and prosecution route has been undertaken ……."

Further para 33 reads thus :-

"33. At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as follows :

*"32. **Protection of action taken in good faith**.- No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manger exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."*

In the present case, we are obligated to say that the learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) CrPC. It is because Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needless to emphasise, the legislative mandate has to be kept in mind."

9. Learned counsel for the State submits that the petitioners are named in the complaint case, but since all accounts has been settled, he has no objection if the order taking cognizance is set aside.

10. Considering prima facie the facts, having looked into the documents of the relevant parties and that the loan account of the complainant has already been settled, in view of the judgment of the Apex Court in the case of ***Priyanka Srivastava*** (supra), I am not inclined to permit multiplicity of proceedings. Hence, the entire proceedings including the order taking cognizance dated 27.07.2012, passed by the learned Chief Judicial Magistrate, Katihar, in Complaint Case No. 926/12, corresponding to Trial No. 750/12, is hereby quashed.

11. Application stands allowed.

(Nilu Agrawal, J.)

Rajesh/-

AFR/NAFR	AFR
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