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HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 284 of 2015

1. Shankar Hari Agarwal S/o Late Devnarayan Agarwal, Aged About 70 Years R/o 4, Nagar Marg, Choubey Colony, Raipur Chhattisgarh Civil & Revenue District Raipur

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Ministry Of Home, Mahanadi Bhawan, Mantralay, Naya Raipur, District Raipur Chhattsigarh
2. The Senior Superintendent Of Police, District Bilaspur Chhattisgarh
3. The Station House Officer, Police Station Azad Chowk, Raipur District Raipur Chhattsigarh

---- Respondent

For Petitioner	Shri B. P. Sharma, Advocate with Shri Sameer Oraon, Advocate
For Respondent/State	Shri Bhaskar Payasi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

04/03/2016

1. The petitioner has prayed for a direction to the respondent authorities to register FIR on the complaint lodged by the petitioner alleging commission of cognizable offence.

2. The petitioner appears to have lodged a complaint before the Senior Superintendent of Police, Raipur on 07.02.2015

and 08.02.2015 to the effect that he is the Director of M/s Sky Alloys & Power Pvt. Ltd., Raipur, which has obtained loan/financial assistance from the Oriental Bank of Commerce and the United Bank of India, however, he has stopped participating in the affairs of the company from November, 2013, therefore, he refused to put signature on the loan DOC documents of Oriental Bank of Commerce, Tatyapara Chowk, Raipur on 12.01.2015, but still the cash credit limit of the company was increased from Rs.19.25 crores to Rs.34.25 crores on 25.03.2015 and in addition a new LC limit of Rs.10.00 crores was also issued in favour of the company. On verification, he came to know that the deed of guarantee dated 27.03.2015 carries his forged signature.

3. It is argued that the complaint lodged with the SSP, Raipur discloses commission of cognizable offence, therefore, a direction deserves to be issued for registration of FIR in view of the law laid down by the Supreme Court in **Lalita Kumari v. Government of Uttar Pradesh and Others**[1].

4. In a more recent case, the Supreme Court in **Priyanka Srivastava and another v. State of Uttar Pradesh and others**[2], while dealing with a similar prayer made by the borrower against the officers of the lending bank, after considering the law laid down by the Supreme Court in

1 (2014) 2 SCC 1
2 (2015) 6 SCC 287

Lalita Kumari (supra), has held thus in paras 27 & 28 :

> 27) 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 the 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.
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> 28) Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like the Respondent 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, Respondent 3 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 1, who is

> presently occupying the position of Vice-President, neither was the loan taken, nor was the default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present Appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid 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 with Section 154(3), indicating it has been sent to the Superintendent of police concerned.

5. In the case in hand also, the petitioner is the Director of a company, which has obtained financial assistance from consortium of Oriental Bank of Commerce and United Bank of India. The present FIR may be a design or preparation to make the transaction controversial in the event the company fails to repay the debt and thereafter to protract the litigation in the garb of pendency of a criminal case. There may be possibility that having signed the papers, the petitioner and other Directors of the company have colluded to criminalise the issued for personal gain.

6. Moreover it is to be seen that the applications (Annexure P-7) were not submitted before the concerned police

station, but they have been moved before the SSP, Raipur. Similarly, having submitted the applications on 7th & 8th December, 2015, the writ petition has been preferred before this Court on 14.12.2015, therefore, possibility cannot be ruled out that the applications were moved only for the purpose of filing of writ petition and to secure an innocuous order of carrying investigation against the bank officers.

7. *Ex-consequenti*, the writ petition, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Gowri