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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 234 OF 2016

Ram Nitish Kotak ..Applicant.
Vs
State of Maharashtra & Anr ..Respondents.

Mr Shailesh Kumar for the applicant.
Smt. R.V. Newton, APP for the State.
Mr Mohan Singh Rajput a/with Mr Santosh Pawar for the respondent No.2.

CORAM : A.S.GADKARI, J.
DATE : 29th June, 2016

P.C.

1) Heard the learned counsel for the respective parties, at length and also perused the entire record produced before me.

2) This is an application for quashing of the Order dated 12.6.2015 passed by the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, issuing process against the applicant under sections 405, 420 read with section 34 of the Indian Penal Code.

3) The applicant is the accused No.2 in Complaint No. 155/SW/14 lodged by the respondent no.2.

4) It is the case of the respondent no.2 that, the respondent no.2 being the bank/financial institution, advanced loan to the applicant against the hypothecation of computers, equipments and other machinery to the applicant and his Company. That the applicant has

entered into an agreement with the complainant, i.e. the Respondent No.2-Bank for the same. As the applicant failed to repay the loan amount within the stipulated period, the respondent no.2 instituted proceedings under the provisions of the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and by its notice dated 28.6.2011 informed the applicant that the said hypothecated goods are the securities of the complainant under the said Act. By a subsequent notice dated 7/3/2012 it was further informed to the applicant, not to sell, transfer, dispose or shift the said securities which were in the possession of the applicant. It is the further case of the complainant that despite the said statutory notice issued by the respondent no.2, the applicant not only shifted the said goods from the place mentioned in the agreement but has subsequently disposed them off. In the premise the complaint was lodged with the concerned Metropolitan Magistrate seeking issuance of process under sections 405, 420 read with section 34 of the IPC.

5) The learned Counsel for the applicant submitted that as a matter of fact his client had informed the bank by letter dated 20.2.2012 that his client was to surrender the premises where the goods were kept, to the landlord and had requested the respondent no.2 to collect the goods within three days from the date of receipt of said notice dated 20.2.2012. That in spite of four letters addressed by the applicant to the Respondent No.2 Bank, the respondent no.2 did not collect those goods within the stipulated period, and as no response was given to his client till the last week of April, 2012 there was no option left before his client than to

surrender the possession of the premises to the landlord. He lastly submitted as the bank did not collect the goods his client cannot be blamed and he is to be discharged from the complaint filed against him.

6) It is to be noted here that the applicant in furtherance of his letters instead of returning or depositing the said hypothecated goods with the complainant Bank, has proceeded to dispose of the said goods in utter violation of the terms of Agreement of Hypothecation and also in utter defiance of the statutory notice issued under the SARFAESI Act, 2002. If the applicant was having any bona fide intention at his command, as a matter of prudence, he would have deposited or dumped the said goods with the respondent no.2-bank. The conduct of the applicant clearly exhibits that he was having mala-fide intention which indubitably attract section 405 and 420 of the IPC.

7) It is the settled position of law by a catena of decisions of the Supreme Court that for the purpose of exercising its power under Section 482 of Cr.P.C. to quash a F.I.R. or a complaint, the High Court would have to proceed entirely on the basis of allegations made in the complaint or the documents accompanying the same per se. If the allegations in the complaint taken at their face value disclose a criminal offence, complaint cannot be quashed, merely because it relates to commercial transaction of breach of contract for which civil remedy is available or has been availed. It is further held that the High Court is not supposed to embark upon the enquiry whether the allegations in the FIR/complaint are reliable or not and thereupon to render a definite finding about the truthfulness or

varsity of the allegations. It is also settled that the High Court can exercise such power in exceptional cases and when the defence of the accused can be accepted on the basis of documents as contemplated under the Evidence Act. It is also held that the power under Section 482 of Cr. P.C. should be exercised, only to save the abuse of process of Court or to secure the ends of justice. It is further held by the Supreme Court that, it is of course open to the accused at the trial to take whatever defence that were open to him, but High Court need not deal with the merits of the case at the stage of quashing of proceeding.

8) However, in the present case, even after taking into consideration the defence of the accused, I am of the considered opinion that the said defence adopted by the applicant is an after thought. Prima facie it clearly appears that the applicant was having intention to commit an offence as contemplated under sections 420, 405 read with section 34 of the IPC. In my considered view, a strong prima facie case is made out for issuance of process.

9) I find no merit in the application. The application is accordingly dismissed.

(A.S.GADKARI, J.)