HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.1629 of 2012

ORDER:

1. This writ petition was filed by the Chief Manager and Deputy General Manager of State Bank of India challenging the initiation of prosecution in F.I.R.No.459 of 2011 by the 2nd respondent on a complaint filed by the 3rd respondent.

2. The 3rd respondent availed the cash credit facility for Rs.200 lakhs and executed certain security documents on 25.07.2005. He created equitable mortgage over his house property bearing No. 2-2-18/17/A (Plot No.3B) admeasuring 712.05 square yards situated at Durgabai Deshmukh colony, Bagh Amberpet, Hyderabad, by depositing the original sale deed as security. The bank issued a bank guarantee in favour of the Superintending Engineer, Handri Niva Sujala Sravanthi (HNSS) circle, Anantapur, on 25.07.2005 on the request of the 3rd respondent firm. The bank guarantee was issued for an amount of Rs.1,45,80,000/- in terms of Memorandum of Understanding dated 09.07.2005. The 3rd respondent firm was subsequently converted into a private limited company vide its certificate of incorporation dated 15.09.2005. After conversion of the firm as a company, on the request of the company, the State Bank of India, Hyderabad, on 24.01.2007 extended cash credit limit of Rs.200 lakhs and bank guarantee facility for Rs.200 lakhs for its business. It executed necessary documents on 03.02.2007 apart from personal guarantees and created an equitable mortgage over the house property. Thereafter, the company failed to repay the loan amount even after demands of the bank. The loan account of the company was classified as Non Performing Asset on 31.07.2008. The loan account of the company was transferred to the State Bank of India, Stressed Assets Management Branch, Secunderabad, on 26.02.2009 for recovery of debt. A demand notice was issued on 10.06.2009 under Section 13 (2) of Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') calling upon the company and its guarantors to repay the outstanding debt of Rs.3,49,62,641/-. Thereafter, further proceedings are also taken. A possession notice was issued on 25.05.2010 and the same was published in the daily news papers on 30.05.2010. The physical possession of the property was taken on 04.12.2010 by the Advocate Commissioner appointed by the learned Chief Metropolitan Magistrate, Hyderabad, by orders dated 15.06.2010 in Crl.P.M.P.No.1537 of 2010. Since the earlier possession was partial and in spite of granting time the 3rd respondent did not remove the articles in four rooms, a further order was obtained from the competent Court in Cr.P.M.P.No.2615 of 2011 on 01.08.2011 and the possession of the remaining four rooms was also taken on 19.08.2011. Steps for sale of the property were taken. At that stage, the 3rd respondent filed W.P.No.13005 of 2010 before this Court challenging the demand notice dated 10.06.2009 and possession notice dated 25.05.2010 and the same was dismissed on 23.06.2010. After dismissal of the said writ petition, the 3rd respondent filed SAIR No.226 of 2010 before the Debts Recovery Tribunal, Hyderabad, under Section 17 of the SARFAESI Act, 2002 challenging the possession notice dated 25.05.2010 and the notice of the Commissioner dated 29.07.2010. The Debts Recovery Tribunal, Hyderabad, by order dated 13.08.2010 dismissed the stay petition. Thereafter, the 3rd respondent filed another W.P.No.20624 of 2010 challenging the order passed by the learned Chief Metropolitan Magistrate, Hyderabad, on 15.06.2010, in Crl.P.M.P.No.1537 of 2010 and this Court by order dated 23.08.2010 granted interim suspension of the order on condition of the 3rd respondent depositing Rs.75,00,000/- within a period of four weeks from the date of that order and another sum of Rs.75,00,000/-within a period of four weeks thereafter. Subsequently, the 3rd respondent sought for extension of time and this Court granted the same by order dated 27.10.2010 by two more weeks. When the 3rd respondent failed to deposit the money in spite of extension of time, the petition was dismissed on 23.11.2010 and the interim suspension order dated 23.08.2010 was vacated. After vacation of the order of suspension, the bank took steps for auctioning of the property and an auction was conducted. A sale certificate was issued on 02.11.2011 to the auction purchaser by the authorized officer. The bank also filed O.A.No.84 of 2010 before the Debts Recovery Tribunal, Hyderabad on 29.03.2010 for recovery of the debt against the company and its guarantors for realization of debt. Thereafter, the 3rd respondent filed O.S.No.2252 of 2011 before the XIX Junior Civil Judge, City Civil Courts, Hyderabad, seeking injunction against the bank from interfering with his peaceful possession and enjoyment of the mortgaged property. The 3rd respondent also filed a criminal complaint on 13.12.2011 before the IV Metropolitan Magistrate, Hyderabad, against the petitioners as accused Nos.2 and 3 and five others alleging that they have committed offences under Sections 120-B, 341, 403, 409, 418, 447 read with Section 34 of I.P.C. The learned Magistrate, though raised an objection on the maintainability of the complaint against the bank officers, without deciding the said objection, referred the complaint to the 2nd respondent for investigation and the 2nd respondent registered the same as F.I.R.No.459 of 2011. At that stage, the petitioners filed the present writ petition.

3. This Court by order dated 25.01.2012 granted interim stay of all further proceedings in F.I.R.No.459 of 2011 on the file of the 2nd respondent.

4. Learned Senior Counsel appearing for the petitioners submits that in respect of the action taken by the petitioners in discharge of their duties under the provisions of the SARFAESI Act, 2002 as officers of the bank, no criminal proceedings shall lie against them.

5. The said issue was considered by this Court in *State Bank of India, Personal Banking Branch, Secunderabad Vs. State of Andhra Pradesh and others,* in W.P.No.7637 of 2010 dated 03.01.2014 reported in 2015 (6) ALD 665, wherein it was held that the investigation of a complaint by the Magistrate in a routine manner is a case of non-

application of mind and accordingly the F.I.R. therein was quashed.

6. An identical case came up for consideration before the Supreme Court in *Priyanka Srivastava and another Vs. State of Uttar Pradesh and others* reported in (2015) 6 Supreme Court Cases 287 and the Supreme Court also held that such action is an abuse of process of Court. It was also held that registration of F.I.R. against statutory authorities is misuse of remedy available under Section 156 (3) of Cr.P.C.

7. In view of clear enunciation of law by this Court and also the Supreme Court in the above decisions, no criminal proceedings shall be taken against the petitioners for their conduct as officers of the bank and in exercise of powers conferred on them under the provisions of SARFAESI Act, 2002.

8. Accordingly, the Writ Petition is allowed and F.I.R.No.459 of 2011 on the file of the 2nd respondent is quashed. No order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

21-03-2016
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