IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

235

CRM-M-24651 of 2014 (O&M)
Date of Decision : 14.03.2016

Brijesh Puri and others

... Petitioners

Versus

State of Punjab and another

.. Respondents

CORAM : HON'BLE MR.JUSTICE KULDIP SINGH

Present : Mr.Sartej Singh Narula, Advocate
for the petitioners.
Mr.Sidakmeet Sandhu, AAG, Punjab.
Mr.H.S.Sullar, Advocate for the complainant.

1. Whether reporters of local newspapers may be allowed to see judgment? **- Yes**
2. To be referred to reporters or not? **- Yes**
3. Whether the judgment should be reported in the Digest? **- Yes**

<u>Kuldip Singh, J. (Oral)</u>

Petitioners, who are officers of HDFC Bank, Branch Leela Bhavan, Patiala have sought quashing of FIR No.112 dated 06.05.2014, registered under Sections 406/409, IPC at Police Station Gobindgarh Mandi, District Fatehgarh Sahib, along with subsequent proceedings arising therefrom.

The short facts, which require to be narrated, are that respondent No.2 obtained loan of Rs.4,62,000/- on 22.03.2011 for which he pledged gold weighing 352.600 gms (net weight 295.800 gms) under the Gold Loan Scheme. The application for obtaining loan is Annexure P/2. It also comes out that gold was valued and valuation thereof was signed by the complainant on 22.03.2011.

Subsequently, the loan of Rs. 4,62,000/- was accordingly sanctioned vide agreement dated 22.02.2011 (Annexure P/3). Another sum of Rs.1,52,000/- was advanced against the said gold in addition to the original loan and the gold was accordingly again valued for Rs.6,14,672.40/- on 28.02.2013 which was also signed by the complainant. It also comes out that another loan of Rs.2,85,000/- was advanced by the HDFC Bank vide application (Annexure P-11) and gold weighing 221.900 gms (net weight 182.410 gms) was pledged which was accordingly valued and signed by the complainant. The loan was sanctioned vide Annexure P-12. It was also extended vide application /request for renewal on 26.10.2012 (Annexure P-13). There were following conditions in the said agreement of loan:-

> " xx xxx xx xxx
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> 12. The Bank may, without assigning any reason and upon written notice mailed or delivered to me/us cancel in full or in part the Loan and demand repayment thereof. Upon such notice, the said Dues shall become forthwith due and payable by me/us to the Bank.
> 13. The following events shall constitute events of default under this Agreement ("Events of default"), upon the occurrence of which the said Dues shall become immediately due and payable by me/us to the Bank and further enable the Bank to enforce the Gold Security and any other security furnished hereunder and sell the same.
>
> (a & b) xxx xx xxx xx
> (c) If the Loan is not repaid on the date of maturity.
> (d) In the event of non-servicing of interest by me/us on the due date.
> (e to j) xx xxx xx xx"

According to the bank, complainant defaulted in the payment of interest. Therefore, the bank issued the notice dated 09.10.2013 (Annexure P-15) and thereafter another notice was issued on 05.12.2013 (Annexure P-16), first asking the complainant to pay the interest and then recalling the loan and informed the complainant that if the loan is not paid the gold pledged by him will be sold. Vide annexure P-19, auction notice for gold ornaments was issued in Dainik Savera Times Newspaper circulated in Haryana for sale of the gold on 30.12.2013 at 9:30 am onwards regarding some borrowers which included the present complainant. Accordingly, gold was sold and the amount of loan was adjusted and the balance amount was sent to the complainant through demand draft. The details of the said adjustment and disbursement to the complainant are already on the file.

The grouse of the complainant is that first, the bank under-valued the gold pledged by him despite the fact that it was agricultural loan; secondly, bank issued auction notice, circulated in a little known newspaper i.e. *'Dainik Savera Time'* in the State of Haryana and sold the gold, whereas the complainant was not aware of it as he is residing in a small village near Mandi Gobindgarh. Therefore, it is stated that bank officers colluded to deprive the complainant of the gold. On the basis of these facts, present FIR under Section 406 and 409 was registered against the petitioners.

I have heard learned counsel for the parties and perused the record already on the file.

As per information submitted by the State counsel, challan under Sections 406 and 409, IPC has been presented before the concerned court, but the charges are yet to be framed.

Criminal breach of trust is defined in Section 405 IPC as under:-

> "Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."

In order to prove the breach of trust, following ingredients required to be fulfilled.

(1) One must be entrusted with property or dominion over property.
(2) He must dishonestly misappropriate or convert the property to his own use or disposes of the property.
(3) Such use or disposal must be in violation of direction of law or legal contract touching discharge of such trust.

In the present case, when the loan was taken against security of the gold, the gold was valued and it was duly signed by the complainant himself. The conditions in the agreement, show that in case of default in paying interest or loan, the bank had the right to sell the gold pledged by the complainant. Undoubtedly, the complainant committed default in paying the interest and loan. When the complainant failed to pay the interest and loan, bank issued two notices separately for both interest and loan, and postal receipts show that notice was issued on the postal address of complainant.

Thereafter, the pledged gold was sold by way of public auction.

Mere fact that auction notice was published in a little known newspaper i.e. '*Dainik Savera Times*' published in the State of Haryana, is no ground to hold that there was dishonest intention on the part of the bank. The gold was properly valued, and its sale was in pursuant to the said agreement between the parties. The gold was sold for more price than its valuation agreed between the parties. The balance amount was sent to the complainant through demand draft.

It comes out that gold was sold in terms of the agreement settled between the parties. Therefore, it cannot be said that the gold was sold dishonestly. The loan was accordingly adjusted. It being so, I am of the view that ingredients for the criminal breach of trust are not made out from the facts brought on the file. The petitioners acted in discharge of their official duty to recover the loan in terms of the agreement by sale of pledged gold for which they were authorized under the terms of the agreement. Thus, the continuation of trial against the petitioners is nothing but a misuse of the process of law.

Accordingly, the petition is allowed and FIR No.112 dated 06.05.2014, registered under Sections 406/409, IPC at Police Station Gobindgarh Mandi, District Fatehgarh Sahib along with subsequent proceedings arising therefrom stand quashed.

[Kuldip Singh]
Judge

14.03.2016
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