IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **Criminal Misc. No. M-6341 of 2014**
Date of Decision:-25.10.2017

R.K. Saxena and others

...Petitioners

Versus

State of Punjab and another

...Respondents

2. **Criminal Misc. No. M-14312 of 2014**

Sarita Rani

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present:- Mr. K.S. Dadwal, Advocate
for the petitioners (in Criminal Misc. No. M-6341 of 2014).

Mr. S.P.S. Sidhu, Advocate
for the petitioner (in Criminal Misc. No. M-14312 of 2014).

Mr. Ajay Pal Singh, DAG, Punjab.

<u>FATEH DEEP SINGH J.</u>

Both these petitions under Section 482 Cr.P.C. for exercise of inherent powers by this Court by petitioners Shri R.K. Saxena, Chief Manager, Shri Anil Kumar Kalia, Assistant General Manager, Shri A.K. Ahluwalia, Deputy General Manager (in the 1st petition) and Smt. Sarita Rani (petitioner in 2nd petition), commonly seek a prayer for quashment of FIR No.24 dated 31.1.2014 (Annexure P-11), under Sections 420 and 120-B IPC, with Police Station Division No.4, Ludhiana City, District Ludhiana against these bank officials alongwith all proceedings arising out of the same and the actions thereunder respectively.

The precise grounds that have been raked up and is even otherwise very much essential to first explore, the background of this imbroglio. As is there and could not be displaced by the counsel for the two sides, one Sudhir Sayal son of the present complainant/respondent No.2-Manju Verma who was running his business under the name and style of M/s Shilpa Garments at Ludhiana approached Punjab National Bank (in short 'the bank') for the purposes of credit facilities for running his business. It was on the basis of this request due process of law was undertaken between the parties wherein the complainant stood as guarantor by mortgaging her residential house measuring 527.7 square yards bearing plot No.7, situated in Jeevan Preet Nagar, Ludhiana, constructed in Khasra No.354-355-356-358-359-360, Khata No.480/690-477/685 as per Jamabandi for the year 1991-92 situated in the revenue estate of Barewal Avana, Abadi Jeewan Preet Nagar, Ludhiana which she claimed to have purchased through deed dated 26.8.1994. The loanee availed cash credit of Rs.80,00,000/- but defaulted in making payment of the loan installments including interest and when the loan became irregular, a letter dated 10.10.2011 was sent to the loanee/defaulter to the effect that as on 31.1.2012 a sum of Rs.90,81,361/- has became due towards the bank. When the same did not bear out any result, the bank officials sent letters dated 11.5.2011, 22.5.2011 and 22.7.2011 even to the defaulter, copies of which were duly forwarded to respondent No.2 complainant/guarantor. Ultimately, when nothing was responded to vide letter dated 15.12.2011 the bank intimated the default committed by the loanee and thereafter the loan amount was termed to be a Non Performing Asset (NPA). Under the Income Recognition and Assets Classification (in short 'IRAC') guidelines, necessary steps were initiated by the bank and when nothing appear to materialise led to initiation of necessary action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') against the loanee and the guarantor under Section 13 of the SARFAESI Act notice was issued on 31.1.2012 to the firm as well as the guarantor and under the provisions of Section 13(2) of this Act it was intimated that as on the date of letter a sum of Rs.90,81,361/- was outstanding. Thereafter under the provisions of law to secure the loan amount security was created by equitable mortgage owned by respondent No.2 and a legal notice was served upon them to pay the outstanding amount within 60 days of the notice and the bank showed its inclination to resort to the provisions under the Act and the law applicable to it. It was thereupon resort to provisions of Section 13(2) and 13(4) was undertaken under this Act which also authorizes the bank to take possession of the secured assets of the borrower including the rights of transfer if there is any lease, assignment or sale regarding the secured assets. It is after the expiry of the requisite period, these steps were exercised and symbolic possession was taken on 3.4.2012 by way of Annexure P-3 followed by a notice under Section 13(4) of the SARFAESI Act read with Rule 8(6) of the Security Interest Enforcement Rules, 2002 (for short 'the Rules') which was issued on 10.4.2012 by way of Annexure P-4. Ultimately as a last means and resort the petitioners being authorised officers of the bank issued notice and thereafter the expiry of the requisite period and affording reasonable opportunities to the loanee and the guarantor after adopting due process by issuing public notice on 11.4.2012 in the recognized newspapers in English and vernacular the mortgage property was put on sale and the last date of receipt of the tenders was fixed to be 15.5.2012. The opening of the tender was made on 16.5.2012 (Annexure P-5). It is in due course another opportunity was afforded to the loanee and his guarantor. The son and the mother duo failed to adhere to the terms of the loan and the obligations to which they had bind themselves by virtue of the contract with the bank. At the auction one Sarita Rani (peitioner in 2nd petition) being the highest bidder, her bid was accepted by virtue of Annexure P-7 and as a consequence of which under the procedure sale certificate (Annexure P-8) was duly issued in her favour and thereafter physical possession of this property was handed over to her. The complainant inspite of being aware of all these proceedings having connived to this default chose a way and managed to file the present criminal case against the petitioners inspite of the fact that son of respondent No.2 was already involved in another financial fraud registered by way of FIR No.20 dated 7.2.2011, under Sections 406, 420, 467, 468, 465, 448, 471 and 120-B IPC, at Police Station Division No.6, Industrial Area, Ludhiana.

Though on behalf of respondent No.2 Mr. Vikas Sagar has sought to oppose the relief with much vehmence on the ground that the bank officials have connived with the auction purchaser and had undervalued the property and had made an illegal transaction by seeking refuge under the law. However, the same has sought to be opposed with much vehemence by counsel for the petitioner Mr. Krishan Singh Dadwal, Advocate and Mr.S.P.S. Sidhu, Advocate who have sought to highlight the relevant provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and has placed reliance of Punjab National Bank vs. Surendra Prasad Sinha **1992(3) RCR (Criminal) 344,** P.K. Gupta vs. S.K. Banerjee and others **2010(6) RCR (Criminal) 2195**, M.A. Rashid vs. Gopal Chandra and another **2012(2) JCC 1210**, Rakesh Kumar Mishra vs. State of Bihar and others **2006(1) RCR (Criminal) 456**.

Appreciating the submissions it is well settled proposition of law that a person who has not come to the Court with clean hands is not entitled to any relief in the administration of justice. It could by no means be displaced by counsel for the private respondent that respondent No.2 as well as her son were defaulters of the loan and since respondent No.2 is the guarantor of her son and has failed to repay the same, the bank has taken recourse to law under the provisions of the Act and, therefore, can neither be termed to be dishonest nor for cheating and is only an effort by the officials of the bank to recover the debt from the principal debtor as well as from the guarantor and the auction purchaser on the other hand is an innocent purchaser at the bank auction. Rather the criminal case is a pure vendetta unleashed by the complainant as a vengeance to teach the bank officials a lesson and to undo the effects of the orders of the Tribunal which has come to the aid of the bank to make good the recovery of their dues. There has been total discharge of the duties by the bank officers and the bank is a Government owned instrumentality and nothing malice or ill will could be pleaded or proved before this Court by the private respondents and reliance is sought to be placed on **Mrs. Priyanka Srivastava and another vs. State of U.P. and others 2015(2) RCR (Criminal) 1034**. Furthermore, the Hon'ble Apex Court in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others 1991(1) RCR (Criminal) 383** has laid down the following proposition and the eventualities when inherent powers can be exercised by the Courts which are as follows :-

> "(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investi- gation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institu- tion and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

holding that a Court can exercise its inherent powers to quash an FIR to meet the ends of justice being exceptional circumstances. In the present set of circumstances apparently and what remains totally unrebutted it is the complainant who is at fault and having usurped the money of the bank and the later having resorted to legal process had thought it prudent to invoke the jurisdiction of the Tribunal for recovery of its dues and has rightly done so and there is nothing illegal in this act of the bank officials (petitioners in 1st case) and the subsequent auction purchaser (petitioner in 2nd case), who has purchased as a bona fide purchaser from the bank in response to the public advertisement inviting tenders for the sale of the mortgaged property. Thus, clearly its an abuse of the process of the Court by respondent No.2-complainant and needs to be hightly depricated and such practice deserves to be curbed in the light of what has been detailed and discussed above the initiation of the criminal proceedings against the petitioner(s) are certainly absolute misuse of legal process needs to be put to an end. There being exceptional circumstances the present both the petitions stand allowed thereby quashing FIR No.24 dated 31.1.2014 (Annexure P-11), under Sections 420 and 120-B IPC, with Police Station Division No.4, Ludhiana City, District Ludhiana and all consequential proceedings arising therefrom against all the petitioner(s).

Keeping in view the peculiar circumstances and to ensure that such like persons do not put to harassment bank officials and jeorpardise the very purpose of the SARFAESI Act, which is by way of expeditious recovery of the bank dues impels this Court to impose special costs of Rs.1,00,000/- in favour of the Bank which shall be recovered from the complainant/respondent No.2 as arrears of revenue and will go to the bank as special costs.

Consequently, both the petitions thus stand allowed and disposed off as such.

October 25, 2017 **(FATEH DEEP SINGH)**
Vijay Asija **JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No