IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3826 of 2015

Arising Out of PS.Case No. -478 Year- 2013 Thana -PIRBAHOR District- PATNA

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P. K. Jain, son of Ramesh Chandra Jain, at present posted as the Chief Manager cum Authorized Officer, Punjab National Bank, Circle Office, R-Block, Patna, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ashish Jaiswal, S/o Rishi Kumar Jaiswal, Jaiswal Market, Musallahpur Haat, P.S. - Pirbahore, District - Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Suresh Pd. Singh No.1, Advocate
Ms. Kumari Rashmi, Advocate

For the Opposite Party No.1: Mr. Shailendra Kumar Singh, APP

For the Opposite Party No.2: Mr. Satyabir Bharti, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 12-10-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 14.11.2014 passed by the Judicial Magistrate, 1st class, Patna, in Pirbahore P.S. Case No.478 of 2013 by which the learned Magistrate has taken cognizance against the Petitioner for the offence under Section(s) 420/34 Indian Penal Code.

2. The prosecution case as per written report filed by the Informant on 02.11.2013 is that there was an auction notice published on 13.03.2013 by the Punjab National Bank for auctioning some properties. The Informant contacted the Petitioner as well as

Branch Manager, Mr. S. K. Sharma and participated in "e-auction" for the property mortgaged with Punjab National Bank, Muradpur Branch, Patna, situated in Chandpur Kumharar, P.S.-Kadamkuan, and being the highest bidder his bid was accepted. Accordingly, he made payment of Rs.35,50,000/- through Bank Draft to Muradpur Branch Office of Punjab National Bank. Sale Certificate was issued in favour of Informant by the Bank. It is alleged that Informant later on came to know that land was in prohibited area. There is no ban on sale and purchase of property but any construction cannot be made without prior permission of Archeological Survey of India. The Informant has made allegation of cheating against the Petitioner.

3. The police investigated the case and submitted charge-sheet against the Petitioner for the offence under Section(s) 420/34 Indian Penal Code and cognizance has been taken by the learned Court below for the aforesaid offence by the impugned order.

4. Counsel for the Petitioner submits that this Petitioner at the relevant time was Nodal Officer in Punjab National Bank in Circle Office, R Block, and at present, he is Chief Manager-cum-Authorized Officer, Punjab National Bank, Circle Office, R-Block, Patna.

5. The Petitioner earlier moved this Hon'ble Court in Cr. Misc. No.8399 of 2014, which was disposed off by order dated

05.09.2014 with observation that Petitioner happens to be Authorized Officer of the Bank at Circle Office and under Section 32 of the SARFAESI Act, 2002, immunity has been granted to him. His application was disposed off with direction to the Investigating Officer to consider the aforesaid aspect and conclude the investigation.

6. Counsel for the Petitioner submits that petitioner was discharging his official duty under the Act for and on behalf of the Bank. There is no substance of allegation under Section 420 Indian Penal Code. Auction notice was published with all relevant information about the property. The Informant after examining the same made full fledged enquiry about the said property and participated in bid along with other bidders, who were interested in the property. The Informant being the highest bidder was allotted the property and he got the Sale Certificate and also obtained delivery of possession. There is neither any element of impersonation nor any cheating in such transaction. The property, in question, was auctioned “As Is Where Is Basis”. The Bank issued very notice for auction stating therein the property, in question, was a mortgaged property of the Bank and to be sold under SARFAESI Act, 2002 (No.54 of 2002). The property was auctioned without inducing or pressurizing or alluring anyone to buy the said property. There was neither any ban by Archeological Survey of India for sale and purchase of any property nor the petitioner was going to be benefited in any manner as alleged. The Informant has purchased the property after considering every pros and cons without having been induced by any one to purchase the property. Petitioner has not done any act under personal capacity. He has acted under official capacity under limits of law. He has immunity from any type of prosecution as per Section 32 of the SARFAESI Act, 2002. The very institution of the case is bad in law and criminal prosecution initiated against the petitioner is wholly illegal.

7. Counsel for the petitioner further submits that before entering into tender all the bidders have gone through the terms and conditions of the tender and after fully understanding and considering the profit and loss have put their signatures and only thereafter they have been allowed to participate in the tender. The Informant has gone through each and every particulars of the property proposed to be auctioned and, thereafter, he has entered into tender process. There is no ingredient of cheating. Xerox copy of the document executed by the Informant dated 17.04.2013 is annexed as Annexure-5 series.

8. Section 55(5) of the Transfer of Property Act, 1882, defines about rights and liabilities of buyer. There is no material defect in title of the property nor is there any encumbrance or charge over the property in question. There is no ban on sale or purchase of the property by Archeological Survey of India. The Informant has implicated this Petitioner into malicious prosecution.

9. On the other hand, Opposite Party No.2 has filed Counter Affidavit stating therein that during investigation it transpired that the Petitioner in order to confer illegitimate benefit upon the defaulting borrower, got enhanced the reserve price of the defective property in question to Rs.25,00,000/- even though, the amount due to the defaulter borrower was only Rs.4,75,948/-. As such, upon selling the said property to the Opposite Party No.2 at an exorbitant price of Rs.35,50,000/-, the Bank only has recovered its loan amount of Rs.4,75,948/- and has returned more than Rs.30,00,000/- to the defaulter borrower for a property, which has no value. The Petitioner was bound to disclose under the statutory provisions contained in Rule 8(1) (f) of SARFAESI Act, 2002, as also Section 55(1)(a) of the Transfer of Property Act that the property suffers from material defect and despite aforementioned fact, the Petitioner, who was Nodal Officer, deceived the Opposite Party No.2 and dishonestly induced him to part with a valuable consideration. The act of the Petitioner was clearly malafide, exposed his connivance with the defaulting borrower to bestow upon him undue profits. The Court below has rightly taken cognizance against the Petitioner for the offence under Section(s) 420/34 Indian Penal Code. The mention of “As Is Where Is Basis” of the said property only pertains to the physical condition of the property and ancillary or peripheral issue pertaining to the property, in question, which does not extend to commencement of any material defect in the property, if any, which the seller in the present case was bound to disclose. The property which was auction sold to the Opposite Party No.2 falls within 100 meters of the prohibited zone and no construction whatsoever is permitted over the said property auction sold to the Opposite Party No.2. It is further submitted that certain constructions falling within 200 meters of protected monuments could or could not be permitted, but where the property, in question, falls within 100 meters of the protected monuments, no construction whatsoever is permitted. The petitioner acted in bad faith, fraudulently and dishonestly deceived the Opposite Party No.2 to purchase the said property, which was known to him to be defective and also by arbitrarily enhancing the reserve price, bestowed illegitimate benefits upon defaulting borrower in connivance with him. The Opposite Party No.2 immediately after coming to know that property falls within prohibited zone of 100 meters of the protected monuments, approached the Petitioner and other accused for cancelling the sale and refunding the deposit. Several letters were exchanged in this regard with Petitioner and other officials of the Bank. The Opposite Party No.2 had been persuading to cancel the sale, which consumed substantial time and thereafter Opposite Party No.2 left with no option but to file instant case. The Petitioner acted malafide, deceived the Opposite Party No.2 and fraudulently induced him to part with a sum of Rs.35,50,000/-. Learned Court below has rightly taken cognizance for the offence under Section(s) 420/34 Indian Penal Code.

10. This Court after hearing counsel for both the parties and looking into allegation in the written report as well as materials in the case diary finds that it is admitted position that Informant participated in open bid for auction of property, in question, along with other bidders, who had interest in the property, and purchased the same being the highest bidder and got Sale Certificate as well as delivery of possession. The Bank issued notice for auction stating that property, in question, was mortgaged property of the bank and was to be sold under SARFAESI Act, 2002 (No.54 of 2002). Property, in question, was auctioned on "As Is Where Is Basis". The Informant purchased the property after becoming highest bidder in open auction after considering every pros and cons. All the bidders including the Informant have gone through the terms and conditions and thereafter they had been allowed to participate in the bid. True copy of purchase of tender paper dated 17.04.2013 is annexed as Annexure-5 series. Clause II of Terms and Conditions, which is enclosed with Annexure-5 series, is as follows:

> *"ii) The particulars specified in the Schedule hereinbelow have been stated to the best of the information of the undersigned, but the undersigned shall not be answerable for any error, misstatement or omission in this proclamation."*

11. It is admitted position that the Petitioner has exercised his power delegated to him as Authorized Officer under SARFAESI Act, 2002 (No.54 of 2002). The Informant has participated in open tender and being the highest bidder to purchase the property deposited the bid amount with the Branch Manager and got the Sale Certificate issued by Petitioner, who was Authorized Officer under the Act and delivery of possession was already perfected to the Informant.

12. This Court in the case of ***Anjani Kumar Sinha Vs. State of Bihar*** reported in ***2017(2) PLJR 332*** has held that Section 32 of the SARFAESI Act, 2002 (No.54 of 2002) gives protection of action taken in good faith to the Reserve Bank or the Central Registry or any secure creditor or any of it Officers.

13. Section 32 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002, (SARFAESI Act, 2002 (No.54 of 2002)) is quoted below:

> **"32. Protection of action taken in good faith.**— No suit, prosecution or other legal proceeding shall lie against the Reserve Bank or the Central Registry or any secured creditor or any of its Officers for anything done or omitted to be done in good faith under this Act."

14. Section 55(5) (c) of The Transfer of Property Act lays down that where the ownership of property has passed to the buyer, he will bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller.

15. The Petitioner being Nodal/Authorized Officer of the Bank has auction sold the property, which was mortgaged to the Bank, for recovery of due amount of loan in discharge of his official duty. It was mentioned in the auction notice that auction will take place on "As Is Where Is Basis" and after public notice published in the newspaper, it was opened to all interested party desirous to participate in the bid, which was published by the agency appointed by the Bank. The Informant participated in the bid and after understanding all the terms and conditions of tender and fully understanding the profit and loss put the signature on the tender paper (Anneuxre-5 series) and deposited the reserve amount. Thereafter, he participated in open bid and being the highest bidder was allotted the property after depositing the highest amount of the bid i.e. Rs.35,50,000/-. Sale Certificate was also issued in his favour and delivery of possession was effected to the Informant.

16. In view of such, this Court does not find any ingredient of cheating or inducement on the part of the Petitioner as alleged by the Informant in the written report. Copies of the auction sale notice and Sale Certificate issued by the Petitioner have been enclosed with First Information Report filed on behalf of the Informant.

17. Therefore, this Court is of the view that the impugned order passed by the learned Court below suffers from illegality. The continuation of criminal proceeding will be abuse of process of law and harassment to petitioner.

18. Accordingly, impugned order dated 14.11.2014 passed by the Judicial Magistrate, 1st class, Patna, in Pirbahore P.S. Case No.478 of 2013 along with entire criminal proceeding against the Petitioner is hereby quashed.

19. This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	**AFR**
CAV DATE	**29-08-2018**
Uploading Date	**15-10-2018**
Transmission Date	**15-10-2018**