HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1602 of 2018

1. Nirmal Agrawal, S/o. Mahaveer Prasad Agrawal, Aged About 60 Years.
2. Yashwardhan Agrawal, S/o. Nirmal Agrawal, Aged About 38 Years.

Both Director Of Jai Ambe Metal Works Pvt. Ltd. R/o. House No. 11, Choubey Colony, P.S. Saraswati Nagar, District- Raipur, Chhattisgarh.

Office Address- Jai Ambe Metal Works Pvt. Ltd. 749/8, Behind Banjari Mandir, Rawabhatha, District Raipur, Chhattisgarh.

---- Petitioners

Versus

1. The State Of Chhattisgarh, Through- Police Station- Civil Lines, District- Raipur, Chhattisgarh.
2. Punjab National Bank, Through- Chief Manager, Branch Office- Katora Talab, Police Station- Civil Lines, Tahsil & District- Raipur, Chhattisgarh.

---- Respondents

For Petitioners	:	Mr. D.K.Gwalre, Advocate
For State	:	Mr. Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

13.08.2018

Heard

1. Learned counsel for the petitioners submits that the order impugned dated 31.07.2018 is without jurisdiction since initially the Magistrate has invoked the provisions of Section 156(3) of Cr.P.C. Subsequently, the police having been given a report in favour of the petitioners again the Magistrate on the merit of the case has directed for registration of the FIR and further investigation has been ordered for. He further submits that the petitioners who are the loanee of respondent Bank had obtained loan and the Bank had taken symbolic possession of the alleged property which was sold and in respect of the hypothecated goods the complaint if it is also admitted as a whole, the offence is not

made out. He further submits that the recovery proceeding is already pending and he relied on ***(2006) 6 SCC 736*** in between ***Indian Oil Corpn. & NEPC India Ltd. & Ors*** and would submit that since possession of hypothecated properties were not given to the Bank, on sale of same, no criminality can be attributed.

2. Perused the application under Section 156(3) of Cr.P.C. filed by the Bank. The application purports that the petitioners have obtained cash credit land and terms loan limit from the Bank and having not repaid the outstanding inflated to more than Rs. 9 Crores. It further purports that the petitioners have sold the hypothecated goods and have usurped the amount without making payment of the same. It is stated that since there was no entrustment was made as such no offence is made out.

3. The ratio laid down in case of Indian Oil Corpn. (supra) defined the hypothecation wherein it is stated that there is no entrustment of properties as such criminality cannot be attributed. At the same time it carves out exception too. The ratio in such case cannot be applied in the present facts as it would show that the beneficial interest was created in favour of the Bank in respect of the hypothecated property. Meaning thereby if the hypothecated properties are sold then the sale proceeds are required to be deposited in the Bank. According to the allegation of the Bank, the sale proceed of the properties were not deposited, thereby, the beneficial interest which were credited in favour of the Bank was defeated.

4. This argument also appears to be do not logical that if the properties are hypothecated and if they are sold and money is used for own and siphoned then the loanee debtor will not have any right and it is only a civil liability which may follow.

5. After reading of the order, I am further guided by the law laid down in case of ***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage & Others*** reported in ***(2016) 6 SCC 277*** wherein it shows that if the FIR is not registered then the aggrieved person may file a complaint as the alternative remedy to approach the Magistrate concerned under Section 156(3) of Cr.P.C. and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

6. Further the law laid down in case of ***HDFC Securities Ltd. & Others v. State of Maharashtra & Another*** reported in ***AIR 2017 SC 61***, at this stage, the order directing investigation cannot be said to have caused irreparable injury. Consequently, the petition is premature and is hereby dismissed.

Sd/-
Goutam Bhaduri
Judge

Ashok