

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION*****CRIMINAL APPLICATION NO.206 OF 2018**

Ms. Sonali Varad Ullal & Ors.] ... Applicants

Versus

State of Maharashtra & Anr.] ... Respondents

Ms. Sonali Tamhankar i/b Mr. R. Sathyanarayanan for Applicants.
Dr. F. R. Shaikh, Addl. P. P. for State – Respondent No.1.
Mr. J. A. Vithlani for Respondent No.2 – Bank.

CORAM :- R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE :- 05 APRIL, 2018

P. C. :-

1. The above Criminal Application has been filed for quashing of the proceedings being Criminal Case No.307/2017 pending on the file of the learned Metropolitan Magistrate, 44th Court at Andheri, Mumbai, for the offence punishable under Section 448 read with Section 34 of the IPC arising out of the registration of FIR being C.R.No.100 of 2015 by the Respondent No.2 – Bank on 25/03/2015 with the Versova Police Station. The said dispute has

arisen in respect of the mortgaged property and the allegations in the FIR are that though the property was mortgaged and was having the seal of the Respondent No.2 – Bank, the said seal was broken open without the permission of the Respondent No.2 – Bank. It appears that the Applicants who are the borrowers, have paid the entire amount which was availed by them, by selling the said mortgaged property.

2. Be that as it may, it is not necessary to dilate further on facts having regard to the fact that the Respondent No.2 – Bank, through its General Manager Mr. Vidyanand Karkera, has filed an Affidavit dated 01/03/2018 which is tendered across the bar by the learned Counsel Mr. Vithlani. The said Affidavit has been affirmed before Mr. Prakash Monappa Mulky, Advocate and Notary, having his office address at Nirmal Palace, 'B' Wing, 3rd Floor, R. J. Marg, Pump House, Andheri (E), Mumbai – 400 093. In the context of the relief sought in the above Application, para 6 of the above Affidavit is material and is reproduced hereinunder :

“6. I say that all the contents mentioned herein above are true and correct to the best of my knowledge and belief, and I am submitting this affidavit

stating that since Petitioner had sold the mortgaged premises with the consent of the respondents and sale proceeds paid to the Bank, the Bank is not interested to press the said FIR No.100 of 2015 under Section 448 r/w 34 I.P.C. which is presently pending before the Ld. Metropolitan Magistrate's 44th Court at Andheri vide Case No.307 of 2017 against the Applicants.”

The Affiant Mr. Vidyanand Karkera is personally present in Court. He is identified by the learned Counsel Mr. Vithlani. He is further identified by his Aadhar Card bearing no.6538 4532 4047. When put in the box and queried, he states that he has read and understood the contents of the Affidavit dated 01/03/2018 tendered by learned Counsel Mr. Vithlani. He further states that the contents of the said Affidavit are acceptable to the Respondent No.2 – Bank and that he has signed the said Affidavit pursuant to the authorization given to him vide the Resolution No.240 passed in the meeting of the Board of Directors of the Respondent No.2 – Bank on 05/08/2017.

3. The Applicant No.2 Mr. Varad Laxman Ullal is also personally present in Court. He is identified by learned Counsel Ms.Sonali Tamhankar instructed by Mr. R. Sathyanarayanan. He is also identified by his Aadhar Card bearing no.8176 8159 1762. When

put in the box and queried, he accepts the factum of the settlement between the Applicants and the Respondent No.2 – Bank.

4. In the light of the Affidavit filed by the Respondent No.2 – Bank and having regard to the statements made by Mr. Vidyanand Karkera, General Manager of the Respondent No.2 – Bank and the Applicant No.2 - Mr. Varad Laxman Ullal, it is clear that the dispute between the parties no more survives as a result of which the Respondent No.2 – Bank is not desirous of proceeding with the case in question which is pending in the learned Metropolitan Magistrate's Court.

5. Having regard to the Judgments of the Apex Court in the cases of Gian Singh Vs. State of Punjab & Anr. reported in (2012) 10 SCC 303 and Narinder Singh & Ors. Vs. State of Punjab & Anr. reported in 2014 AIR SCW 2065, no useful purpose would be served by keeping the above Criminal Application pending. There is, therefore, no impediment in allowing the above Criminal Application. The Criminal Application is accordingly allowed and made absolute in terms of prayer clause (a).

6. In the facts and circumstances of the case, where the machinery of this Court is utilized for settling the dispute between the parties, the Applicants to deposit costs of Rs.10,000/- with the State Legal Aid Fund within six weeks from date. Receipt to be obtained and filed in the Registry.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)