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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 18th July, 2018

+ CRL. M.C. 54/2015 & CrI.M.A. 6367/2018

SUSHMA GUPTA & ANR.

..... Petitioners

Through: Mr. Sudhir K. Makkar, Sr. Adv.
with Ms. Meenakshi Singh,
Adv.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Ravi Nayak, APP for the
State with SI Sanjeev Kumar,
PS EOW, New Delhi.
Mr. Sanjiv Kakra & Mr.
Mayank Bhargava, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The present petition has been filed invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to pray for the proceedings arising out of FIR No. 168/2009 involving offences punishable under Sections 406/420/120B of Indian Penal Code, 1860 (IPC) of police station Economic Offences Wing (EOW) of Delhi police to be quashed on the ground the pendency of the investigation of the matter has been a cause of untold harassment for the petitioners, they having been called by the investigating agency several times, the allegations in the FIR being misconceived and in the nature of device to pressurize the

petitioners, a purely civil liability having been given the colour of criminality.

2. The respondents have resisted the petition, the investigating agency having filed status reports from time to time.

3. A perusal of the FIR and the status reports which have been submitted, reveals that the complainant – State Bank of Bikaner & Jaipur (second respondent) alleges that M/s Elite Appliances Ltd. had availed various financial facilities to the tune of Rs. 3.269 crore w.e.f. 3.12.94 from it against equitable mortgage of assets of the company with personal guarantee of its directors, the first petitioner having also stood guarantee by mortgaging documents relating to property bearing no. B-1/1806, Vasant Kunj, New Delhi with the bank on 17.06.96. The borrower company made default in repayment which led to the bank filing recovery suit in Debts Recovery Tribunal against the borrower and guarantors for outstanding dues of Rs. 5.25 crores. The said proceedings eventually resulted in recovery certificate no. 135/2005 being issued in terms of order dated 30.08.2005 for Rs. 5,25,88,871/-, the liability of the first petitioner having been restricted to the realizable value of the mortgage property. It was discovered against the above backdrop that the first petitioner in connivance with the second petitioner had sold the said property to one Smt. Raj Kumari Sharma without prior approval or information, the said Raj Kumari Sharma, having further sold the property to one Meenakshi Kuhar by acts of commission and omission which smack of fraudulent and dishonest intention.

4. In the facts and circumstances, it cannot be said that the case set out in the FIR is wholly unfounded. *Prima facie*, an attempt was made to defraud and deprive the bank of possibility of recovery of the amount due to it by the first petitioner as the guarantor, there being no explanation worth the name as to why the property was sold concealing the fact that it was subject to a charge of the bank under the loan transaction.

5. Undoubtedly, the investigation has taken quite some time to conclude. But then, the grievance of the petitioners that the pendency of the investigative process has been a cause for harassment by itself is no ground for the criminal action to be brought to an end, particularly against the submission that the investigation has since been completed and a report under Section 173 Cr.P.C. seeking trial, *inter alia*, of the petitioners was submitted on 04.01.2016 followed by supplementary report based on report of Forensic Science Laboratory which was submitted on 26.08.2017 on which the competent criminal court has already taken cognizance.

6. Against the above backdrop where the matter is now pending before the Court of Magistrate for consideration as to whether sufficient evidence has come up for putting the petitioners on trial on specific charges, it will not be just and proper for this Court in its inherent jurisdiction under Section 482 Cr.P.C. to sit in judgment over the issues that essentially involve questions of fact.

7. The petitioners have the liberty to raise the contentions urged here before the trial court at the stage of consideration of charge.

8. With these observations, the petition is disposed of.

R.K.GAUBA, J.

JULY18, 2018

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