

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEAL NO.77 OF 2018

1. M/s. Accurate Pipes & Fittings Pvt. Ltd.
C/o. M/s. S. L. Singbal & Associates,
Singbal Building, near bus stand,
Ponda-Goa.
2. Shri Dalichand Hastimal Oswal
Son of Shri Hastimal Oswal,
85 years of age, married, Indian
National, r/o.5, Housing Society,
Sadhu Nagar, Jalgaon,
Maharashtra – 425 001.
3. Shri Shirish Dalichand Oswal,
Son of Shri Dalichand Oswal,
Major of age, married, Indian
National, resident of B-8, Sarvodya
Housing Society, LBS Marg,
Ghatkopar East,
Mumbai, Maharashtra.

... Appellants

Appellant Nos.1, 2 and 3 through
duly constituted Power of
Attorney Mr. Vinayak Choudhori,
son of Mr. Devram Choudhori, 72
years of age, Married, Indian
National, resident of 2, Nirmal
Park, Gajanand Maharaj Nagar,
Vhujawal, Jalgaon, Maharashtra.

V e r s u s

The EDC Limited, having its
Office in EDC House, 1st Floor,
Dr. Atmaram Borkar Road,
P.B. No.275, Panaji, Goa.
Through its authorized Officer
Shri P. P. Borkar, Deputy General Manager,
Panaji, major of age, Service,
Residing at Betim, Goa.

... Respondents

Shri R. J. Pinto, Advocate for the Appellants.

Shri A. D. Bhohe and Shri Annelise Fernandes, Advocates for the Respondents.

Coram :- C. V. BHADANG, J.

Date : 15th February 2019

JUDGMENT

1. By this appeal, the appellant is challenging the order dated 06.11.2017 (below exhibit 102) passed by the learned Principal District Judge, Panaji, in Civil Misc. Application No.43/2007.

2. The Civil Misc. Application No.43/2007 is filed by the respondents against the petitioner under Section 31(1)(aa) of the State Financial Corporation Act, 1951 (*SFC Act*, for short) for recovery of the loan granted to the petitioners on 04.08.1988. The respondent filed the said application after issuance of a recall notice dated 20.05.1993 under Section 29 of the SFC Act calling upon the petitioners to repay the loan amount. The said application is pending before the learned Principal District Judge at Panaji. In the said application, the petitioner no.3(respondent no.3 before the learned District Judge) filed a 'complaint' alleging that the respondent-EDC and its officials have committed offences under Sections 120-A

and B, 166, 167, 175, 177, 182, 191, 192, 193, 196, 197, 199, 200, 201, 204, 209, 219, 403, 409, 420, 493 read with Section 34 of the Indian Penal Code (*IPC* for short) and Sections 340 and 195 of the Criminal Procedure Code (*Cr.P.C.* for short).

3. The gravamen of the allegations was that the respondents auctioned the assets of the petitioner in the year 2004 for a meagre sum of ₹32,00,000/- when the actual valuation of the assets was ₹15 Crores. It was claimed that the respondents have fabricated the record.

4. The learned District Judge found that the petitioners have not produced any material on record to show the valuation of the assets which were auctioned in the year 2004. The learned District Judge has further noticed that the proceedings under Section 31(1)(aa) of the SFC Act were only against the guarantors and therefore the issues of proper valuation or conduct of the sale of the assets of the principle debtor cannot be determined in such proceedings. The learned District Judge has further found that prior to the auction, notice was published in the news paper on 08.12.1999, 27.02.1999 and 28.03.2002 and the petitioners were aware of the auction, however, they did not bring any

better bidder prior to the sale of the assets although opportunity was granted to them. In such circumstances, the learned District Judge has dismissed the complaint-exhibit 102. Hence, this appeal.

5. I have heard Shri R. J. Pinto, the learned Counsel appearing for the appellants and Shri A. D. Bhobe, the learned Counsel appearing for the respondents. Perused records.

6. Shri Pinto, the learned Counsel for the appellants has taken me through the records and the impugned order passed in order to submit that, prima facie, case of the commission of the offence as alleged is made out against the respondents and its officers. It is submitted that the learned District Judge was required to make an inquiry in order to find out whether a prima facie case of the commission of the offences as alleged is made out and in the absence of the said inquiry, the complaint exhibit-102 could not have been dismissed. It is submitted that the assets worth ₹15 Crores were auctioned for a meagre sum of ₹32,00,000/- in the year 2004. It is also submitted that the notice issued prior to the initiation of the proceedings under Section 31(1)(aa) of the SFC Act is at variance with the application.

7. Shri Bhobe, the learned Counsel for the respondents has supported the impugned Order. It is submitted that the so-called 'complaint' is by way of an abuse of the process of the Court. It is submitted that although the 'complaint' exhibit-102 was filed by the petitioner no.3 alone, the impugned order is challenged by the petitioners who are the respondents before the learned District Judge. It is submitted that the District Judge has rightly found that there is no valuation report placed on record and even assuming that there is any dispute as to the valuation and to the amount at which the assets were auctioned, it would be at the highest a civil dispute.

8. I have carefully considered the rival contentions and the submissions made and I do not find that any case for interference is made out. The appellants are trying to give a criminal colour to a dispute which at the highest would be purely a civil dispute. It is not possible to accept as to how the complaint as framed and filed can be maintained in proceedings under Section 31(1)(aa) of the SFC Act filed by the respondent. That apart, none of the ingredients of the offences as alleged can be said to be prima facie made out on the basis of the allegations that the property was auctioned at a meagre sum of ₹32,00,000/- when the actual valuation was ₹15 Crores. The appellants have not placed any valuation

report on record as has been noticed by the learned District Judge to show that in the year 2004 the valuation of the assets was ₹15 Crores. The alleged variance in the notice issued prior to the initiation of the proceedings under Section 31(1)(aa) of the SFC Act with the application so filed, also cannot make out any offence as alleged, inasmuch as the amount can always vary depending upon the accrual of interest.

9. Thus, the appeal is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

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