IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-25150 of 2019 (O&M)
Date of Decision: December 10th 2021

N.K. Jain

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Ms. Rashmi Attri, AAG Punjab.

Mr. K.S. Nalwa, Advocate
for complainant-respondent No.2.

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JAISHREE THAKUR, J.

1. The instant petition has been filed under Section 482 Cr.P.C. seeking to quash FIR No.06 dated 05.02.2019, registered under Sections 406, 420, 120-B of Indian Penal Code at Police Station Khamano, District Fatehgarh Sahib and all other subsequent proceedings arising therefrom.

2. In brief, the facts of the case, as alleged by complainant/respondent No.2 Inderpreet Kaur in the FIR are that she is a house wife and resident of village and post office Khamano, Fatehgarh Sahib. She was shocked to receive a notice No.LCB/2018 dated 26.06.2018 from the Punjab National Bank demanding an amount of Rs.653.98 crores from her and her mother-in-law. It was alleged that certain officials of the

Punjab National Bank, Corporate Branch, Sector 17, Chandigarh visited her residence at Khamano on 16.11.2015 and asked her to give the original sale deeds pertaining to House No.20, Sector 3-A, Chandigarh and House No.341, Sector 9-D, Chandigarh. It was further alleged that she was made to sign certain blank documents for the process of due diligence only and the original sale deeds were not returned thereafter. The complainant has alleged that the original title deeds had been given for obtaining legal opinion for an *ad hoc* limit of Rs.20 crore to one M/s Lakshmi Energy and Foods Limited. The officials of the Punjab National Bank again visited the residence of the complainant at Khamano and requested for signing some more blank documents to facilitate the process of due diligence and thereafter, she did not receive any intimation from the bank nor was she called upon to execute any mortgage deeds. It was further alleged that her properties were not found fit for creation of an equitable mortgage as per the Bank's Advocate, and the deeds are withheld in a pre-planned conspiracy by the bank officials to defraud her. On receiving a notice to pay Rs.653.98 crores, she approached the Punjab National Bank as well as M/s Lakshmi Energy and Foods Limited and they informed that the notice had been wrongly sent and would be withdrawn. Thereafter, the complainant proceeded to verify the record of the Estate Office, Chandigarh and she came to know that there is a letter dated 04.12.2015 issued by the Chief Manager, Punjab National Bank addressed to the Estate Office along with letters dated 06.11.2015 and 3.12.2015 purportedly issued by the complainant with a unilateral request by the bank for making lien on her properties and another letter dated 24.02.2016 whereby, the aforesaid letter dated 04.12.2015 was withdrawn. It was further submitted that with the aforesaid pre-planned conspiracy knowing fully well that no charge can be created on the property, accused persons and the bank have after lapse of considerable time, served the notice dated 26.06.2018 upon the complainant with the sole object of harassing and humiliating the complainant by threatening to extort the amount of 653 crores from the complainant. On the basis of these facts, the instant FIR came to be registered.

3. In the instant petition seeking quashing of the aforesaid FIR, the petitioner has alleged that the family members of the complainant, Janak Raj Singh (husband) and Balbir Singh Uppal (father-in-law) are running the business under the name and style of M/s Lakshmi Energy and Foods Limited and the said company had been availing various credit facilities from a consortium of four banks namely Punjab National Bank, ICICI Bank, Axis Bank and Syndicate Bank since the year 2010. It is submitted that accounts of the company were irregular as per terms of sanction and thereafter, on the request of the company, the accounts were restructured in March, 2015. It is stated that in November, 2015, the said company again approached the bank for availing more credit facilities for their business and the bank agreed to provide additional credit facilities to the company. The said company had offered to provide additional collateral securities to the Punjab National Bank against the release of enhanced WC limit (Working Capital) of Rs.60 crores and aforementioned properties i.e. House No.341, Sector 9-D, Chandigarh and House No.20, Sector 3, Chandigarh as additional collateral security. Since, the company was an old client, the competent authority released Rs.20 crores out of the WC limit of Rs.60

crores as an interim measure. It is alleged that thereafter, the complainant herself submitted two applications before the Estate Office, U.T., Chandigarh for the authorization to inspect the record pertaining to the properties, as mentioned above. The request for sanction of enhanced credit facility to the said company was approved by the Managing Committee on 01.12.2015 and the same was communicated to the company and it had accepted the terms and conditions as prescribed by the bank. It is stated that after sanction of the limit, the complainant and her mother-in-law offered the properties in question as security for the entire working capital limit of Rs.270.45 crores and thereafter, the part payment of the enhanced credit facility was availed by the company and the bank had informed the Estate Office, U.T., Chandigarh for making a note of the lien in the record pertaining to House No.20, Sector 3-A, Chandigarh. On 23.02.2016, the complainant, her mother-in-law and her husband had written to the bank that the property being offered as mortgage/security should be considered only for the enhanced amount of the working capital limit and not for the entire amount of Rs.270.45 crores. It is further stated that as the accounts of the company were not running regular, therefore, the same were declared NPA on 31.12.2016 by the Punjab National Bank. Consequently, notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') was served upon the company as well as the guarantors and the mortgagers of the property. Thereafter, notice under Section 13(4) of SARFAESI Act was served upon the company, guarantors and mortgagors on 26.06.2018. It is alleged that title deeds deposited by the complainant, her husband and her mother-in-law with the bank were verified and it was found that on House No.341, Sector 9-D, Chandigarh, the Economic Offence Wing, Mumbai, Maharashtra had already a charge and it was the complainant and the company, who had tried to commit fraud upon the bank. It is submitted that the instant FIR has been registered as a counter-blast to the proceedings initiated by the bank under the SARFAESI Act, as such, the same are liable to be quashed being in contravention to the provisions of SARFAESI Act.

4. Mr. Keshav Pratap Singh, learned counsel appearing on behalf of the petitioner would contend that the petitioner has only issued a notice under Section 13(4) of the SARFAESI Act and apart from this document, there was no other documents signed or issued by the petitioner. It is submitted that the petitioner handled the account of M/s Lakshmi Energy and Foods Limited only from June 2018 to November, 2018. It is submitted that an amount of Rs.30 crores had been transferred to M/s Lakshmi Energy and Foods Limited and the said amount had not been returned, as such, the account was declared as NPA on 31.12.2016. Learned counsel would further argue that even in the final report submitted by the police under Section 173 Cr.P.C., no role has been attributed to the petitioner and the documents attached with the challan are also not related to the petitioner. It is contended that even if it is presumed that the petitioner was posted at the same Branch during the said period, that itself would not constitute an offence against the petitioner, as the concept of vicarious liability is alien to criminal law, and the petitioner being Chief Manager of the bank at that time, cannot be held to be responsible. It is further contended that petitioner

is protected under Section 32 of the SARFAESI Act, which deals with protection of action taken in good faith. In support of his arguments, learned counsel for the petitioner relies upon judgment rendered by the Apex Court in the case of ***Priyanka Srivastava vs. State of U.P., and others***, 2015(2) RCR (Criminal) 1034, judgment rendered by the Delhi High Court in the case of ***M.A. Rashid vs. Gopal Chandra and another***, 2012 (12) RCR (Crl.) 950, judgment rendered by the Madras High Court in the case of ***Arul Selvan vs. A.H. Abdul Hameed***, 2019(1) DCR, 346, judgment rendered by the Calcutta High Court in the case of ***Parameswar Ghoshal vs. State of West Bengal***, 2018(1) Cal Cri LR 333 and judgment rendered by the Telangana and Andhra Pradesh High Court in the case of ***Chief Manager/Authorized Officer, Canara Bank, Hyderabad and others vs. State of Andhra Pradesh and another,*** 2015(1) Andh LD 935.

5. On the other hand, Mr. K.S. Nalwa, learned counsel appearing on behalf of complainant/respondent No.2 would contend that after the complaint dated 21.09.2018 was filed by the complainant, a detailed pre-registration enquiry was conducted and opinion of ADA Legal was sought and thereafter, the instant FIR came to be registered on 05.02.2019. It is pointed out that the petitioner has not sought quashing of offences added during the course of investigation i.e. under Sections 465, 467, 468, 471 of Indian Penal Code. It is submitted that M/s Lakshmi Energy and Foods Limited was having credit limit of Rs.210 crores with the Punjab National Bank. It is argued that original title deeds of House No.341, Sector 9-D, Chandigarh and House No.20, Sector 3-A, Chandigarh were submitted to the bank for *ad hoc* limit of Rs.20 crores and the same were handed over to

the officials of the bank for due diligence and the same were to be utilized for increased *ad hoc* loan facilities. It is contended that initially an amount of Rs.20 crores was sanctioned for period of 60-90 days only, as the sanctioning of the extended main limit was to take some time and thereafter, these properties were to be automatically released. The total *ad hoc* amount released to the company was Rs.30 crores and in consonance with the arrangement, letters dated 31.11.2015 were signed by the complainant addressed to the Estate Office, U.T., Chandigarh granting permission to the Advocate of the bank for inspection of the record of these two properties. It is pointed out that the said letters were issued only for inspection of record and no instructions were issued in the said letter by the complainant for creating an equitable mortgage or lien over the properties. Learned counsel for the complainant would submit that the bank officials in a clandestine manner issued letter dated 04.12.2015 to the Estate Office, U.T., Chandigarh for making lien on House No.20, Sector 3-A, Chandigarh and further a similar letter was issued by the bank for the other property bearing House No.341, Sector 9-D, Chandigarh. It is contended that letter dated 04.12.2015 talks of credit limit of Rs.270.45 crores, however, the same letter was substituted/replaced by the bank vide letter dated 24.02.2016 for an amount not exceeding Rs.59.68 crores. It is submitted that on the basis of permission to inspect the Estate Office record, the Advocate of the bank submitted reports dated 14.12.2015 qua both the properties and it was opined that House No.341, Sector 9-D, Chandigarh is not fit for equitable mortgage and to the question *whether equitable mortgage can be created at the place where the branch disbursing the loan is situated,* the opinion given by the Advocate was 'No'. It is argued that the complainant had issued letter dated 23.02.2016 to the bank clarifying that the enhanced limit is for maximum upto Rs.59.68 crores and the current charge over the properties is Rs.30 crores only, however, the bank officials fabricated blank signed letters dated 03.12.2015 to show limit of Rs.270.45 crores and these letters contain three separate handwritings. It is argued that fraudulent action of the accused persons as well as the petitioner, aimed to usurp the properties of the complainant became further evident from the notices issued under Sections 13(2) and 13(4) of the SARFAESI Act, whereby, an attempt was made to shift the entire financial liability of the principal borrower over the properties of the complainant and her mother-in-law by asking for Rs.653.97 crores. It is further submitted that during the course of investigation, the petitioner has also submitted two fabricated opinions to the Investigating Officer and the original opinion dated 14.12.2015 was replaced by opinion of the same date, while pointing out that the inspection was conducted by the Advocate of the bank on 26.11.2015, however, the report is dated 17.11.2015. It is also submitted that on issuance of notice under Section 13(2) of SARFAESI Act to the complainant, the same was brought to the notice of the bank and the same was promised to be withdrawn. It is contended that original title deeds of the properties of the complainant were submitted to the bank, on the assurance that the title deeds would be released after the *ad hoc* limit is merged with the main limit of the principal borrower, however, the bank created a false charge over them and created mortgage and lien over these properties, while pointing out that no lien or mortgage has been created by the Estate Office over these properties. It is further submitted that fraudulent acts of the petitioner did not end here, as even for the second property i.e. House No.20, Sector 3-A, Chandigarh, an opinion dated 17.11.2015 was presented and in the said opinion, it is stated that *Times Bank Ltd., has issued No Due Certificate that the loan has been repaid by Smt. Narinder Kaur* whereas, the said report is a fabricated document as the file was inspected on 26.11.2015 and at the same time, the report is dated 17.11.2015. So far as defence claimed by the petitioner under Section 32 of SARFAESI Act is concerned, it is argued that the said section is based on *Good Faith* whereas, the petitioner herein and the other officials of the bank acted fraudulently and dishonestly, as such, said section is of no help to the petitioner. In support of his arguments, learned counsel for the complainant relied upon judgments rendered by the Apex Court in the case of ***Smt. S.R. Venkataraman vs. Union of India***, (1979) 2 SCC 491, ***Brijendra Singh vs. State of U.P., and others***, (1981) 1 SCC 597, ***Asstt. Commissioner, Anti-Evasion Commercial Taxes, Bharatpur vs. Amtek India Ltd.,*** (2007) 11 SCC 407 and ***Central Bureau of Investigation vs. K.M. Sharan,*** (2008) 4 SCC 471.

6. Per contra, Ms. Rashmi Attri, AAG Punjab, appearing on behalf of the respondent-State, opposes the instant petition, while *inter alia* contending that from the final report submitted by the Investigating Agency, it is apparently clear that the report got prepared by the petitioner from Sh. Manmohan, Advocate is a false report and the same has been got prepared by the petitioner in order to save his skin as well as that of other officials of the bank.

7. I have heard learned counsel for the parties and have gone through the pleadings of the case and the case laws cited.

8. In the present case, the complainant has alleged in the FIR that the bank through its Chief Manager and other officials manipulated and fabricated the record with an intention to defraud the complainant and the entire episode to this effect so mentioned by the complainant in the FIR, has already been briefly stated in the earlier para of this judgment. On the other hand, the petitioner-accused has alleged contrary facts to the FIR in this petition requesting to quash the FIR, which have also been noted above.

9. Section 482 of Cr.P.C. deals with inherent powers of the High Court and there are catena of judgments, which guide the Court in exercising the said inherent power. Nevertheless, there are certain guiding principles to be followed, as laid down in the case of ***Prashant Bharti vs. State of NCT of Delhi, (2013) 9 SCC 293***, while determining whether an FIR is to be quashed. The twin object is to prevent abuse of the process of Court and/or to secure the ends of justice. The judgemen has laid down following questions to be analyzed by the High Court, in order to determine the veracity of a prayer for quashing the criminal proceedings by the accused under Section 482 of Cr.P.C.,;

> *"(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?*
>
> *(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as*

would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

10. In the present case, final report filed by the police under Section 173 of Cr.P.C. is available on record as Annexure P/13. A thorough investigation has been done and the investigating officer has not been able to find any document from which it can be established that complainant-Inderpreet Kaur and her mother-in-law Narinder Kaur had mortgaged their house with the bank, because as per record, apart from Inderpreet Kaur, there are other owners of House No.341, Sector 9, Chandigarh. Therefore, to mortgage the aforesaid house, the signatures of Inderpreet Kaur as well as all other shareholders were also required. Based on the signatures of only

Mrs. Inderpreet Kaur, no equitable mortgage could have been created. Even the report submitted by Mr. Manmohan, Advocate of the Bank, the said property had already been attached by EOW/Government of Maharashtra, so loan could not be sanctioned to them as per the bank rules. It is an issue to be looked into as to how part loan was disbursed pending approval when the property could not have been used as collateral security. It is also surprising as to how a report could have been prepared by Sh. Manmohan Singh that the property could be accepted for equitable mortgage, even before he had inspected the records in the Estate Office.

11. The arguments raised by learned counsel for the petitioner that the petitioner handled the account of M/s Lakshmi Energy and Foods Limited only from June 2018 to November 2018 and that no role has been attributed to him in the final report, cannot *per se* be accepted. There is a letter dated 22.11.2021 available on the court file, which has been issued by the Chief Manager of the Punjab National Bank, Large Corporate Branch, Sector 17-B, Chandigarh to the SHO, Khamano, Punjab, in which it is informed that Mr. N.K. Jain was posted as Chief Manager for a period starting from 15.06.2015 to 22.11.2018 in LCB, Chandigarh. Further, a specific role has been attributed to the petitioner herein in the final report submitted by the investigating agency, as discussed above.

12 So far as the argument raised that the petitioner is protected under Section 32 of the SARFAESI Act, which deals with protection of action taken in good faith is concerned, the said argument falls flat. Section 32 of SARFAESI Act provides that no suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officer or

Manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act. No doubt, the said section clearly postulates and provides protection of the action taken in good faith, however, it has to be established by the petitioner that he did indeed act in good faith. There is sufficient material collected by the investigating agency against the petitioner herein, which cannot be negated in these proceedings seeking quashing of the FIR under Section 482 of Cr.P.C.

13 In view of the foregoing discussion, the criteria as laid by the Apex Court in the case of ***Prashant Bharti vs. State of NCT of Delhi (supra)*** would not permit the quashing of the FIR, as there is no substantial material available before this court, which will allow the court to hold that continuation of the proceedings would amount to an abuse of the process of law. Therefore, the instant petition is hereby dismissed.

14 Needless to say, anything observed or said by this court herein above is only for the purpose of deciding the instant petition seeking quashing of the FIR and the same shall not be construed as an opinion on the merits of the case.

(JAISHREE THAKUR)
JUDGE

December 10th , 2021
vijay saini

Whether speaking/reasoned Yes/No
Whether reportable Yes/No