

13.02.2023.
Item No. 7.
Court No.13
ap

W.P.A. No. 750 of 2023
Epistel Impex Private Limited & Ors.
Versus
The Union of India & Ors.

Mr. Siddhartha Banerjee,
Mr. Apurba Ghosh,
Ms. Esha Banerjee,
Mr. Rakib Hossain Khan.

...For the petitioners.

Mrs. Soni Ojha.

...For the respondent nos.4 & 5.

Affidavits-of-service filed in Court today be taken
on record.

The petitioners are aggrieved by the investigation
being conducted into the Electronics Complex Police
Station, Bidhannagar Police Commissionerate.

The Bank has lodged a complaint that was
registered as FIR No. 50 of 202 dated 10th February,
2022 under Sections
406/408/420/465/467/468/471/120B of the Indian
Penal Code.

The sum and substance of the Bank's complaint
is that the petitioners, in connivance and collusion
with an employee of the Bank, has defrauded the Bank
a well-over Rs.50 crores.

Counsel for the petitioners, however, submits
that his client has taken a loan and is unable to repay
for various reasons. It is also submitted that a notice

under Section 13(2) of the SARFAESI Act, 2002 was issued for which the Bank is claiming only Rs.14 Crores and odd. It is also submitted that police were obliged to issue notice under Section 41A of the Code of Criminal Procedure in respect of the offence relating to commercial matters.

The Officer-in-charge, Electronics Complex Police Station, Bidhannagar Police Commissionerate has filed a report in the form of instructions addressed to the State Advocate. The same is taken on record.

It is submitted that since punishment under Section 467 of the Indian Penal Code is ten years, the police were not obliged to issue notice under Section 41A of the Code of Criminal Procedure.

Mr. Banerjee, Counsel for the petitioners however, submits that his clients are being arm-twisted by the police into repaying the dues of the Bank.

The Officer-in-charge, Electronics Complex Police Station, Bidhannagar Police Commissionerate vehemently opposes and denied such submissions.

Having heard the learned Counsel appearing for the respective parties, this Court is of the view that the prayer for quashing of the FIR is not entertained since the petitioners have effective alternative remedy under the Code of Criminal Procedure. The investigation shall be conducted by the police strictly in accordance

with law and as prescribed under the Code of Criminal Procedure.

Let a final report be submitted to the Jurisdictional Magistrate within a period of two months from the date mandatorily and positively.

The petitioners shall co-operate with the investigation as and when called for.

Any other reliefs and/or remedies that the petitioners seek against the Bank for repaying their dues, may be agitated before an appropriate forum.

With the aforesaid directions, the instant writ petition shall stand disposed of.

There will be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)