IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

WRIT PETITION NO: 24471 OF 2014

Between:

1. C.V.R. Rajendran, s/o. Sri.K.C.Veerappan, aged about 59 years, occ Chairman and Managing Director, Andhra Bank, Head Office, 5-9-11, Pattabhi Bhavan, Saifabad, Hyderabad
2. Ch. Ram Prasad, sio Sri.Veera Raghava Rao aged about 60 years occ Retired General Manager (Recovery) Andhra Bank, Head Office, 5-9-11, Pattabhi Bhavan, Saifabad, Hyderabad
3. K.V. Subbaiah, sio Sri. Subbaiah aged about 58 years occ Zonal Manager Andhra Bank, 168 Lingamchetty Street, Chennai
4. The Authorised Officer Zonal Office, Andhra Bank Besant Nagar Branch Chennai
5. N. Sravan Kumar, sio Sri. Jesudas aged about 52 years occ Chief Manager Andhra Bank, Santosh Nagar Branch, Hyderabad

...PETITIONERS

AND

1. The State of Telangana Rep. by its Secretary, Home Department Secretariat, Hyderabad
2. The Station House Officer Police Station Saifabad, Hyderabad
3. Dr. Raju I. B s/o Raju I. B, aged about 51 years H.No.35, Ravi Colony, Street No. 4, Mahendra Hills Secunderabad
4. S. Jaganmohan Rao, s/o Ramaiah aged about 54 years occ Govt. Service r/o Flat No.301, 10-3-74/15 Dattus Mansion, East Maredpally Teachers Colony, Secunderabad - 500026
5. E. Bhaskar Rao, s/o Late Sri. E. Venkteswarulu aged about 70 years occ Retired Service r/o Plot No.244, Road No.4 TMC, Mahendra Hills East Maredpally, Secunderabad - 500026

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, order or direction more particularly a Writ in the nature of Mandamus declaring the prosecution in FIR.No.662/2014 before the 2nd Respondent as illegal, arbitrary abuse of due process of law and violative of Article 14 and 19 (1) (g) of Constitution of India and Sec. 32 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

I.A. NO: 1 OF 2014(WPMP. NO: 30650 OF 2014)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in FIR.No.662/2014 before the 2nd respondent.

I.A. NO: 1 OF 2015(WVMP. NO: 2758 OF 2015)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim orders dated 26-08-2014 passed in the above W.P. No. 24471 of 2014.

Counsel for the Petitioner : SRI NARENDER REDDY, Sr.COUNSEL for SRI M SRIKANTH REDDY

Counsel for the Respondents No.1&2: SRI. SAI RAM FOR ASST GP FOR HOME

Counsel for the Respondents No.3to5 : SRI V.V.RAMANA

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL
WRIT PETITION No.24471 OF 2014

ORDER :

This Writ Petition is filed by the petitioners under Article 226 of the Constitution of India seeking issuance of Writ of Mandamus declaring the prosecution in FIR No.662 of 2014 before the 2nd respondent as illegal, arbitrary, abuse of due process of law and violative of Articles 14 and 19(1)(g) of the Constitution of India and Section 32 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act").

2. Heard Sri Narender Reddy, learned Senior Counsel appearing for Sri M.Srikanth Reddy, learned counsel for the petitioners, Sri Sairam, learned Assistant Government Pleader representing learned Government Pleader for Home and Sri VV Ramana, learned counsel for the respondent Nos.3 to 5. Perused the record.

3. Andhra Bank, Besant Nagar Branch sanctioned term loan facility of Rs.10,00,000/- Lakhs on 22.11.2010 to a proprietary concern viz.M/s.Sai Source Consultancy Service, represented by its Proprietor Mr.KH Madhusudhan Rao on the equitable mortgage of property bearing Plot No.218, admeasuring 372.22 Sq.Yards in Sy.Nos.121/3 and 121/4, situated at Annavarappadu, Ongole Municipal Area, Ongole Town, Prakasham District by depositing title deeds dated 30.07.2003 bearing

document No.2998 of 2003 of the said property by Smt.Alluri Leelavati, W/o.Late Subba Rao and to that effect a Memorandum of Deposit of Title Deeds was executed and registered on 22.11.2010 with the office of Sub-Registrar, Ongole, Prakasham District vide document bearing No.16043 of 2010. The said mortgage was accepted after obtaining legal opinion and valuation report from the bank's panel valuer and legal adviser. Due to default committed by the borrower, the said account has become non-performing asset as on 04.07.2012 with an outstanding due of Rs.12,01,509/- and the bank has initiated recovery proceedings under SARFAESI Act, by following due procedure. The 3rd respondent participated in the auction dated 30.08.2013 and became successful bidder quoting an amount of Rs.9,05,000/- and obtained sale certificate dated 16.09.2013. Later, the 3rd respondent deliberately evaded the sale transaction and sent legal notices stating that the property was not traceable and demanded for return of the sale consideration. The authorized officer of the bank gave reply stating that the property is very much identifiable and expressed the banks willingness to register the said property and further stated that sale certificate cannot be cancelled and sale consideration cannot be refunded.

4. It is contended on behalf of the petitioners that the 3rd respondent along with respondent Nos.4 and 5 made complaint dated 28.05.2014 before the learned I Additional Chief Metropolitan

Magistrate, City Criminal Courts at Nampally, Hyderabad against the petitioners for the offence punishable under Sections 120B, 409, 420, 467 and 505 IPC with a view to harass the petitioners and also to tarnish the image of the bank. Further, the learned Judge of the trial Court, without examining the matter in detail, referred the same to the 2nd respondent for investigation and report as per order dated 05.08.2014. Accordingly, the 2nd respondent registered FIR No.662 of 2014 against the petitioners. When the matter was got published in the newspapers by the 3rd respondent with a view to defame the petitioners as well as the bank officials, then only the petitioners came to know about registration of FIR. It is the further averment of the petition that the authorized officer of Andhra Bank in exercise of powers conferred under the provisions of the SARFAESI Act, 2002, proceeded to recover the loan amount bonafidely by issuing notice under Section 13 of the said Act. All the procedural aspects were strictly followed before putting the property for auction and that the property in question is very much identifiable. Section 32 of the said Act prohibits prosecution of the petitioners or the bank officials for the action taken by them for recovery of debt.

5. It is further averred in the petition that registration of FIR No.662 of 2014 is nothing but arbitrary, illegal and in violation of Articles 14, 19 1(g) of the Constitution of India and also in violation of

Section 32 of the said Act. Further, the complaint does not disclose any of the offenses much less the offences alleged to have been committed by the petitioners. Further, as per orders in WP No.7637 of 2010 this Court held that launching of criminal proceedings in the matter of recovery of loan amount is nothing but harassment of the officers concerned. In support of their contentions, learned counsel for the petitioners relied upon the decisions rendered in **Priyanka Srivastava and another Vs. State of Uttar Pradesh and others**[1] and order dated 23.06.2016 passed in **Writ Petition No.40413 of 2015** of this Court.

6. Learned senior counsel on behalf of the petitioners would contend that the matter is civil in nature. He further contended that the petitioners have expressed their unconditional willingness to register the property as per the auction proceedings but the 3rd respondent is not coming forward to complete the sale transaction for which, the petitioners cannot be made liable. Learned senior counsel further contended that in view of Section 17 of the Act the remedy available to the unofficial respondents, if they have any grievance, is to file an application under section 17 before DRT against the measures taken by the bank within 45 days from the date of the section 13 (2) notice issued by the bank. But the 3rd respondent without resorting to such exercise, has maliciously, adopted the arm twist methods like initiation of

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[1] (2015) 6 Supreme Court Cases 287

criminal proceedings only to defame the petitioners and the image of the bank, which is nothing but illegal and abuse of process of law. He further contended that since the property is situated in the State of Andhra Pradesh and due to bifurcation of the composite State of Andhra Pradesh, the 3rd respondent, who is unwilling to purchase such property, only to evade performance of his part of obligation in pursuance of the public auction and to exert pressure on the petitioners to prevent them from performing their duties, has resorted to initiate criminal proceedings. He further contended that the petitioners have performed their duties strictly adhering to the rules and they cannot be forced to face criminal proceedings for the delay tactics played by the 3rd respondent. He further contended that in view of Section 32 of SARFAESI Act, learned Judge of the trial Court ought not to have taken cognizance of the offences against the petitioners. Thus stating, he requested to quash the impugned criminal proceedings against the petitioners.

7. On the other hand, learned counsel for the respondent Nos.3 to 5 vehemently opposed the present writ petition contending that the petitioners and the bank officials conspired together and tried to cheat the respondent No.3 due to which, the future of the 3rd respondent has stuck in limbo since he has been roaming around the Courts for want of justice. Further, it is also an admitted fact that the 3rd

respondent, being the successful bidder in the auction, had deposited huge sums in the bank with a fond hope that the property would be registered in his favour but the petitioners, without showing/identifying the property with correct boundaries in accordance with the guidelines prescribed under Survey and Boundaries Act, with a view to evade registration of the property in his favour, subjected the 3rd respondent to huge financial loss, trauma and mental agony. Due to the inaction on the part of the petitioners in showing the property with correct boundaries to the 3rd respondent, the registration of property could not be effected. Learned counsel for the unofficial respondents further submitted that since the petitioners did not register the property in favour of the 3rd respondent or return the money deposited by him in furtherance of auction proceedings, he left with no other option except to knock the doors of the criminal Court seeking fair investigation into the matter. He further contended that unless and until criminal law is being allowed to be pressed into service the truth will not come out. It is further contended on behalf of the 3rd respondent that under these circumstances, to meet the ends of justice, the learned Judge of the trial Court has rightly ordered the 2nd respondent to register crime and hence, there is no illegality in the said action and requested to dismiss the present writ petition. At this stage, the learned counsel for the 3rd respondent submitted that if the bank authorities pay back the amount deposited by him in pursuance of the auction proceedings, together with the applicable interest, he has no objection for quashing the criminal proceedings impugned in this writ petition against the petitioners.

8. Learned Assistant Government Pleader representing learned Government Pleader for Home would submit that unless and until the fair trial is being conducted the truth will not come out and interference of this Court at this premature stage is not warranted.

9. In **Priyanka Srivastava (1st supra)** the Hon'ble Supreme Court held at paragraph No.33 as under:

> "32. ***Protection of action taken in good faith***.-
>
> No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers 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."

10. Having regard to the submissions made by learned counsel from all the corners and as seen from the record, this matter is pending for quite a long time making the parties to roam around the Courts. Further, it is an undisputed fact that inspite of depositing money in the bank by the 3rd respondent in pursuance of the auction, the property was not registered in his favour due to the difficulty in its identification. In order to get his grievance redressed, the 3rd respondent has to approach a competent civil Court and file a suit for specific performance of the contract/sale certificate, but he cannot initiate criminal

prosecution against the petitioners. Since it is also the case of the petitioners that the authorized officer of the bank addressed a letter to the 3rd respondent that they are ready to identify the property and register the same in the name of 3rd respondent, the 3rd respondent ought to have taken further steps thereon. But without resorting to such course of action and pursue his remedies available under law, the 3rd respondent set the criminal law into motion. In such circumstances, the present writ petition deserves to be allowed by quashing the impugned proceedings.

11. Though the action of 3rd respondent in initiating criminal proceedings against the petitioners is found to be not correct, it is a fact to be taken into consideration that he became scapegoat by depositing huge sums into the bank in pursuance of the auction proceedings and suffered mental agony and trauma for all these years due to non-registration of property in his favour. It is also an admitted fact that the bank officials expressed their willingness to identify the property and got it register in his favour after conducting survey.

12. In **UNITECK Limited Vs. Telangana State Industrial Infrastructure Corporation** (Civil Appeal No.317 of 2021 decided on 17.02.2021), wherein the Hon'ble Supreme Court held that exercise of writ jurisdiction under Article 226 of the Constitution of India in a

contractual matter is not ruled out particularly in the present case where there is absolutely no dispute in regard to the basic facts.

13. Further, in view of the principle enunciated by the Hon'ble Supreme Court in **Priyanka Srivastava** case (1st supra) since Parliament in its wisdom has made a provision under Section 32 of the SARFAESI Act to protect the secured creditors or any of its officers, the present proceedings against the petitioners herein, who are accused Nos.1 to 5 in the impugned FIR, are liable to be quashed.

14. In that view of the matter and in view of the categorical submission made by the learned counsel for the 3rd respondent that if the bank authorities refund the amount deposited by him he has no objection for quashing the criminal proceedings, and also in view of the principle enunciated by the Hon'ble Supreme Court in the cases cited supra, to meet the ends of justice and to put a quietus to the litigation, 3rd respondent is directed to approach the bank authorities for refund of the money deposited by him and the bank authorities, upon determination of such application, shall refund the amount deposited by the 3rd respondent in pursuance of the auction proceedings together with interest at 6% per annum from the date of deposit till realization within three months from the date of receipt of such application.

15. With the above observations, this writ petition is allowed without costs quashing the proceedings against the petitioners herein, who are accused Nos.1 to 5 in FIR No.662 of 2014 on the file of the Station House Officer, Police Station, Saifabad, Hyderabad. Miscellaneous applications, if any, pending shall stand closed.

SD/-B. SARASWATHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary, Home Department Secretariat, Hyderabad, State of Telangana.
2. The Station House Officer Police Station Saifabad, Hyderabad
3. One CC to SRI M.SRIKANTH REDDY, Advocate. [OPUC]
4. One CC to SRI V.V.RAMANA, Advocate. [OPUC]
5. Two CCs to GP FOR HOME, High Court for the State of Telangana at Hyderabad. [OUT]
6. Two CD Copies.

BSK
GJP
PMG.

HIGH COURT

DATED:29/12/2023

ORDER

WP.No.24471 of 2014

ALLOWING THE WRIT PETITION
WITHOUT COSTS

(9) Pmc
12/1/24