IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14016-2022 (O&M)
Reserved on: 11.04.2023
Pronounced on: 17.05.2023

Johny Mathew

... Petitioner(s)

Versus

Nishant Kumar Yadav & others

…Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Petitioner-in-person.

Ms. Shubhra Singh, Addl.A.G., Haryana.

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ANOOP CHITKARA, J.

Seeking decision on his application filed under section 340 CrPC read with Section 195 CrPC before District Magistrate, Gurugram, the complainant has come up before this court under section 482 CrPC.

Petitioner had filed an application under Section 340 read with Section 195 CRPC before District Magistrate, Gurugram. The said application bears 2nd January, 2016 as its date. In the said application, the petitioner stated action taken by the authorized officer of PNB Housing Finance Private Limited, amounting to perjury and being in total disregard to settled procedures which were required to be followed under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act 2002). His contention was that the finance company concealed several important facts and made a false statement before the concerned Divisional Magistrate to obtain a favourable order under section 14 of the SARFAESI Act 2002. The applicant further prayed that given the false statement, the previous order directing taking of decision, was required to be recalled. Petitioner also raised some preliminary objections that the PNB Housing Finance Private Limited was not an entity registered under the Reserve Bank of India under Section 3 of the SARFAESI Act 2002. As such, it should not have conducted the business for securitization or asset reconstruction given the bar under section 4 of the said Act and guidelines/directions issued in 2003.

It transpires that the petitioner had taken loan from PNB Housing Finance Private Limited and had mortgaged one property, as collateral security. However, due to default in payment, the bank proceeded under the SARFAESI Act 2002 and eventually, took possession over the property. The petitioner is aggrieved because of the procedure adopted by the officials in helping the PNB Housing Finance Private Limited to obtain possession and he claims that all these private respondents acted beyond their powers and in contravention of SARFAESI Act 2002 and instructions issued by the Reserve Bank of India from time to time.

Vide order dated 15.6.2016, District Magistrate, Gurugram had already decided the said application and observed that some documents which were required to adjudicate the matter, were not placed on record by the complainant-petitioner. However, acting in equity and fairplay, the concerned District Magistrate was magnanimous enough to suspend the order dated 9.6.2015 for 50 days to enable the petitioner to approach the Debt Recovery Tribunal or any judicial forum. The concerned District Magistrate specified that the order dated 9.6.2015 shall come into operation on 5.8.2016. Thus, the order issued by the concerned District Magistrate, permitting taking over the possession with the help of police had been kept in abeyance till 5.8.2016 to enable the petitioner to take appropriate legal remedies.

Now, after a gap of six years, the petitioner came up before this Court, praying that directions be issued to initiate action under Section 340 CrPC against the official respondents for the lapses; directions be issued to investigate the corruption which was involved while issuing order dated 9/17th June 2015; To investigate the complaint filed on 27.6.2016 regarding lost items.

Regarding action under section 340 CrPC, the appropriate Court i.e. District Magistrate had already decided the application. Thus, this court would not like to comment any further in this regard. Regarding corruption involved while passing order dated 9.6.2015, there are statutory remedies available to the petitioner. Needless to say, he could have filed an appropriate complaint under the Prevention of Corruption Act and it would be impermissible to circumvent the statutory provisions and straightaway come to this court under section 482 CrPC. Nothing stopped the petitioner from filing any application in this regard before appropriate authority in case any cognizable offence was made out. As far as the last prayer of the petitioner i.e. to investigate the lost items which were in the property at the time it were taken over by the bank, it would be appropriate to refer to order dated 11th of March 2016 passed by the Principal Division Bench of this court, which reads as under:-

> "The flat in question is in possession of the respondent-Bank along with the furniture and fixtures. An inventory in this respect has been furnished to the petitioner. The respondent-Bank makes a statement that it desires that the petitioner removes the articles from the flat as per the inventory as it has no claim in respect thereof. The respondent-Bank does not wish to take responsibility in respect of such items. The petitioner is at liberty to remove

> these items after giving the bank 48 hours' notice in writing. The respondent-Bank has made this offer to avoid any claim in future by the petitioner for damages or otherwise in respect of such articles."

Given above, none of the prayers survive for adjudication by this court. The petition is dismissed. However, liberty is reserved to the petitioner to approach the appropriate court for legal remedies available in court in accordance with law. It is clarified that disposal of the present petition shall not come in the way of the petitioner in case he chooses to take any such remedy.

(ANOOP CHITKARA)
JUDGE

May 17, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No