

**237 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-26534-2014

Decided on:-04.05.2023

Surinder Pal Singh Rana and others

....Petitioners..

vs.

Avtar Singh

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. S.S. Narula, Advocate with
Mr. Baljinder Singh, Advocate
for the petitioners.

None for the respondent.

HARKESH MANUJA J. (Oral)

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for seeking quashing of complaint No.30 dated 19.12.2013 as well as summoning order dated 20.05.2014 passed by the court of Chief Judicial Magistrate, SAS Nagar, whereby, petitioners have been summoned to face trial for offences under Sections 420, 467, 468, 471, 182, 191, 192, 193, 196, 199 read with Section 120-B IPC.

2. Facts leading to the present case are that the respondent-complainant took some financial assistance/loan from the Oriental Bank of Commerce in the year 2005. The same was taken over by the Punjab and Sind Bank in December 2007. The respondent having defaulted, proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) (hereinafter referred to as "SARFAESI Act") were

initiated against him, followed by filing of an application dated 14.05.2013 before

the District Magistrate, SAS Nagar Mohali invoking Section 14 of the SARFAESI Act, supported by an affidavit of petitioner No.1. As a matter of fact, admittedly, there was some deficiency on stamp duty on the application/affidavit dated 14.05.2013, which was made good by petitioner No.1 on 03.06.2013, followed by an order passed thereupon on 14.06.2013 by the District Magistrate SAS Nagar Mohali, exercising its power under Section 14 of the SARFAESI Act with the following observation:-

"You are requested to take over the assets as mentioned in the application and hand over the same to the security creditor. Authorized officer Punjab and Sind Bank, SCF Branch, (C-0689), Sector 17-B, Chandigarh.

If there is any stay or status quo from any competent court in the above matter then this order will not be implemented."

3. Alleging forgery of the affidavit dated 14.05.2013 filed by petitioner No.1 in support of the application moved under Section 14 of the SARFAESI Act, to the extent of affixation of stamp duty thereupon on 03.06.2013, a complaint No.30 dated 19.12.2013, under Sections 420, 467, 468, 471, 182, 191, 192, 193, 196, 199 read with Section 120-B IPC came to be filed at the instance of respondent against petitioners including certain other officials of the Punjab and Sind Bank. Petitioner No.1 was implicated being the deponent of the affidavit dated 14.05.2013 and petitioners No.2 and 3 were arrayed with the allegations of conspiracy. Chief Judicial Magistrate, SAS Nagar Mohali vide order dated 20.05.2014, ruled for summoning of the petitioners under Sections 420, 467, 468, 471 and 120-B IPC.

4. Impugning the aforesaid complaint and the summoning order, learned counsel for the petitioners submits that the allegations of forgery as alleged in the complaint were not made out as the stamp duty was affixed on 03.06.2013 so as to

make good the deficiency thereupon as desired by the officials of the District

CRM-M-26534-2014

Magistrate before whom the application under Section 14 of the SARFAESI Act was filed by petitioner No.1. He also refers to an order dated 22.12.2014 passed inter-se parties in CWP-13068-2014, titled as **"Punjab and Sind Bank vs. District Magistrate, SAS Nagar Mohali and others"**, to contend that the same issue regarding the affidavit dated 14.05.2013 was deliberated upon followed by recording of finding that no forgery was made therein as the act of making up the deficiency of stamp duty thereupon was done in terms of Section 35 of the Stamp Duty Act. The operative part from the aforesaid order is reproduced hereunder:-

"Coming to the third question, Mr. Ratta has strongly relied upon an order passed by the Chief Judicial Magistrate summoning the officials of the Bank for the offences under Sections 420, 467, 468, 471, 120-B IPC. Though quashing petition against the said order is stated to be pending, but without prejudice to such proceedings, we have examined the argument raised by Mr. Ratta for the purposes of tenability of the claim of the Bank against the borrower. A perusal of the record of the Additional District Magistrate shows that an application, supported by a document titled as affidavit, for taking possession was filed by the Bank under Section 14 of the SARFAESI Act on 14.05.2013. However, it appears that such document was not on a stamp paper. Therefore, to make up the deficiency of stamp duty on the said document, the adhesive stamps were supplied by the stamp vendor vide entry No.3067 on 03.06.2013. Mr. Ratta has vehemently argued that affixing of stamp on such a document is an act of forgery. The said argument is wholly misconceived. It is the deficiency in the stamp duty, which has been made good in terms of Section 35 of the Stamp Act. Therefore, mere fact that the document was not sufficient stamped, when originally filed, but stamped subsequently will not make an act of forgery. It has not been so found by the Additional District Magistrate as well.

However, we find that the said document is not attested by a notary public or an Oath Commissioner. It is verified by the executants of the document i.e. Surinderpal Singh Rana, Assistant General Manager. If the document is not attested, the same could have been rejected by the District Magistrate. But again that is not the ground taken by the Additional District Magistrate to reject the affidavit. Therefore, it is not an act of forgery, but a case of curable irregularity. Thus, we do not find that there is any fraud or forgery committed by the Bank, but it is an irregularity, which can be cured."

CWP No.13068-2014 has become final *inter se* the parties. He further submits that the complainant herein was party-respondent No.2 in the aforementioned CWP No.13068-2014 and the aforesaid findings were recorded in his presence.

6. I have heard learned counsel for the petitioners and gone through the paper book, I find substance in the submissions made on behalf of the petitioner.

7. On the other hand, perusal of order sheet shows that notice of motion in the present case was issued on 06.08.2014 and the respondent appeared through his counsel on 06.07.2015, however, today, no one has chosen to appear on his behalf. Reply dated 12.10.2015 filed at his instance forms part of the record and I have also gone through the same. Relevant portion from paragraph 4 (xii) of the same is reproduced hereunder:-

" That the contents of para 4 sub para xii of the petition are admitted being matter of record, however, it is pertinent to mention that the bank initial gave a document in the shape of an affidavit without the appropriate and required stamp paper. It was only when it is pointed out of the requirement to given an affidavit on a judicial stamp paper the petitioners purchased the stamp paper as per the statement of Baldev Singh s/o Arjan Singh R/o H.No. HE399 A Phase 7 Mohali who has the chamber No.92 in the District Court Complex at Mohali on 03.06.2013 through one Amok Gupta purchased Rs.25 valued stamp paper having entry No.3067 as per register of the stamp paper vendor and use the same by ante dating 14.05.2013 in the court of the District Magistrate Mohali. Copy of the statement is already attached as Annexure R-3/T."

8. Perusal of the complaint as well as summoning order shows that the primary allegation levelled against the petitioners has been of having committed forgery in an affidavit dated 14.05.2013 submitted by petitioner No.1, along with application filed under Section 14 of the SARFAESI Act before the District Magistrate, SAS Nagar Mohali, by affixing stamp duty of Rs.25 thereupon on 03.06.2013 which is post submission of affidavit before the District Magistrate.

The aforesaid issue was even raised by respondent in a separate but related

litigation between the parties in **CWP No.13068-2014**, titled as "**Punjab and Sind Bank vs. District Magistrate, SAS Nagar Mohali and others**", decided on 22.12.2014, wherein a Division Bench of this Court very categorically and unambiguously held that the affixation of stamp by petitioner No.1 on 03.06.2013 upon the affidavit filed on 14.05.2013 did not amount to any forgery as the same was merely making up of deficiency of stamp duty in terms of Section 35 of the Stamp Act, 1899. The Hon'ble Division Bench had gone on to record to say that the said act of the petitioners at best amounted to curable irregularity rather than forgery.

9. More than that, the respondent-complainant in his reply to the present petition has categorically averred that the stamp of Rs.25 was purchased on 03.06.2013 and affixed on the affidavit after the requirement thereof was pointed out to the petitioners. Once admittedly, the stamp duty was made good by the petitioners on having been pointed out by the office of District Magistrate, without carrying out any other alterations, additions or tampering either in the application or affidavit dated 14.05.2013, no offence of forgery as defined under Section 463 IPC was made out against them, particularly when the application dated 14.05.2023 was dealt with and disposed of by the District Magistrate, SAS Nagar only on 14.06.2013 i.e. much after the making up of the deficiency of stamp thereupon. It may be pointed out here that making of false document to commit fraud is an essential ingredient of forgery, which is missing in the present case as there has been no dishonest intent on the part of the petitioners while making good the deficiency in stamp duty.

10. In the facts and circumstances of the present case, the petitioners did not draw any advantage or wrongful gain by affixation of stamp and there was no

element of wrongful loss to the complainant as well because the application and affidavit dated 14.05.2013 were taken up for consideration by District Magistrate, SAS Nagar, Mohali on 14.06.2013 i.e. upon making up all the deficiency in the stamp duty.

11. In view of the discussion made herein above as well as from the perusal of contents of the complaint, no offence as alleged has been made out against the petitioners and thus, the continuation of proceedings clearly amounts to abuse of process of law, resulting into miscarriage of justice to the petitioners. The complaint in fact appears to be malafide act on the part of respondents with ulterior motive so as to pressurize the petitioners not to proceed against the him for effecting recovery of loan and thus, the present petition clearly falls within clause 7 to para 107 of judgment passed by the Hon'ble Supreme Court, in case of **"State of Haryana vs. Chaudhary Bhajan Lal , AIR 1992 SC 604**. Relevant para 107 of the same is reproduced hereunder:-

"107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section [482](#) of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section [156](#) (1) of the Code except under an order of a Magistrate within the purview of Section [155](#)(2) of the Code.

3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
4. *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section [155](#)(2) of the Code.*
5. *Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
7. **Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.**

12. In view of the discussion made herein above, the present petition is allowed. Consequently, the complaint No.30 dated 19.12.2013, under Sections 420, 467, 468, 471, 182, 191, 192, 193, 196, 199 read with Section 120-B IPC and impugned summoning order dated 20.05.2014 along with all consequential proceedings arising therefrom are hereby quashed qua the petitioners.

04.05.2023

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(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/ No