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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40131-2018 (O&M)
Date of Decision:- 20.08.2024

Yash Paul Gupta

.... Petitioner

Vs.

State of Punjab and Another

.... Respondents

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Akshay Jain, Advocate
for the petitioner.

Mr. Gautam Thapar, AAG, Punjab.

Mr. Manuj Nagrath, Advocate
for respondent No. 2/complainant.

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AMARJOT BHATTI, J.

Petitioner Yash Paul Gupta has filed petition under Section 482 Cr.P.C. for quashing of FIR No. 67 dated 28.02.2018 registered at Police Station Division No. 5, Ludhiana under Sections 409/420 of Indian Penal Code, 1860, being abuse of process of Court and to issue any suitable order/direction which the Court may deem fit and proper in peculiar facts and circumstances of case.

2. As per the facts of case, aforesaid FIR has been registered on the written complaint CR No. 1174783 dated 17.08.2017 filed by Taranjit Singh against Chairman Arundhati Bhattacharya and others. It is alleged that father of complainant Raghbir Singh died on 14.06.2015 and complainant Taranjit Singh filed this complaint as legal heir as well as owner of property. In the year 2005, father of complainant Raghbir Singh

purchased two kanals of land as per Jamabandi for the year 1984-85, Village Bhora, District Ludhiana from Surinder Pal vide sale deed No. 11214 dated 11.08.2005, duly registered in the office of Sub-Registrar, Ludhiana. Since then he was exclusive owner and in possession of property. Vendor Surinder Pal had purchased this property from Barjinder Singh vide sale deed No. 2465 dated 22.05.1990, registered in the office of Sub-Registrar, Ludhiana. His father Raghbir Singh had purchased said property after due diligence regarding title of property in question by inspecting revenue record and to find out if there was encumbrance or any type of charge on the property in question. State Bank of India alleged to have granted credit facility to M/s Gian Singh & Sons, 96-R, Industrial Area-B, Ludhiana, Manohar Singh and Paramjit Singh, partners of aforesaid concern, M/s Gurdial Singh Manohar Singh through Manohar Singh and Surinder Pal Singh (imposter) alleged to have mortgaged the property to secure said loan facility. State Bank of India in connivance with aforesaid persons who raised loan created forged and fabricated document and obtained signatures of some fake person in the name of Surinder Pal Singh and sanctioned loan without inquiring about title, verification of person who allegedly signed as Surinder Pal Singh. The record of Sub-Registrar was not verified before creating charge over the property. In-fact, sale deed produced in bank on the basis of which said charge was created was forged and fabricated. State Bank of India sanctioned fresh Term Loan of ₹15 lacs on 11.04.2005 in favour of M/s Gian Singh and Sons and others where again Surinder Pal Singh was reflected as guarantor. In-fact Surinder Pal Singh never appeared before any bank or other authority. In the year

2008, State Bank of India initiated proceedings under Securitization Act against the alleged borrowers and mortgagors and sold the property in question to one Pardeep Kumar and Ujjagar Singh vide auction dated 11.04.2008 for a sum of ₹75 lacs. In July, 2008, father of complainant was surprised when he came to know about said sale. He immediately wrote letter dated 16.07.2008 and informed State Bank of India regarding his title in the property in question and further requested to stop process in order to protect their legal rights. State Bank of India vide letter dated 08.08.2008 asked for documents to look into the matter. The bank sought legal opinion and on this Sh. Rajiv Dugal, Advocate gave his legal report dated 30.07.2008. In the said report, it was found that signature of witnesses Jagdish Singh, Namberdar and Resham Dass in sale deed supplied by bank were different from the copy of sale deed obtained from the office of Sub-Registrar. Signatures of seller Barjinder Singh were also different and on behalf of buyer Surinder Pal Singh himself signed on sale deed supplied by bank but in certified copy of sale deed obtained from office of the Sub-Registrar, there were signatures of Harbhajan Kaur and Surjeet Singh. Similarly, name of Deed Writers were also different. Said sale deeds were got examined from Handwriting and Finger Print Expert Navdeep Gupta, who submitted report dated 02.09.2014. All the relevant documents were produced before State Bank of India in support of his submissions. At the instance of State Bank of India, FIR No. 229 dated 12.09.2009, under Sections 420, 465, 467, 468, 471, 120-B of IPC, Police Station Division No. 5, Civil Lines, Ludhiana was registered. State Bank of India filed application on the basis of which Recovery Certificate dated

24.10.2011 for a sum of ₹85,85,133.12/- was issued. Copy of order dated 05.10.2011 passed by Debts Recovery Tribunal-II, Chandigarh are also produced along with complaint. State Bank of India through accused No. 1 to 4 despite being aware of factual position and title of complainant as well as lodging of FIR on behalf of bank did not disclose these facts to learned Presiding Officer, DRT-II, Chandigarh in O.A. No. 224 of 2008 and concealed material information regarding property in question. Accused No. 1 to 4 were having full knowledge that the loan was sanctioned on forged and fabricated documents. Despite all this, property was again auctioned to accused No. 5 to 9, causing great loss to complainant. State Bank of India in pursuance of recovery proceedings against said property on the basis of Recovery Certificate dated 24.10.2011 vide letter dated 09.10.2012 put the property in question on auction to be held on 16.11.2012. The property was sold to accused No. 5 to 9 and later on confirmed sale and issued sale certificate on 13.08.2013. The complainant visited property in the month of December and came to know about this fact. Accused No. 1 to 4 of State Bank of India did not pay any heed to information supplied by complainant. In this way, all accused in connivance with each other cheated and committed fraud with complainant as well as his father and caused great loss to them. The matter was inquired by Incharge, Economic Wing/Assistant Commissioner, Special Branch-cum-E.O. Wing, Ludhiana and ultimately present FIR was registered.

3. Learned counsel for petitioner argued that registration of present FIR is the result of misuse of process of law. Learned counsel for petitioner relied upon the judgment of **Andhra Pradesh High Court** in **Criminal**

Petition No. 8871 of 2012, decided on 26.02.2014, case titled **"Dasari Venu Gopal and others Versus State of Andhra Pradesh and Anr."**, where it was observed in para No. 10 as under :-

> *"10. ..... while exercising jurisdiction under Section 482 Cr.P.C., this Court is not supposed to evaluate the evidence. However, this Court can scrutinise the allegations mentioned in the F.I.R./complaint/charge sheet. When the allegations are examined in the light of the admitted facts and it is found that the allegations are ex-facie false or inherently improbable, this Court can invoke its jurisdiction to quash the proceedings."*

The bank carried out proceedings under SARFAESI Act. In-fact respondent No. 2/complainant lost battle at all levels in proceedings carried out under SARFAESI Act and ultimately filed this false and fabricated complaint, on the basis of which present FIR has been registered. The complaint is filed as a result of vengeance and to interfere in process followed by financial institution as per law. Present petitioner acted in his official capacity. He had joined branch at Civil Lines, Ludhiana on 30.07.2012 and submitted his affidavit dated 17.09.2012 (Annexure P-3) for presenting it before DRT, Chandigarh. Regular Branch Manager was on leave, therefore, affidavit was signed by him as Chief Manager. There was no concealment of fact in the said affidavit. This fact is clear from the order dated 21.08.2014 (Annexure P-4) on the third party objections filed by Raghbir Singh father of respondent No. 2. Said order dated 21.08.2014 was challenged in appeal before DRT and appeal was also dismissed vide order dated 05.06.2017 (Annexure P-5). This order was further challenged before Debt Recovery Appellate Tribunal, New Delhi by filing Appeal No. 276 of

2017 in which status quo order was passed subject to condition to deposit some amount. Said order was challenged by filing Civil Writ Petition No. 14192 of 2017 which was also dismissed as withdrawn vide order dated 05.07.2017 (Annexure P-6). In support of his arguments, learned counsel for petitioner has relied upon judgment of **Patna High Court in Criminal Miscellaneous No. 4855 of 2022, decided on 12.12.2023**, case titled "**Dr. Shipra Roy Versus The State of Bihar and Ors.**", where in that case "*petitioner was bonafide auction purchaser of a property mortgaged by the informant with the bank while taking loan. The informant, who is the borrower, had registered FIR against the petitioner, her husband and the bank Manager and others in order to wreak vengeance*. It was further observed that *transaction between informant and bank was purely commercial in nature. The informant himself was the defaulter and he had already invoked statutory right under SARFAESI Act, which was decided by the Tribunal against him*." It is argued that when respondent No. 2 lost everywhere, he filed complaint dated 17.08.2017, on the basis of which FIR was registered without appreciating aforesaid orders passed in SARFAESI proceedings from time to time. Present petitioner filed correct affidavit without concealment of any fact. No such issue was raised by Recovery Officer that wrong affidavit was filed or any fact was concealed. Petitioner was wrongly arrayed as accused in aforesaid FIR. Even otherwise, no offence under Sections 409 or 420 of IPC is made out qua present petitioner. Therefore, FIR may be quashed by accepting present petition.

4. Learned counsel representing State filed status report dated

04.04.2019 conforming that FIR was registered on the complaint of respondent No. 2/complainant dated 17.08.2017. Father of complainant Raghbir Singh had purchased two kanals of land from Surinder Pal vide registered sale deed dated 11.08.2005. M/s Gian Singh and Sons and others had obtained loan which was not returned by them, as a result, present petitioner being Manager of bank filed application dated 09.10.2012 with Debt Recovery Tribunal, Chandigarh and in those proceedings property of complainant was sold to Harish Chander for a sum of ₹1,18,20,000/- on 16.11.2012 and bank recovered ₹97,35,000/-. The petitioner being then Manager of bank was fully aware that father of complainant had purchased the property whereas fake sale deed was produced while obtaining loan from bank. After completion of investigation from Special Branch-cum-E.O. Wing, Ludhiana, challan report was presented before trial Court on 09.07.2018. Charges have not been framed on account of stay order passed by this Court. Present petitioner was fully aware that sale deed produced before the bank authorities for raising loan was a forged document. FIR No. 229 dated 12.09.2009 was already registered. Ignoring all these facts, property belonging to father of complainant, now deceased, was wrongly sold by bank authorities. Therefore, petition filed by petitioner is without merits and deserves dismissal.

5. Respondent No. 2/complainant also filed detailed reply to this petition, confirming the arguments advanced by learned counsel representing State. Learned counsel reiterated the facts detailed in FIR. Copy of sale deed dated 11.08.2005 is Annexure R-2/1. Father of respondent No. 2 had purchased the said property with due diligence after

making proper inquiry regarding title of property in favour of Surinder Pal. While raising loan, some imposter signed as mortgagor to secure the credit facilities availed by M/s Gian Singh and Sons and others. Sale deed produced before the bank authorities is a fake document and petitioner was fully aware of this fact. At the instance of bank authorities, one FIR was also lodged. Material facts were concealed by petitioner while filing affidavit dated 17.09.2012 and property owned by father of respondent No.2 was wrongly put on auction. Facts and documents relied upon by petitioner can be proved at the time of leading evidence. Petition filed by petitioner for quashing of present FIR is without merits.

6. I have considered the arguments advanced before me. Facts of case are evident from the contents of FIR No. 67 dated 28.02.2018, Police Station Division No. 5, District Police Commissionerate, Ludhiana registered under Sections 409 and 420 of IPC, which is Annexure P-1. Taranjit Singh complainant/respondent No. 2 filed written complaint dated 17.08.2017 on the basis of which present FIR has been lodged. It is claimed that Raghbir Singh father of respondent No.2/complainant purchased two kanals of land at village Bhora, District Ludhiana from Surinder Pal vide registered sale deed dated 11.08.2005. Title deed in favour of Surinder Pal having purchased said property from Barjinder Singh vide sale deed dated 22.05.1990 is also placed on record alongwith complaint. It is not disputed that M/s Gian Singh and Sons, their partners Manohar Singh, Paramjit Singh, M/s Gurdial Singh Manohar Singh through Manohar Singh raised loan from State Bank of India to the tune of ₹43.50 lacs on 15.03.2004 and Surinder Pal mortgaged his property to secure credit facility, in favour of

State Bank of India. In addition to this, amount of ₹15 lacs was again sanctioned on 15.03.2005 and Home Loan facility of ₹46 lacs was raised on 31.01.2006. Aforesaid loan facility was secured by creating equitable mortgage of factory land and building measuring 675 Sq. Yards at 96-R, Industrial Area-B, Bhagwan Chowk, Ludhiana and second collateral security was plot measuring 1210 Sq. Yards, Jassian Road, near GT Road Byepass, Ludhiana, by deposit of title deed. Loan was not repaid as per its terms and conditions and same was declared Non-Performing Asset and to recover the loan amount proceedings were initiated under SARFAESI Act. As per the case of respondent No. 2/complainant, Raghbir Singh his father purchased the property from Surinder Pal vide sale deed dated 11.08.2005. It is claimed that some imposter appeared before the bank authorities as Surinder Pal and produced a fake sale deed to secure the said loan facility availed of by M/s Gian Singh and Sons and others.

It cannot be ignored that recovery of loan amount was initiated under the provisions of SARFAESI Act. It is matter of record that State Bank of India filed O.A. No. 224 of 2008 against M/s Gian Singh and Sons and others in which recovery certificate was issued to the tune of ₹85,85,133.12/- along with interest as detailed therein. Copy of order dated 05.10.2011 is Annexure P-2. Property in question was put on auction on 16.11.2012 and sale certificate dated 13.08.2013 was issued. Father of respondent No. 2 Raghbir Singh filed objections as third party bearing RC No. 112/2011, which were declined vide order dated 21.08.2014 by Recovery Officer, Debt Recovery Tribunal-II, Chandigarh, which is Annexure P-4. Said order was challenged by Raghbir Singh by filing

Appeal No. 22 of 2017 and same were again rejected by Debts Recovery Tribunal-III, Chandigarh by passing order dated 05.06.2017, Annexure P-5. Aforesaid order was again challenged by filing appeal before Debts Recovery Appellate Tribunal, New Delhi in which status quo was passed subject to condition to deposit some amount and same was challenged by Taranjit Singh and others by filing Civil Writ Petition No. 14192 of 2017 and same was dismissed as withdrawn as per order dated 05.07.2017, which is Annexure P-6. Subsequently, auction purchaser filed application bearing RC No. 840/2017 for delivery of physical possession of property which was allowed by Recovery Officer, Debts Recovery Tribunal-III, Chandigarh vide order dated 24.07.2014, Annexure P-7. Aforesaid proceedings under SARFAESI Act are not disputed by respondent No. 2/complainant. In-fact, father of respondent No. 2 was aware of controversy since July 2008, when the property was put on auction for the first time on 11.04.2008. As referred above in detail, Raghbir Singh filed third party objections when property was auctioned for the second time on 16.11.2012 and sale was confirmed and sale certificate was issued.

7. Role attributed to present petitioner is regarding filing of affidavit dated 17.09.2012, Annexure P-3 before Debts Recovery Tribunal, Chandigarh, giving detail of status of mortgaged property. Perusal of this affidavit indicates that earlier FIR No. 229 dated 12.09.2009, under Sections 420, 465, 467, 468, 471, 120-B of IPC, registered at Police Station Division No. 5, Civil Lines, Ludhiana was also disclosed. Order passed by Recovery Officer, Debts Recovery Tribunal-II, Chandigarh, Annexure P-4 and order dated 05.06.2017 in appeal No. 22/2017, Annexure P-5, clearly

indicate that all the objections raised by Raghbir Singh father of respondent No.2/complainant were duly considered and rejected. Therefore, it cannot be said that present petitioner concealed any fact during the proceedings before Debts Recovery Tribunal, Chandigarh. Petitioner signed affidavit dated 17.09.2012, Annexure P-3, in his official capacity. Controversy involved in this case was within the purview of SARFAESI Act and objections filed by Raghbir Singh father of complainant/respondent No. 2 were rejected at all levels. Thereafter, complaint was filed on 17.08.2017. Apart from this, Taranjit Singh again filed suit for declaration against State Bank of India, Assistant General Manager and others. Copy of said civil suit is Annexure P-9. Thus, considering the facts of case and proceedings which were initiated under SARFAESI Act, no offence under Section 420 of IPC or under Section 409 of IPC is made out qua present petitioner.

8. In the light of this, petition filed by petitioner – Yash Paul Gupta is allowed. Accordingly, FIR No. 67 dated 28.02.2018 registered at Police Station Division No. 5, Ludhiana under Sections 409/420 of Indian Penal Code, 1860 against the petitioner and all subsequent proceedings arising therefrom are hereby quashed.

9. Petition is accordingly accepted.

10. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

20.08.2024 **(AMARJOT BHATTI)**
lalit **JUDGE**

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