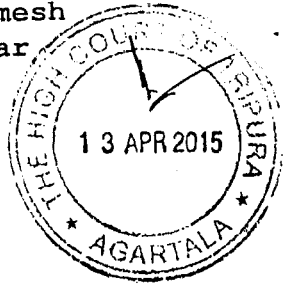


CRP.

M.V. Ramesh
Registrar



SUPREME COURT OF INDIA
NEW DELHI-110001

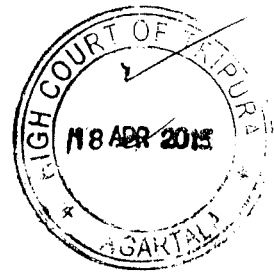
Section : II
D.No. 105/2012/SCII
Registered post A.D.

DATED : 27th March, 2015

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TO:

1. The Registrar General,
High Court at Calcutta
Calcutta (West Bengal)
2. The Registrar General,
High Court of Bombay
Bombay (Maharashtra)
3. The Registrar General,
High Court of Allahabad,
Allahabad (U.P.)
4. The Registrar General,
High Court of Judicature for
the State of Andhra Pradesh and
State of Telangana at Hyderabad
5. The Registrar General,
High Court of Chhattisgarh
Bilaspur (Chhattisgarh)
6. The Registrar General,
Delhi High Court
Shershah Road, New Delhi
7. The Registrar General,
High Court of Jharkhand
Ranchi (Jharkhand)
8. The Registrar General,
High Court of Madhya Pradesh
Jabalpur (M.P.)
9. The Registrar General,
High Court of Punjab & Haryana
Chandigarh



Reg. (Jud.)
MA
18.4.15

Cont....2/-

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10. The Registrar General,
High Court of Rajasthan
Jodhpur (Rajasthan)
11. The Registrar General,
High Court of Sikkim at Gangtok
12. The Registrar General,
High Court of Patna, Patna (Bihar)
13. The Registrar General,
High Court of Madras, Chennai (Tamilnadu)
14. The Registrar General,
High Court of Kerala, Ernakulam (Kochi)
15. The Registrar General,
Karnataka High Court
Bangalore (Karnataka)
16. The Registrar General,
Gujrat High Court
Gandhinagar, Ahmedabad (Gujarat)
17. The Registrar General,
Gauhati High Court, Gauhati (Assam)
18. The Registrar General,
Himachal Pradesh High Court
Shimla (H.P.)
19. The Registrar General,
Orissa High Court, Cuttak (Orissa)
20. The Registrar General,
Jammu & Kashmir High Court, Srinagar (J&K)
21. The Registrar General,
High Court of Uttarakhand
Nainital (Uttarakhand)
22. The Registrar General,
High Court of Tripura
at Agartala

Cont....3/-

23. The Registrar General,
Manipur High Court at Imphal
24. The Registrar General,
Meghalaya High Court at Shillong

CRIMINAL APPEAL NO. 781 OF 2012

Priyanka Srivastava & Anr. ...Appellant(s)

VERSUS

State of Uttar Pradesh & Ors. ...Respondent(s)

Sir,

I wish to state that the matter above mentioned was listed before this Hon'ble Court on 19th March, 2015 and the Hon'ble Court has been pleased to deliver its judgment and order while allowing the aforesaid appeal after elaborately dealing with the provisions and the powers of the learned Magistrates under Section 156(3) Cr.P.C. with reference to protection of action taken in good faith u/s. 32 of the SARFAESI Act.

Para 32 of the aforesaid judgment which reads as under;

"32. A copy of the order passed by us be sent to the learned Chief Justices of all the High Courts by the Registry of this Court so that the High Courts would circulate the same amongst the learned Sessions Judges who, in turn, shall circulate it among the learned Magistrates so that they can remain more vigilant and diligent while exercising the power under Section 156(3) Cr.P.C."

Accordingly, in compliance of the above orders, I am to transmit herewith for information and necessary action, a certified copy of this Court's Judgment dated 19th March, 2015 passed in the criminal appeal cited supra.

Cont....4/-

Kindly place copy of the aforesaid Judgment before His Lordship the Hon'ble the Chief Justice for kind perusal and for onward circulation amongst the learned Sessions Judges who in turn would circulate the same among the learned Magistrates, as per the orders of this Hon'ble Court.

Please ensure the compliance and acknowledge the receipt.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'M. M. M.', written over a horizontal line.

Registrar (AM)

Encl. : As above

R-207/15

Reportable

IN THE SUPREME COURT OF INDIA *Certified to be true copy*
CRIMINAL APPELLATE JURISDICTION *Sentash 27/3/15*
Assistant Registrar (Jud.)
2014
Supreme Court of India

CRIMINAL APPEAL NO.781 OF 2012

174183

Mrs. Priyanka Srivastava and Another Appellants

Versus

State of U.P. and Others Respondents

J U D G M E N T

Dipak Misra, J.

The present appeal projects and frescoes a scenario which is not only disturbing but also has the potentiality to create a stir compelling one to ponder in a perturbed state how some unscrupulous, unprincipled and deviant litigants can ingeniously and innovatively design in a nonchalant manner to knock at the doors of the Court, as if, it is a laboratory where multifarious experiments can take place and such skillful persons can adroitly abuse the process of the Court at their own will and desire by

painting a canvas of agony by assiduous assertions made in the application though the real intention is to harass the statutory authorities, without any remote remorse, with the inventive design primarily to create a mental pressure on the said officials as individuals, for they would not like to be dragged to a court of law to face in criminal cases, and further pressurize in such a fashion so that financial institution which they represent would ultimately be constrained to accept the request for "one-time settlement" with the fond hope that the obstinate defaulters who had borrowed money from it would withdraw the cases instituted against them. The facts, as we proceed to adumbrate, would graphically reveal how such persons, pretentiously aggrieved but potentially dangerous, adopt the self-convincing mastery methods to achieve so. That is the sad and unfortunate factual score forming the fulcrum of the case at hand, and, we painfully recount.

2. The facts which need to be stated are that the respondent No.3, namely, Prakash Kumar Bajaj, son of Pradeep Kumar Bajaj, had availed a housing loan from

the financial institution, namely, Punjab National Bank Housing Finance Limited (PNBHFL) on 21st January, 2001, *vide* housing loan account No.IHL-583. The loan was taken in the name of the respondent No.3 and his wife, namely, Jyotsana Bajaj. As there was default in consecutive payment of the installments, the loan account was treated as a Non-Performing Asset (NPA) in accordance with the guidelines framed by the Reserve Bank of India. The authorities of the financial institution issued notice to the borrowers under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short, 'the SARFAESI Act') and in pursuance of the proceedings undertaken in the said Act, the PNBHFL, on 5th June, 2007, submitted an application before the District Magistrate, Varanasi, U.P. for taking appropriate action under Section 13(4) of the SARFAESI Act.

3. At this juncture, the respondent No.3 preferred W.P. No.44482 of 2007, which was dismissed by the High Court on 14th September, 2007, with the observation that it was open to the petitioner therein to file requisite

objection and, thereafter, to take appropriate action as envisaged under Section 17 of the SARFAESI Act. After the dismissal of the writ petition with the aforesaid observation, the respondent No.3, possibly nurturing the idea of self-centric Solomon's wisdom, filed a Criminal Complaint Case No.1058 of 2008, under Section 200 Cr.P.C. against V.N. Sahay, Sandesh Tiwari and V.K. Khanna, the then Vice-President, Assistant President and the Managing Director respectively for offences punishable under Sections 163, 193 and 506 of the Indian Penal Code (IPC). It was alleged in the application that the said accused persons had intentionally taken steps to cause injury to him. The learned Magistrate vide order dated 4th October, 2008, dismissed the criminal complaint and declined to take cognizance after recording the statement of the complainant under Section 200 Cr.P.C. and examining the witnesses under Section 202 Cr.P.C.

4. Being grieved by the aforesaid order, the respondent No.3 preferred a Revision Petition No.460 of 2008, which was eventually heard by the learned Additional Sessions Judge, Varanasi, U.P. The learned Additional Sessions

Judge after adumbrating the facts and taking note of the submissions of the revisionist, set aside the order dated 4th October, 2008 and remanded the matter to the trial Court with the direction that he shall hear the complaint again and pass a cognizance order according to law on the basis of merits according to the directions given in the said order. Be it noted, the learned Additional Sessions Judge heard the counsel for the respondent No.3 and the learned counsel for the State but no notice was issued to the accused persons therein. Ordinarily, we would not have adverted to the same because that is the subject matter in the appeal, but it has become imperative to do only to highlight how these kind of litigations are being dealt with and also to show the respondents had the unwarranted enthusiasm to move the courts. The order passed against the said accused persons at that time was an adverse order inasmuch as the matter was remitted. It was incumbent to hear the respondents though they had not become accused persons. A three-Judge Bench in *Manharibhai Muljibhai Kakadia and Anr. v.*

Shaileshbhai Mohanbhai Patel and others¹ has opined that in a case arising out of a complaint petition, when travels to the superior Court and an adverse order is passed, an opportunity of hearing has to be given. The relevant passages are reproduced hereunder:

46.If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

XXXXX XXXXX XXXXX

48. In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person

¹ (2012) 10 SCC 517

to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203—although it is at preliminary stage—nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to “accused” or “the other person” under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.

XXXXX XXXXX XXXXX

53. We are in complete agreement with the view expressed by this Court in P. Sundarrajan², Raghu Raj Singh Rousha³ and A.N. Santhanam⁴. We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process."

Though the present controversy is different, we have

dealt with the said facet as we intend to emphasize how the Courts have dealt with and addressed to such a matter so that a borrower with vengeance could ultimately exhibit his high-handedness.

5. As the narration further proceeds, after the remand, the learned Magistrate *vide* order dated 13th July, 2009, took cognizance and issued summons to V.N. Sahay, Sandesh Tripathi and V.K. Khanna. The said accused persons knocked at the doors of the High Court under Section 482 Cr.P.C. and the High Court in Crl. Misc. No.13628 of 2010, by order dated 27th May, 2013, ruled thus:

"A perusal of the complaint filed by the respondent no.2 also indicates that the issues were with regard to the action of the bank officers against respondent no.2 on the ground of alleged malafide and as such an offence under sections 166/500 I.P.C. was made out. Both the sections are non cognizable and bailable and triable by Magistrate of First Class. For the foregoing reasons the 482 Petition deserves to be allowed and the criminal complaint filed by the respondent no.2 being Complaint Case No.1058 of 2009 is liable to be quashed.

Accordingly the application under section 482 Cr.P.C. is allowed and the Criminal Complaint Case No.1058 of 2009, Prakash Kumar Bajaj versus P.N.L. Housing Finance Ltd. And

others, pending in the Court of Additional Chief Judicial Magistrate, Court No.2 Varanasi is quashed.”

6. Presently, we are required to sit in the time machine for a while. In the interregnum period the borrowers filed an objection under Section 13(3A) of the SARFAESI Act. Be it noted, as the objection was not dealt with, the respondent No.3 preferred W.P. No.22254 of 2009, which was disposed of on 5th May, 2009 by the High Court, directing disposal of the same. Eventually, the objection was rejected by the competent authority vide order dated June 1, 2009. Being grieved by the aforesaid order of rejection, the respondent No.3 filed Securitisation Appeal No.5 of 2010, before the Debt Recovery Tribunal (DRT), Allahabad, U.P., which was rejected *vide* order dated 23rd November, 2012. The non-success before the DRT impelled the borrowers to prefer an appeal before the Debts Recovery Appellate Tribunal (DRAT), Allahabad, U.P.

7. At this stage, it is apposite to state that the third respondent, if we allow ourselves to say so, have possibly mastered how to create a sense of fear in the mind of the

officials who are compelled to face criminal cases. After the High Court had quashed the earlier proceeding, the third respondent, in October, 2011, filed another application under Section 156(3) CrPC against V.N. Sahay, Sandesh Tripathi and V.K. Khanna alleging criminal conspiracy and forging of documents referring to three post-dated cheques and eventually it was numbered as Complaint Case No. 344/2011, which gave rise to FIR No. 262 of 2011 under Sections 465, 467, 468, 471, 386, 506, 34 and 120B IPC. Being not satisfied with the same, on 30.10.2011, he filed another application under Section 156(3) against the present appellants alleging that there has been under-valuation of the property. It was numbered as Complaint Case No. 396/2011 wherein the Trial Magistrate directed the SHO to register FIR against the present appellants. Pursuant to the said order, FIR No. 298/2011 was registered.

8. At this juncture, it is imperative to state that the third respondent made the officials agree to enter into one time settlement. The said agreement was arrived at with the stipulation that he shall withdraw various cases filed

by him on acceptance of the one time settlement. As the factual matrix would reveal, the third respondent did not disclose about the initiation of the complaint cases no. 344/2011 and 396/2011. On 28.11.2011, the one time settlement was acted upon and the third respondent deposited Rs.15 lakhs.

9. At this stage, it is apt to mention that V.N. Sahay and two others approached the High Court of Allahabad in Writ (C) No. 17611/2013 wherein the learned Single Judge heard the matter along with application under Section 482 CrPC in Crl. Misc. No. 13628/2010. We have already reproduced the relevant part of the order passed therein. Be it noted, the writ petition has also been disposed of by the High Court by stating thus:

“Heard Mr. Manish Trivedi, learned counsel for the petitioner, Mr. Vivek Kumar Srivastava, learned counsel appearing on behalf of respondent no.3 and learned AGA.

It is submitted by learned AGA that in the present case investigation has been completed and final report has been submitted, considering the same, this petition has become infructuous.

The interim order dated 2.12.2011 is hereby vacated.

Accordingly, this petition is disposed of.”

10. At this juncture, we are impelled to look at the past again. The respondent had preferred, as has been stated before, an appeal before the DRAT. The said appeal was numbered as Appeal No. 5 of 2013. In the said appeal, the following order came to be passed:

“During the pendency of the said application, a proposal was submitted by the borrower to settle the claim for an amount of Rs.15.00 lacs. The said proposal was accepted by the Bank by its letter dated 15.11.2011 and the appellant also deposited the full amount, for which the settlement was arrived at i.e. Rs.15.00 lacs. Thereafter, the grievance of the appellant was that since the full amount of the settlement has been paid by the appellant, therefore, the bank should be directed to return the title deed, as the title deed was not returned.

The Tribunal was of the view that since the matter has been settled, therefore, the securitization application was dismissed as infructuous and the Tribunal did not pass any order for return of the title deed. Therefore, the appellant being aggrieved of the judgment dated 23.11.2011 passed by the Tribunal has filed the present appeal.

Learned counsel for the appellant submitted that after when the full amount under the settlement has been paid, the respondent-Bank was duty bound to return the title deed, which has not been returned to the appellant.

It is contended on behalf of the respondent-

Bank that the settlement was accepted by letter dated 14.11.2011, wherein the condition was mentioned that the appellant shall withdraw the complaint case which he has filed before the Criminal Court.

Learned counsel for the appellant submitted that he has no objection to withdraw the complaint case but the title deed must be returned to the appellant.

The title deed shall be returned by the respondent-Bank to the appellant within seven days from today and thereafter, the appellant shall move an application to withdraw the Criminal Case No.1058/09 which is pending before the Chief Judicial Magistrate, Varanasi."

11. The labyrinth maladroitley created by the respondent No.3 does not end here. It appears that he had the indefatigable spirit to indulge himself in the abuse of the process of the Court. The respondent No.3 had filed an application under Section 156(3) Cr.P.C. before the learned Additional Chief Judicial Magistrate on 30th October, 2011, against the present appellants, who are the Vice-President and the valuer respectively. In the body of the petition, as we find in the paragraphs 19 and 20, it has been stated thus:

"That the aforesaid case was referred to the Deputy Inspector General of Police, Varanasi through speed post but no proceeding had been initiated till today in that regard.

That the aforesaid act done by the aforesaid accused prima-facie comes in the ambit of section 465, 467, 471, 386, 504. 34 & 120B IPC and in this way cognizable offence is made out and proved well."

12. On the basis of the aforesaid application the learned Additional Chief Judicial Magistrate, Varanasi, U.P. called for a report from the concerned police station and received the information that no FIR had been lodged and hence, no case was registered at the local police station. Thereafter, the learned Additional Chief Judicial Magistrate observed as follows:

"It has been stated clearly in the application by the applicant that it is the statement of applicant that he had already given 3 postdated cheques to the financial bank for payment and despite the availability of the postdated cheques in the financial society, even a single share in the loan account has not been got paid. The opposite parties deliberately due to conspiracy and prejudice against applicant have not deposited previously mentioned postdated cheques for payment and these people are doing a conspiracy to grab the valuable property of the applicant. Under a criminal conspiracy, illegally and on false and fabricated grounds a petition has been filed before District Collector (Finance & Revenue) Varanasi, which comes under the ambit of cognizable offence. Keeping in view the facts of the case, commission of cognizable offence appears to be made out and it shall be justifiable to get done the

investigation of the same by the police.”

After so stating it directed as follows:

“In the light of the application, SHO Bhelpur, Varanasi is hereby directed to register the case and investigate the same.”

13. On the basis of the aforesaid order, F.I.R. No.298 of 2011 was registered, which gave rise to case Crime No.415 of 2011 for the offences punishable under Sections 465, 467, and 471 I.P.C. Being dissatisfied with the aforesaid order, the appellants moved the High Court in Crl. Misc. No.24561 of 2011. The High Court in a cryptic order opined that on a perusal of the F.I.R. it cannot be said that no cognizable offence is made out. Being of this view, it has declined to interfere with the order. Hence, this appeal by special leave.

14. In course of hearing, learned counsel for the State of U.P. has submitted that the investigating agency has already submitted the final report on 21st November, 2012. The said report reads as follows:

“Complainant in the present case has not appeared before any of the investigators, even after repeated summoning. And that the action of Smt. Priyanka Srivastava has been done as per her legal rights in 'good faith',

which is protected under Section 32 of the SARFAESI Act, 2002. With the abovestated investigations, the present report is concluded.”

15. On a query being made, learned counsel for the State would contend that the learned Magistrate has not passed any order on the final report. Mr. Ajay Kumar, learned counsel appearing for the appellants would submit that the learned Magistrate has the option to accept the report by rejecting the final form/final report under Section 190 Cr.P.C. and may proceed against the appellants or may issue notice to the complainant, who is entitled to file a protest petition and, thereafter, may proceed with the matter and, therefore, this Court should address the controversy on merits and quash the proceedings.

16. We have narrated the facts in detail as the present case, as we find, exemplifies in enormous magnitude to take recourse to Section 156(3) Cr.P.C., as if, it is a routine procedure. That apart, the proceedings initiated and the action taken by the authorities under the SARFAESI Act are assailable under the said Act before the higher forum and if, a borrower is allowed to take recourse to criminal law in the manner it has been taken

