(2016) 09 AHC CK 0185

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition Nos. 19998 of 2015.

Anil Kumar (Correct Name is Anil Mehrotra) - Petitioners @HASH State of U.P. And 3 Others

Date of Decision : 16-09-2016

Acts Referred:
Penal Code, 1860 (IPC) — Section 380, Section 448, Section 457

Citation : (2016) 97 ACrC 713 : (2016) 10 ADJ 618 : (2017) 1 AllLJ 668 : (2017) 1 CriCC 453

Hon'ble Judges : Ramesh Sinha and Shamsher Bahadur Singh, JJ.

Bench : Division Bench

Final Decision : Allowed

Judgement

Ramesh Sinha, J. - This petition has been filed by the petitioner with a prayer to quash the F.I.R. dated 19.4.2015 registered as case crime no. 540 of 2015 under sections 448, 457, 380, 420 I.P.C., police station Sahibabad, District Ghaziabad.

2. The prosecution story as mentioned in the F.I.R. is that Oriental Bank of Commerce under the Provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ''the Act'') requested the District Magistrate, Ghaziabad for taking possession of Flat No. UG-2, situated at Plot No. B-1/154, DLF, Dilshad Extension-2, Bhopura, Ghaziabad. Pursuant thereto under the order of District Magistrate Ghaziabad dated 20.7.2010, the possession of the aforesaid Flat No. UG-2 was made to the Oriental Bank of Commerce with the aid of Senior Superintendent of Police, Ghaziabad. On 1.5.2011, the Oriental Bank of Commerce issued an advertisement in the daily newspaper Amar Ujala/Dainik Jagran by which the aforesaid property was offered to be auctioned pertaining to Iftkhar Ali son of Noor Mohammad and Smt. Farhana wife of Iftkhar Ali. In the aforesaid auction proceeding, the respondent no. 4 was declared to be highest bidder and as such he deposited the requisite amount. On 16.9.2011 when the respondent no. 4 went to inspect the aforesaid Flat No. UG-2, he saw after opening lock of flat that one Raish Ahmad and some other persons were present inside the flat and in this regard when the respondent no. 4 made complaint to the Oriental Bank of

Commerce, they asked him to deposit rest of the amount first, thereafter they will ensure the possession to be handed over the respondent no. 4. It is further alleged that pursuant to the aforesaid the respondent no. 4 had deposited the entire amount and the sale has been confirmed and he was put in possession of the aforesaid Flat No. UG-2. On 1.11.2011, the respondent no. 4 stated to have decorated his flat with table, bed, washing machine, almirah, dressing table, dining table etc. It is further stated that on 15.7.2014, the respondent no. 4 after locking his aforesaid flat went to his native place at Bulandshahar. On 2.8.2014, in absence of the respondent no. 4, the petitioner along with Prem Kumar Rajpal, Ravindra Nath, who are the officers of Union Bank of India in connivance with his associate Raj Bhan Singh, Ex-Manager, Oriental Bank of Commerce, Builder Pawan Kumar Sharma and Raish Ahmad and other, after breaking the lock of the flat of the respondent no. 4 stolen all the articles present in the aforesaid flat and also they have taken illegal possession of the same. When the respondent no. 4 went to Union Bank of India, Raj Nagar Branch, Ghaziabad for taking possession back, they informed him that the flat which was taken into possession by the Union Bank of India is Flat No. UG-4 and not UG-2. All the articles found in the flat are articles of Flat No. UG-4. Therefore, they asked the respondent no. 4 to contact the Oriental Bank of Commerce and threatened him that in case he comes again he will be falsely implicated in case of theft and loot. While the respondent no. 4 was talking with the bank officers at the same time Raish Ahmad, Zahir Ahmad and Pawan Kumar Sharma were suddenly reached there. Thereafter, the respondent no. 4 was said to have contact the Oriental Bank of Commerce where the Manager of Union Bank of India was also present. He narrated the entire story to the Manager of the Oriental Bank of Commerce and he was told by the officers of the Oriental Bank that he will have to contact Union Bank of India, as the work of Oriental Bank of Commerce is over, as they have taken money and given him possession, hence the respondent no. 4 lodged the present F.I.R. against the petitioner and other co-accused persons, who are also employees of the bank.

3. Pleadings have been exchanged between the parties.

4. The respondent no. 4 has not responded to the notice issued to him in the present petition.

5. Heard Sri Anil Kumar Bajpai, learned counsel for the petitioner and Sri Irshad Hussain, learned A.G.A. for the State.

6. Learned counsel for the petitioner submits that in fact one Mr. Binu Nair and Mrs. Geeta Nair moved an application to the Union Bank of India, Raj Nagar Branch, Ghaziabad for grant of housing loan in order to purchase Flat No. UG-4, situated at Plot No. B-1/154, DLF, Dilshad Extension-2, Bhopura, Ghaziabad. The said loan was sanctioned by the Union Bank of India in favour of Mr. Binu Nair and Mrs. Geeta Nair after completing all the formalities on 18.3.2011. Mr. Rais Ahmad stood as guarantor of the said loan for which he has executed a letter of guarantee in favour of the bank on the same day. Mr. Binu Nair and Mrs. Geeta

Nair thereafter purchased Flat No. UG-4 with the loan amount through a registered sale deed dated 25.5.2011 and thereafter on 29.9.2011 the memorandum of title deed was prepared containing deposit of title deed specifying the description of the title deed/documents which includes the sale deed in favour of Mr. Binu Nair and Mrs. Geeta Nair on 29.9.2011. He submitted that Mr. Binu Nair and Mrs. Geeta Nair defaulted in payment of EMI and therefore, the Union Bank of India proceeded under the provisions contained under the Act and by invoking the provisions of Section 13 (2) and 13 (4) of the Act, a notice to take possession of Flat No. UG-4 was issued to Mr. Binu Nair and Mrs. Geeta Nair under the signature of authorised officer on 5.10.2013. The notice under sections 13 (2) and 13 (4) of the Act had been served upon the borrower as they failed to make payment and their account has been declared Non Performing Assets, thereafter the Branch Manager, Union Bank of India, Raj Nagar Branch, Ghaziabad requested the District Magistrate, Ghaziabad under section 14 of the Act to secure taking over possession by the Union Bank of India and pursuant thereto, the District Magistrate vide order dated 15.4.2014 directed the Senior Superintendent of Police, Ghaziabad to provide security after getting the requisite amount deposited by the Bank so that possession may be taken over. In pursuance of the aforesaid order of the District Magistrate, the Union Bank of India has deposited Rs. 27,810/- and the Senior Superintendent of Police Ghazibad vide letter dated 21.7.2014 acknowledged the receipt of payment and directed the Station House Officer, Police station Sahibabad to provide adequate police force so that the Union Bank of India may take possession of Flat No. UG-4. On 2.8.2014, the Bank has taken possession through the police force of local police station in presence of Panchs and police officials and in this regard an inventory was prepared in which no article was found from Flat No. UG-4. Along with inventory a Panchnama was also prepared which was duly signed by the Panch, the authorised officer and authorised officer.

7. It was further pointed out that the informant respondent no. 4 had purchased Flat No. UG-2 in auction from the Oriental Bank of Commerce in his favour through sale certificate dated 26.6.2011 which is situated just above Flat No. UG-4 at Plot No. B-1/154, DLF, Dilshad Extension-2, Bhopura, Ghaziabad. He argued that Flat No. UG-2 has different description which is evident from the sale deed dated 14.7.2008 of UG-2 Flat executed in favour of its buyer/borrower, namely, Smt. Farana wife of Iftikhar Ali, who had taken loan from Oriental Bank of Commerce and defaulted in payment of its instalment to Oriental Bank of Commerce. He next argued that the respondent no. 4 due to oblique motive concocted a false story in the F.I.R. to grab Flat No. UG-4 under the pretext that the same is Flat No. UG-2.

8. It was next submitted that the informant prior to lodging of the impugned F.I.R. had filed Original Suit No. 131 of 2015 on 28.1.2015 before the Civil Judge (S.D.), Ghaziabad seeking permanent injunction and possession of Flat No. UG-2, measuring area 69-67 Sq. Meters situated at Plot No. B-1/154, DLF, Dilshad Extension-2, Bhopura, Tehsil Loni, District Ghaziabad. In the aforesaid suit, the

Civil Judge (S.D.) Ghaziabad issued summon to the Union Bank of India, Raj Nagar Branch, Ghaziabad through its Branch Manager for appearance on 12.2.2015 fixing 5.4.2015/12.3.2015 for service of summon and filing of written statement respectively by the Bank.

9. He urged that the dispute, if any, between the parties is purely civil in nature and all the act done by the petitioner is under the capacity of Authorised Officer under the Act. He submits that the petitioner enjoys protection under section 32 of the Act, hence the impugned F.I.R. is liable to be quashed on this ground alone. Section 32 of the Act is quoted herein below:-

"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. In support of his contention, learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in the case of Priyanka Srivastava & another v. State of U.P. & others reported in (2015) 6 SCC 287 wherein it was held by the Apex Court that "borrower of housing loan failing to repay the loan to Bank/FI concerned on action being taken against borrower by Bank authorities under the Act, borrower, instead of resorting to remedy available under relevant Act, taking recourse to Section 156 (3) Cr.P.C. and getting various FIRs (including the present one) registered against Bank authorities merely to harass them with sole intent to avoid loan by said criminal action, bank authorities compelled to concede to borrower''s request for one time settlement. In the facts and circumstances of the case, order passed by Judicial magistrate under section 156 (3) Cr.P.C. directing registration of impugned F.I.R. against the appellant Bank authorities without any application of mind by merely narrating allegations made in application under section 156 (3) Cr.P.C. and ignoring Section 32 of the Act which given protection to a secured creditor or its officers for acts done in good faith under the said Act, held not sustainable in law. The F.I.R. registered pursuant to the said order is liable to be quashed".

11. He submitted that the petitioner Anil Mehrotra, who is presently posted as Chief Manager, petitioner Prem Kumar Rajpal is Senior Managar and petitioner Ram Nath is also official of Union Loan Point, Union Bank of India, Ghaziabad and have performed their official duty. The F.I.R. lodged by respondent no. 4 does not disclose any offence against them, hence the same is liable to be quashed.

12. Learned A.G.A. opposed the prayer for quashing but could not dispute the fact that the respondent no. 4 was auction purchaser of Flat No. UG-2, situated at Plot No. B-1/154, DLF, Dilshad Extension-2, Bhopura, Ghaziabad under the SARFESAI Act and physical possession of the same was handed over to him by the Oriental Bank of Commerce.

13. Considered the submissions advanced by learned counsel for the parties and perused the impugned F.I.R. and relevant material on record. Admittedly, the respondent no. 4 has purchased Flat No. UG-2, situated at Plot No. B-1/154, DLF, Dilshad Extension-2, Bhopura, Ghaziabad in an auction from the Oriental Bank of India for which a sale certificate was issued on 26.6.2011 in his favour by the said Bank and he was given physical possession of the same. He has also filed a civil suit for restoring the possession of the said flat against the Oriental Bank of Commerce and the petitioner Bank prior to lodging of the F.I.R. which is still pending for adjudication. The respondent no. 4 for his ulterior motive has lodged the present F.I.R. against the petitioner and other officials of Union Bank of India, who have performed their official duty and are duly protected under section 32 of "the Act". Moreover, the First Information Report lodged against the petitioner also does not disclose any offence against them. It appears that just to harass them, in order to put pressure on them to compromise in Original Suit No. 131 of 2015 filed by respondent no. 4, the impugned F.I.R. has been lodged by him against the petitioner. Hence the present F.I.R. is liable to be quashed.

14. In view of the foregoing discussion, the impugned F.I.R. is hereby quashed.

15. The petition stands allowed.

16. However, no order as to costs.

