
(2018) 03 GAU CK 0081
In the Gauhati High Court
Case No : Criminal Petition No. 39 of 2017

AUTHORISED OFFICER

APPELLANT

Vs

GOENKA WOOLLEN MILLS LTD

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 409
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 32

Citation : (2018) 03 GAU CK 0081

Hon'ble Judges : HITESH KUMAR SARMA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. This petition, under Section 482 of the Code of Criminal Procedure, has been preferred by the Authorised Officer, State Bank of India, Stressed

Asset Management Branch, Guwahati against Goenka Woollen Mills Ltd and others for quashing the First Information Report (FIR) in Azara P.S

Case No. 352/2016 (G.R Case No 13782/16) registered under Section 409 of Indian Penal Code lodged by Sri Vijay Kumar Goenka, the respondent

No. 2.

2. The petitioner states that the respondent no. 1 Goenka Woollen Mills Ltd is a borrower of the SBI, A.T. Road Branch, Guwahati and is a defaulter

whose various loan accounts became irregular and had been classified as NPA long back since 31.3.2004. The respondent company having not

responded to the various demands for repayment, the Bank, SBI took recourse to the provisions of Securitisation and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for the

outstanding loan of Rs 6,34,94,000 and took possession of the immovable and movable properties charged with the Bank by way of mortgage. The petitioner also states that the Debt Recovery Tribunal has also issued a Recovery Certificate in favour of the petitioner for Rs 7,56,01,864.09 against the respondents. The respondents have preferred appeal against the said order of Debt Recovery Tribunal and the same is pending disposal at the Debt Recovery Appellate Tribunal, Kolkata. The petitioner further states that the Debt Recovery Tribunal, in O.A No. 34/2007 has issued Recovery Certificate DRPC No. 1550 dated 15.12.2004 for a sum of Rs 12,87,58,980 and recovery proceedings have been initiated by a Notice of Demand dated 15.5.2015. The respondents challenged the Notice of Demand before this High Court and a Division Bench in WP (C) 4759/2015 directed the respondents to avail the alternative remedy by filing statutory appeal against the impugned notice. The respondents have not preferred any appeal in terms of the directions in WP (C) 4759/2015 rather; lodged an FIR with the Azara Police Station against the petitioner and 7 others, all Officers of SBI, for commission of offence of criminal breach of trust in respect of the properties of which possession has been taken over by the SBI.

3. The petitioner states that properties allegedly involved in the said FIR are non-existent properties referred to in the purported audited balance sheet as on 31.3.2009 showing current asset worth Rs 3.14 crore and stock worth Rs 1.20 crore. The petitioner states that the FIR has been lodged with an intent to harass the officers of SBI and hence the same needs to be quashed.

4. The respondents No. 1 & 2 have filed their affidavit in opposition wherein they have controverted the allegations made by the petitioner and state that the act alleged in the FIR has nothing to do with the proceedings under SARFAESI Act rather; the matter involves criminal act of misappropriation/illegal removal and siphoning of the valuable assets of the respondents by the Bank and its officials.

5. I have heard Mr. L. Talukdar, learned Counsel for the petitioner and also heard Mr. A.M. Bora, and learned Senior Counsel appearing for the respondents.

6. The law with respect to quashing of FIR has been succinctly laid down in the case of State of Haryana v. Bhajan Lal, (1992) Suppl 1 SCC

335 wherein the Honâ??ble Supreme Court laid down certain illustrative

circumstances which may demand quashing of an FIR. The circumstances are reproduced as follows;

(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 FIR 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 FIR 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 FIR 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.

7. In the light of illustrative instances laid down in the case of Bhajan Lal (supra), when I read the FIR, Annexure D, it appears that the basic cause

for lodging the FIR is the letter dated 1.9.2014 from the Deputy General Manager, Stressed Asset Management Branch, Kolkata conveying, inter alia,

as follows; As per the audited Balance Sheet as on 31.3.2009, out of the current assets worth Rs 3.14 crore, stocks constitute Rs 1.20 crore,

PRESENTLY THERE ARE NO STOCK.

8. It is on the basis of this particular observation in the letter dated 1.9.2014 that the respondent no. 2 alleged that stock/assets worth Rs 1.20 crore

has been misappropriated from the custody of the Bank.

9. The contention of the petitioner is that respondents have reflected non-existent properties in their balance sheet and clarification in this regard was

given to the respondent, vide Annexure E & F.

10. It is evident from the rival contentions that issues involved require inquiry and/or investigation of certain facts. The question which forms the core

is whether there exists any mala fide in the acts of the petitioner or the status of stocks/assets, of which actual possession was taken over by the

Bank, was based on some mistaken factual position of the stock/assets. Needless to say, it would be improper for this Court to come to a definite

finding in this regard merely on the basis of reading of documents. At the same time this Court cannot lose sight of the fact that respondents have not

disputed the fact that they are borrowers and that some liability exists towards SBI. The action taken by the petitioner was in discharge of his official

capacity. Section 32 of the SARFAESI Act provides that 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. The investigation of the FIR in question, if allowed, would be taking off the protection provided to the Officers of the Bank who take actions in

terms of the provisions contained in SARFAESI Act. It is with this end in view that one can recall the observations made by the Hon^{ble} Supreme

Court in the case of Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1 observed that in certain cases a preliminary inquiry may be necessary in order to

ascertain whether cognizable offence has been committed. The relevant observations of the Hon^{ble} Supreme Court in Lalita Kumari (supra), are

reproduced as follows;

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no

preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 monthsâ?? delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary

inquiry. 120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

11. The dispute raised in the raised in present petition is covered by the circumstances mentioned in para 120.2 and para 120.6 of LalitaKumari (supra), If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be

conducted only to ascertain whether cognizable offence is disclosed or not. Again, not only the dispute is utterly commercial in nature but there has been a delay of more than two years in lodging the FIR. Thus, as observed in para 120.6 of LalitaKumari (supra), this is a fit case for conducting preliminary inquiry with a view to ascertain whether any cognizable offence has been committed or not.

12. Thus, in view of the law laid down by the Honâ??ble Supreme Court in LalitaKumari (supra), and bearing in mind the nature of dispute involved it would be proper to quash the registration of FIR in Azara P.S Case No. 352/2016 (G.R Case No 13782/16) registered under Section 409 of Indian Penal Code, against the petitioner and direct the Officer in Charge, Azara Police Station, to conduct a preliminary inquiry for the purpose of ascertaining whether any cognizable offence has been committed by the petitioner or any other person in view of the allegation levelled in the information dated 6.12.2016 by the respondent no. 2 and to proceed in accordance with the outcome of such preliminary inquiry.

13. With the above observations and direction, the present Criminal petition stands disposed of.

14. Let a copy of this order be sent to the Officer in Charge, Azara Police Station.