**(2012) 06 KAR CK 0106**

**In the Karnataka High Court**

**Case No :** Criminal Petition No. 1111 of 2012

Mr. Pawan K. Gupta APPELLANT

Vs

Mr. Debasish Mohanty RESPONDENT

**Date of Decision :** 05-06-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 190, 200
Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 27, 33

**Citation :** (2012) 06 KAR CK 0106

**Hon'ble Judges :** Subhash B. Adi, J

**Bench :** Single Bench

**Advocate :** Raghavendra C, for the Appellant; P.N. Ramesh, for Bangalore Law Assts., for the Respondent

**Final Decision :** Allowed

# Judgement

Subhash B. Adi

1. Petitioner - accused No.3 has sought for quashing of proceedings in C.C. No.14210/2011 on the file of the VI Addl. Chief Metropolitan Magistrate, Bangalore, registered for the offences punishable under Sections 27 and 33 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. (for short, the Act) Respondent herein has filed complaint u/s 200 of the Code of Criminal Procedure against the petitioner for the offences punishable under Sections 27 and 33 of the Act inter alia contending that the respondent had borrowed a sum of Rs. 53.00 lakhs from BHW Home Finance Limited, agreeing to repay the said amount along with interest at the rate of 9% per annum. The respondent was paying monthly installment at Rs. 39,750/- for 24 months, Rs. 43,725/- for 36 months, Rs. 47,686/- for 60 months and finally, Rs. 56,312/- for 120 months.

2. The complainant has alleged that much to his shock and dismay, the said Finance Company has abruptly without any justification whatsoever has

 

increased the earnest monthly installment from Rs. 39,750/- to Rs. 52,871/-. In this regard, the complainant had addressed a letter to the accused - Bank on 22.10.2008 seeking reasons for upward revision of the earnest monthly installment. The complainant was quite regular in payment of monthly installments. However, due to global recession, the services of the complainant at Accenture was terminated with effect from 30.12.2008. Inspite of severe financial constraints, the complainant was paying the Accused - Bank a monthly installment though not regular, even subsequent to 21.10.2008. Accused - Bank issued a notice dated 21.03.2009 under the Act as per Annexure ''D'' produced along with the complaint calling upon the complainant to forthwith tender outstanding liability of Rs. 59,83,104.62Ps.

3. The complainant had taken up the matter by issuing the notice issued under the Act vide letter dated 27.05.2009 and also made payment of Rs. 80,000/-. Once any representation or objection is raised by the complainant, it is mandatory under the Act that the accused - Bank should reply to the same within one week enumerating therein the reason for non-acceptance of representation and objection of the complainant. The accused has not replied to the representation and as such, has violated the provisions of Section 13(3-a) of the Act. Under the provisions of the Act, it is imperative for the accused to issue publication in two newspapers. As per rule 8(5) of the Security Interest (Enforcement) Rules, 2002, before the sale of the property, the accused was duty bound to obtain a valuation of the property from an approved valuer. However, no such valuation has been obtained by the accused. The various representatives of the accused were in constant touch with the complainant and not any one of them have even informed the complainant that any further steps were to be taken in furtherance of the earlier notice u/s 13(2) of the Act. The accused, suppressing the material, has lodged a complaint before the Magistrate Court in C. Misc. No.1348/2009 for taking possession of the property u/s 14 of the Act. The complainant alleges that the complainant managed to raise money to the tune of Rs. 6,03,565/- and made a demand draft for the said amount and when he was ready to pay the same, the amount was increased within 24 hours and he was asked to make payment on the same day i.e., 30th November 2009. The complainant also alleges that because of the fraud played by the accused, the complainant has also lost the right of appeal u/s 17 of the Act. It is further stated that the accused - Bank is acting as per whims and fancies and contrary to the provisions of the Act. The complainant alleges that the accused has committed the offences punishable under Sections 27, 28 and 29 of the Act.

4. In the entire complaint, there is no allegation that the accused is not the financial institution, which has lent loan to the complainant. In turn, the complaint reveals that the complainant, in furtherance of the notice issued u/s 13(2) and 13(4) of the Act, has made an attempt to repay the loan and the allegation is that procedure as provided under the Act is not followed by the accused.

 

5. However, before this Court, the learned counsel for the respondent - complainant submits that, the accused-Bank is not a financial institution. The Company, which lent money is one BHW Home Finance Limited and as such, the accused - Bank had no right to recover the money from the complainant. The said averment is not forthcoming in the complaint and apart from this, the complainant himself has participated in the proceedings arising between the parties both under the Act and also before the Debts Recovery Tribunal. Further, he has suffered an order before the Consumer Disputes Redressal Forum. At no point of time, complainant has raised the said objection. Even assuming that such objection was raised, the documents produced by the petitioner - accused reveals that the original financial company, namely, BHW Home Finance Limited has merged with petitioner - M/s.Deutsche Post Bank Home Finance Limited. The documents produced by the petitioner, including the gazette notification along with this petition also reveals that change of name of the BHW Home Finance Ltd., is approved by the concerned authorities. Hence, there cannot be any dispute as regard to this aspect of the matter.

6. The complainant himself has participated in the proceedings and just to circumvent the procedures under the Act and to avoid repayment of loan, has used different methods to challenge the loan transaction, by filing the complaint and at the same time, raising disputes.

7. The learned Magistrate, without even verifying as to whether the complaint constitute an offence under the Act, has erroneously taken cognizance u/s 190 of the Criminal Procedure Code. Minimum that the learned Magistrate is required to do is go through the averments made in the complaint. Except mentioning that there is violation of the provisions of the Act, nowhere it is stated as to how the offence is constituted under the provisions of the Act. When the parties have submitted themselves to the jurisdiction of various proceedings in relation to recovery of debt, without raising such objection and the petitioner has also invoked the provisions of the Act and has filed Crl.Misc.No.1348/2009 u/s 14 of the Act for recovery of possession, it is at this stage, to avoid repayment, this complaint is filed. All this only shows that the complaint is misconceived. In my opinion, the learned Magistrate has erred in taking cognizance of the offences against the petitioner as the averments in the complaint do not constitute any offence.

Accordingly, the petition is allowed. Proceedings in C.C. No.14210/2011 on the file of the VI Addl. Chief Metropolitan Magistrate, Bangalore, stand quashed.