
(2009) 04 MP CK 0042
In the Madhya Pradesh High Court

P.K. Gupta

APPELLANT

Vs

S.K. Banerjee, Managing Director and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 109, 114, 409
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 29, 32

Citation : (2009) 4 MPHT 171 : (2010) 6 RCR(Criminal) 2195

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Mody, J.—Being aggrieved by the order dated 31-4-07 passed by Sessions Judge, Dhar in Criminal Revision No. 32/07 whereby the order dated 17-1-07 passed by CJM, Dhar in Criminal Case No. 0/06 whereby the private complaint filed by the petitioner u/s 29 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (which shall be referred hereinafter as an "Act") was dismissed, was maintained, the present petition has been filed.

2. Short facts of the case are that the petitioner filed a private complaint against the respondent Nos. 1 to 9 alleging that respondent Nos. 1 to 9 are the officials of Saraswat Co-operative Bank Ltd., having its branch office at G/10, Shrivardhan Complex, RNT Marg, Indore. In the complaint it was alleged that the petitioner was the Director of Industrial Unit of M/s. Dynatech Packaging Pvt. Ltd. situated at S-5/2, Industrial Area, Sector No. 1, Pithampur, Tehsil and District Dhar. It was alleged that the unit was purchased by the petitioner from the earlier owners of the said unit, who had taken terra loan and C.C. loan from the Saraswat Co-operative Bank Ltd. It was alleged that respondent Nos. 1 to 9 illegally approached for recovery of the loan without following the provisions contained in the Act of 2002 and in that process the respondent Nos. 1 to 9

unlawfully took possession of the Industrial Unit on 22-11-05. It was alleged that since procedure was not followed by respondent Nos. 1 to 9 and the loan amount has already been paid fully to the bank by the complainant, therefore, the respondent Nos. 1 to 9 has made themselves liable to be prosecuted for the offence u/s 29 of the Act. It was prayed that after taking cognizance and also after notice to the respondent Nos. 1 to 9, they be convicted. After recording of evidence learned Trial Court instead of taking cognizance dismissed the complaint, against which a revision petition was filed which was also dismissed, hence this petition.

3. Learned Counsel for petitioner argued at length and submits that the impugned order passed by the learned Courts below is illegal and deserves to be set aside. It is submitted that it is the mandatory requirement of Section 32 of the Act that before proceeding to sale the property of a secured creditor, it is incumbent upon the authority of the bank to issue notice to the borrower. It is submitted that his mandatory requirement of law is not complied with, hence respondent Nos. 1 to 9 has made themselves liable for prosecution u/s 29 of the Act. It is submitted that in the facts and circumstances the impugned orders passed by the learned Courts below are illegal and deserves to be set aside.

4. Learned Counsel for respondent Nos. 1 to 9 submit that after following the process of law the action has been taken by the bank and respondent Nos. 1 to 9 are fully protected u/s 32 of the Act. It is submitted that no illegality has been committed by the learned Courts below in dismissing the petition filed by the petitioner. It is submitted that since the revision petition filed by the petitioner has already been dismissed, therefore, second petition is barred. It is prayed that petition be dismissed.

5. Section 13(2) of the Act lays down that where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under Sub-section (4) of the Act.

6. In the petition filed before this Court, it is nowhere stated by the petitioner that the mandatory requirement of Section 13(2) has not been complied with by the respondent-Bank. Apart from this since the revision petition filed by the petitioner has already been dismissed, therefore, the petition filed by the petitioner u/s 482, Cr.PC cannot be entertained as the second revision petition is barred under the law.

7. That apart Section 32 of the Act lays down 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.

8. From perusal of the order dated 18-2-07 passed by Tehsildar Mhow filed by petitioner himself it is evident that recovery proceedings were initiated against the petitioner for a sum of Rs. 16,76,353/-. In the petition it is stated that all the dues were paid by the petitioner. It is nowhere stated by the petitioner that on which date the due amount was paid by the petitioner.

9. In the matter of Punjab National Bank and others Vs. Surendra Prasad Sinha, , Hon"ble Apex Court has observed that judicial process should not be an instrument of oppression or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the persons needlessly. Therefore, in case of default in repayment of bank loan, when the debt become time barred and the bank had adjusted the debt from the FDRs in its possession which were deposited by the guarantor by way of security, after their maturity, and a complaint was laid by the guarantor impleading the Chairman, Managing Director of the Bank and a host of officers on the charges under Sections 109, 114 and 409 of the Penal Code, it would be the responsibility and duty of the Magistrate to find whether the concerned accused were legally responsible for the offences charged for, before issuing the process. Thus, the complaint on the basis of which the process was issued was filed as vendetta to harass the persons needlessly, was quashed.

10. In the present case, it is nowhere stated by the petitioner that which of the officer has violated the provisions of the Act. On the contrary petitioner has impleaded all the officers of the Bank as accused. In the facts and circumstances of the case, this Court is of the view that the complaint was filed by the petitioner against the respondent Nos. 1 to 9 as vendetta to harass them. In view of this, this Court is of the view that no illegality has been committed by the learned Courts below in dismissing the complaint filed by the petitioner, which can be corrected by this Court while exercising inherent jurisdiction u/s 482, Cr.PC. Hence, petition has no merits and is hereby dismissed.