
(2014) 09 RAJ CK 0041

In the Rajasthan High Court

Case No : Criminal Writ Petition No. 52/2014

PNB Housing Finance Ltd.

APPELLANT

Vs

State of Raj and Others

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226 — Criminal Procedure Code, 1973 (CrPC) -
Section 154, 173, 482

Citation : (2014) 09 RAJ CK 0041

Hon'ble Judges : Nisha Gupta, J.

Bench : Single Bench

Advocate : Ashwini Kumar Sharma, Senior Officer and Party-in-Person, for the Appellant; Arun Mathur, Assistant Director (Prosecution) City, for the Respondent

Final Decision : Disposed off

Judgement

Nisha Gupta, J.?This writ petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C has been filed for appropriate direction to the concerned authorities to register an FIR on the complaint filed by the petitioner dated 14.6.2013 at Police Station Gandhi Nagar, Jaipur.

2. Unnecessary detailed and cumbersome petition has been filed for the above order and direction. Gist of the contentions in the petition are that the petitioner is a Housing Finance Company registered under the Companies Act and is subsidiary company of Punjab National Bank and notified as a financing company under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and term loan cum hypothecation agreement dated 13.3.2008 was executed between the petitioner and respondent No. 3 wherein the petitioner agreed to lend term loan of Rs. 5 crore to respondent No. 3 and petitioner was entitled to disburse the loan in different stages on which respondent No. 2 has pledged as security the title or documents of the subject plot to be created in future in favour of respondent No. 3, contract to create a mortgage thereon on the petitioner. On the above assurance, the petitioner has

granted financial assistance to respondent No. 3 and he has availed the financial assistance of Rs. 2 crore 30 lacs as the principal amount and it was disbursed directly to respondent No. 2 on 13.3.2008. Thereafter, the petitioner came to know that fraud had been played on him by respondent No. 3 with the privy of respondent No. 2 and which has resulted wrongful loss to the petitioner, if the petitioner would have known the fraud, the financial assistance would not have been granted to respondents. False and incomplete informations have been supplied to the petitioner and wrongful gain has been obtained by respondents No. 2 and 3. The petitioner tried to lodge an FIR at Police Station Gandhi Nagar but when he could not succeed he sent a complaint dated 14.6.2013 to DCP (East), Jaipur Commissionerate through speed post with the prayer that FIR be lodged against the accused company M/s. Jain Realtors Pvt. Ltd. with his directors and official of the Jaipur Development Authority but inspite of receipt of report, no FIR has been registered. Concerned authorities are sitting over the matter, hence an appropriate direction be issued to the concerned authorities to register an FIR and investigate the matter in accordance with law. The same contentions have been repeated by the representative of the petitioner present in person.

3. A reply has been filed on behalf of the State Government in which it has been accepted that a complaint at police Station, Gandhi Nagar has been made and Investigation is in progress but factual report speaks otherwise. In factual report it has been stated that on the instance of respondent No. 5, an FIR No. 343/2010 was registered earlier in which negative final report has been filed and the Investigation Officer was of the opinion that it is the case of civil nature, nothing has been stated that what progress has been made as regards the communication received by DCP (East) on 18.6.2014 sent by the petitioner.

4. Heard the parties present in person and perused the impugned document relevant to the petition.

5. It is not in dispute that a report has been sent to DCP (East) with the allegation that his FIR has not been registered by the officials of Police Station Gandhi Nagar and by invoking the provisions of Section 154 sub-clause (3) Cr.P.C, the information as regards the commission of cognizable offence has been forwarded to DCP (East). It is unfortunate state of affairs that inspite of receipt of information, no FIR has been registered in the matter since 18.6.2013 and DCP has only forwarded the information to Babulal, SI without getting registered the First Information Report.

6. The stand taken by the State is that earlier one FIR has been lodged in the matter and negative final report has been filed on the same. It is true that earlier one FIR No. 343/2010 has been lodged but admittedly it has been lodged by respondent No. 5 who has been alleged to be accused in the present case and that FIR has been registered in relation to the facts which were in issue between respondent No. 5 and Jaipur Development Authority and his officials. Now the present petitioner has filed the complaint for a cognizable offence as regards to

the loan advanced to respondent No. 3 and it has also been stated that connivance of respondent No. 1 and 2 are also there. There is a clear mandate by way of provision in Cr.P.C that if any information received at the Police Station which discloses a commission of cognizable offence it has to be recorded and investigated as per law and in Lalita Kumari Vs. Govt. of U.P. and Others, , the constitutional bench of the Apex Court has clearly mandate as under:.

"Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

7. In view of the above, it was the bounden duty of the concerned authorities to register an FIR which is mandatory in nature, hence it is ordered that SHO Police Station, Gandhi Nagar be register a First Information Report on the information sent to them vide communication DCP (East) dated 14.6.2013 and investigate the matter in accordance with law and result should be submitted expeditiously before the concerned court as per the provisions of Section 173 Cr.P.C.

8. With these observations, this writ petition is disposed of.