

(2011) 10 UK CK 0086

In the Uttarakhand High Court

Case No : Criminal Writ Petition No.875 of 2011

Sharad Kumar Agarwal, Director M/s Wings Commercial
Company Limited, Smt. Neeta Agarwal, Director M/s Wings
Commercial company, Limited and Others

APPELLANT

Vs

State of Uttarakhand and Bank of Baroda

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 399(2), 401(2)
Penal Code, 1860 (IPC) — Section 406, 420, 467, 468, 471
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 13

Citation : (2011) 10 UK CK 0086

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Prafulla C. Pant, J.—Heard.

2. By means of this writ petition moved under Article 226 of Constitution of India, the petitioners have challenged the order dated 3rd of August, 2011, passed by Sessions Judge, Udham Singh Nagar, in Criminal Revision No.127 of 2011. The petitioners have further challenged the order dated 20th of August, 2011, passed by Additional Chief Judicial Magistrate, Kashipur, whereby said Magistrate has directed to the Police to register a criminal case and investigate the same.

3. Earlier, a writ petition (criminal) No. 770 of 2011, was filed by the petitioners before this Court seeking quashing of the First Information Report, registered in pursuance to the order dated 20th of August, 2011, passed by Additional Chief Judicial Magistrate, Kashipur. The said writ petition, after hearing the parties, was dismissed by this Court vide its order dated 07.09.2011.

4. Learned counsel for the petitioners drew attention of this Court to the order

dated 28.09.2011, passed by the Apex Court, in Special Leave to Appeal (Criminal) No. 7393-7394 of 2011, by which, the SLP was allowed to be withdrawn, leaving it to open to the petitioners to challenge the order dated 15th of July, 2011, passed by the revisional court (Sessions Judge, Udham Singh Nagar) in criminal revision No. 127 of 2011. Hence this writ petition.

5. Brief facts of the case are that petitioners are Directors of M/s Wings Commercial Company Limited. Respondent No. 3 Bank of Baroda, sanctioned loans (term of loan Rs. 256 Lakhs, cash credit loan of Rs. 700 Lakhs, apart from Rs. 200 Lakhs in the form of FLC) to the aforesaid company on certain terms. The petitioner took personal guarantee of repayment of said loan. It appears that the company and the petitioners failed to repay the loan, consequently, in January 2010, respondent No.3 (creditor Bank) started proceedings under Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short SARFAESIA). Thereafter, respondent No.3 further invoked the provisions of Recovery of Debt Dues to Bank and Financial Institution Act, 1993(for short RDDBFIA) and filed Original Application No. 106 of 2010, for recovery of loan through Debt Recovery Tribunal at Allahabad, in connection with the proceedings of SARFAESIA. The creditor bank, after compliance of Section 13 of the said Act, took possession of the property mortgaged by the Directors with it. The allegations of the creditor bank is that in October, 2010, the petitioners who were Directors of the Company and the guarantors, conspired and took away a plant and machinery from the premises of the Company, without taking any permission from the Bank. With these allegations a criminal complaint was filed before the Station House Officer, Police Station-Kashipur on 26.08.2010. It appears that the Police took no action, whereafter, the petitioners moved an application u/s 156(3) of Cr.P.C. before the Additional Chief Judicial Magistrate, Kashipur, who rejected the application vide its order dated 16.06.2011. Aggrieved by said order a creditor bank filed criminal revision no. 127 of 2011, before the Sessions Judge, Udham Singh Nagar. The revisional court after hearing the parties vide impugned order dated 3rd of August, 2011, allowed the revision and set aside the order passed by the Magistrate and directed him to pass fresh orders in accordance with law. Consequently, the Additional Chief Judicial Magistrate, Kashipur vide its order dated 20th of August, 2011, directed the Police to register the case against the petitioners in respect of offences punishable u/s 420, 406, 467, 468, 471 of Indian Penal Code.

6. Learned counsel for the petitioners argued before this Court that the petitioners were neither impleaded as a party in the criminal revision, nor heard, as such, the order passed by revisional court is bad in law. In support of the argument, the attention of this Court is drawn to the case of Raghu Raj Singh Rousha Vs. Shivam Sundaram Promoters (P) L and Another, .

7. I have gone through the aforesaid case law and considered the argument advanced on behalf of the petitioners. In the case Raghu Raj Singh (Supra) the Magistrate, while rejecting the application, treated application as criminal

complaint and started proceedings u/s 200 and 202 of Cr.P.C. In other words, the Magistrate had decided to take cognizance of the offence. In that circumstance, the Apex Court held that the accused should have been heard at the time of the revision. But in the present case, the Additional Chief Judicial Magistrate, neither took cognizance of the offence, nor shown any intention to take cognizance in the matter and there was no right to be heard at that stage. As such, this Court is of the view that the Raghu Raj Singh's case does not help the present petitioners.

8. Attention of this Court is drawn to sub-Section (2) of Section 401 read with sub-Section (2) of Section 399 of Cr.P.C., and it is contended that the revisional court has no right to pass any order prejudicial to the interest of the party, who was not impleaded in the revision. It is pertinent to mention here that revisional court had not directed the Magistrate to get the case registered. It has simply examined the validity of the order and set the same aside. By that time no order was passed against the interest of the petitioners. There is no doubt about it that on the basis of such order u/s 156(3) of Cr.P.C., accused had no right to be heard. The position to which the matter was restored was stage of Section 156(3) of Cr.P.C. Thereafter, the Magistrate applied his mind afresh and considered the facts and circumstances of the case and took the view that the matter was such, in which a crime must be directed to be registered. As such, this Court is of the opinion that there is no illegality in the order passed by the revisional court, and the order passed by the Additional Chief Judicial Magistrate, by which crime was directed to be registered.

9. Before concluding, this Court thinks it just and proper to mention that this Court has already applied its mind as to the validity of the First Information Report lodged, when in the earlier round of litigation the writ petition (criminal) No. 770 of 2011, was heard and it was found that there are serious allegations of cheating and criminal misappropriation on the part of the accused in an attempt to defeat the creditor bank from realization the loan and in that circumstances, the writ petition was dismissed. This Court does not find any sufficient reason to take different view to the view taken earlier. Apart from this assuming for a moment that the revisional court should not have passed an order without hearing the petitioners, even then, this Court is not inclined to interfere with the impugned orders, for the reason that it is not equitable to interfere with the same, as it would not secure the ends of justice in the matter, considering the gravity of the offence, said to have been committed by the petitioners, which is a matter of investigation.

10. For the reasons as discussed above, the writ petition is dismissed summarily. (Interim Relief Application No. 10528 of 2011, stands disposed of).