(2012) 02 JH CK 0015

In the Jharkhand High Court

Case No : Criminal Revision No. 476 of 2008

Vijaykedia APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 201, 202, 202(1), 203
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 14, 17

Citation : (2012) 2 BC 210

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : R.N. Prasad, for the Appellant; Rajan Raj, for the Respondent

Judgement

Prashant Kumar, J.—This revision is directed against the order dated 1.3.2008 passed by learned Chief Judicial Magistrate, Ranchi in Complaint Case No. C-1357/2006 whereby and whereunder he dismissed complaint petition u/s 203 of the Cr.P.C. Petitioner (complainant) has stated that he is owner of two Firms, namely, Ajay Aloid & Alcoid Company and Johnson & Johnson Rang Rasayan Udyog. He further alleged that both aforesaid firms are running in separate building inside the Budhia Compound, Ranchi. Complainant further stated that he took loan of Rs. 10 lacs from U.C.O. Bank for running business of Ajay Aloid & Alcoid Company. He further stated that he could not pay back the loan amount, therefore, Bank approached Debt Recovery Tribunal for realization of loan. It is further stated that Debt Recovery Tribunal decided the matter in favour of Bank and directed that Bank can recover its money by selling property and goods of Ajay Aloid & Alcoid Company. It is then alleged that in the garb of aforesaid order of Debt Recovery Tribunal, accused persons dishonestly removed property of the Firm Johnson and Johnson and sold them to Arun Kumar Budhia and Sanjay Kumar Budhia on thrown-away price and, thereby, put huge loss to the petitioner.

2. It appears that petitioner himself examined before Chief Judicial Magistrate on

oath and supported his claim made in the complaint petition. It further appears that learned Chief Judicial Magistrate, Ranchi in exercise of power as contained u/s 202(1) of the Cr.P.C. referred the matter to Senior Superintendent of Police, Ranchi for investigation. It further appears that Sr. Superintendent of Police got the matter investigated through Officer-in-charge of Hindpiri Police Station. Thereafter, Sr. S.P. forwarded the report in the Court of Chief Judicial Magistrate. Thereafter, petitioner filed protest petition, as he was not satisfied with the report of police. Thereafter, learned Court below after considering the materials available on record came to the conclusion that entire activities of Nationalized Bank have been made under law and the matter has been heard and disposed of by learned Debt Recovery Tribunal, Ranchi. Thus, learned Chief Judicial Magistrate has found no irregularities in the action of officers of Bank who were made accused by complainant. Accordingly, finding no sufficient ground to proceed against accused persons, he dismissed the complaint petition.

3. It is submitted by learned Counsel for the petitioner that at the time of taking cognizance it is not open for the Magistrate to go beyond the materials produced by the complainant for concluding that no case is made out against accused person. In the instant case, Court has considered some materials which could not be taken into account. It is submitted that learned Court below took into consideration mandate of Reserve Bank of India regarding non-permissibility of running two industrial units in same campus. Accordingly, it is submitted that impugned order cannot be sustained in this revision.

4. Having heard the submissions, I have gone through the record of the case. It is an admitted position that petitioner (complainant) took Rs. 10 lacs as loan from U.C.O. Bank. Annexure-2 shows that petitioner was declared NPA on 31.3.2005 u/s 17 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as SRFAESI Act). Thereafter, U.C.O. Bank in pursuance of provision of Section 13 of SRFAESI Act asked petitioner to pay Rs. 11,07,125/- with interest. It then appears that when petitioner did not pay said amount, Bank took symbolic possession of the unit of petitioner on 20.10.2005. Thereafter on 21.10.2005 a notice pasted on the premises for preparation of inventory of the property. When despite aforesaid notice, petitioner did not co-operate in preparation of inventory then, Bank moved u/s 14 of SRFAESI Act before District Magistrate for taking physical possession and preparation of inventory of hypothecated assets of the unit. It then appears that thereafter on 25.4.2006 with the assistance of police and in presence of independent witnesses, inventory, of plant, machinery and stock of paints, prepared and Bank took physical possession of the same. It then appears that petitioner filed appeal before Debt Recovery Tribunal, Ranchi against said action of the Bank vide S. A. No. 3/05. Aforesaid appeal was dismissed by Debt Recovery Tribunal and Bank was allowed to sell the plant, machinery and stock of petitioner''s company of which possession was taken as per inventory prepared on 25.4.2006. It appears that as per aforesaid direction of Debt Recovery Tribunal, Ranchi, Bank officials sold aforesaid articles.

5. Thus, it is clear that Bank officials acted in pursuance of the provisions of SRFAESI Act. Thus, in my view learned Chief Judicial Magistrate rightly concluded that actions of Bank officials are in accordance with law.

6. While passing order u/s 203 of the Cr. P.C., the cognizance taking Magistrate is empowered to look into all materials collected during inquiry conducted u/s 202 of the Cr.P.C. As noticed above, learned Chief Judicial Magistrate referred the matter to police for investigation and he received police report during said inquiry. Thus, police report is also part of the materials collected during the said inquiry. From perusal of report, which is annexed with supplementary affidavit, it is clear that as per directives of Reserve Bank of India, it is incumbent for the petitioner to inform U.C.O. Bank that he wants to start another business in the same campus after taking loan from another Bank. Under the said circumstance, if aforesaid materials come before the Chief Judicial Magistrate, through police report, during inquiry u/s 201 of the Cr.P.C. then in my view he is bound to take such fact into account while passing order u/s 203 of the Cr.P.C. Accordingly, I find no illegality in the impugned order in this regard. In view of the discussions made above, I find no merit in this revision, accordingly the same is dismissed.