

(2015) 03 JH CK 0089

In the Jharkhand High Court

Case No : Criminal M.P. No. 3459 of 2013

Virendra Kumar Jha and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 34, 406, 420

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19

Citation : (2015) 3 JLJR 25

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : A.K. Kashyap, Senior Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J.

1. Heard Mr. A.K. Kashyap, learned senior counsel for the petitioners and Mr. A Allam, learned senior counsel for opposite party No. 2.

2. In this application, the petitioners have prayed for quashing the entire criminal proceeding in connection with Sector IV P.S. Case No. 159 of 2013, G.R. No. 1608 of 2013, which has been registered for the offence punishable under Section 406, 420/34 of the Indian Penal Code.

3. The prosecution story as would appear from the FIR instituted by the informant is that the petitioners being the Directors of M/s. Revati Exim Pvt. Ltd. had obtained loan for steel processing and trading to the tune of Rs. 300 lacs, which was sanctioned on 23.12.2010 and which was subsequently enhanced to Rs. 400 lacs. The stock of steel, paper and finished articles were primarily hypothecated as guarantee for working capital and cash credit and rolling machine was hypothecated as guarantee for term loan. It has been stated that the land lying in mouza Pindrajora, Khata No. 25, Plot No. 2770, 2807 and 2809,

Area 4.28 acres, registered in the name of Revati Exim Pvt. Ltd. measuring 4.28 acres vide registered sale deed No. 1147 dated 11.02.2010 was given under equitable mortgage in favour of the bank. It is alleged that on 19.07.2012, over limit of Rs. 80 lakhs was disbursed on 26.07.2012 for the purpose of purchase of Iron goods and paper products. It has further been alleged that the Directors of the Company had dishonestly stopped transactions in the cash credit account and when the officials of the bank had inspected the business premises of the company, the hypothecated stocks were found to be nil. It has also been alleged that according to the terms of the agreement, the Directors of the Company should have deposited the sale proceeds of hypothecated stocks, but the same was not complied and the fund was diverted for their personal use and as a result of which, the bank had sustained wrongful loss. It has also been alleged that the bank had served legal notice to the petitioners through its legal counsel but the same was returned to the bank unserved and although the petitioners were repeatedly requested to regularize the account but the same was not done and hence the case was instituted for the offence punishable under sections 406, 420/34 of the Indian Penal Code, which was registered as Sector IV P.S. Case No. 159 of 2013.

4. Learned senior counsel for the petitioners has submitted that the entire allegations made in the FIR do not constitute any criminal liability and if at all the bank is aggrieved by the acts on the part of the petitioners, the bank may take recourse to an appropriate remedy under civil law. It has further been submitted that in fact the bank has already filed an application before the Debt Recovery Tribunal, Ranchi being Case No. O.A. No. 319 of 2013 under Section 19 of the Recovery of Debts Due to Bank and Financial Institution Act, 1993 read with Rule 4 of the Debts Recovery Tribunal (Procedure) Rules, 1993 and notification issued by the Ministry of Finance Banking Division, and Government of India and since the said application is pending, it was premature on the part of the bank to institute a criminal case against the petitioners. It has also been submitted that the cash credit arrangements etc. have been availed by the petitioners and the stocks and raw materials were hypothecated to the bank. It has been submitted that the bank has claimed an amount of Rs. 5,50,94,795.48 as the loss sustained, for which it has already filed an application, as indicated above, before the Debts Recovery Tribunal and for the self same relief, a criminal case has been instituted, which is not permissible in law. It has further been submitted that the FIR itself reveals that the petitioners had submitted the registered deed of the land by way of mortgage and thereafter the bank had given term loan cash credit arrangements etc. and in such circumstances no ingredients of cheating or criminal breach of trust is made out against the petitioners. In such circumstances, learned senior counsel for the petitioners, therefore, submits that no case is made out against the petitioners and hence the entire criminal proceedings is liable to be quashed.

5. Learned senior counsel for opposite party No. 2, on the other hand, has submitted that there is specific allegation against the petitioners of cheating the

bank and causing wrongful loss to the bank. It has been submitted that the entire money borrowed from the bank to the extent of Rs. 5 crores and above have been diverted for the personal gain of the petitioners. It has further been submitted that the entire operation of taking loan from the bank and thereafter misusing the same for personal gain do amounts to a criminal offence and, thus, it cannot be said that only a civil dispute is made out in the facts and circumstances of the case. It has also been submitted by learned senior counsel for the opposite party No. 2 that the criminal intent on the part of the petitioners would be evident from the fact that after defalcating/misusing a huge amount taken as loan from the bank, they have closed down their company and have floated a new company and there has been new induction of a member as well as retirement of another member, which shows the conspiracy of the petitioners in committing the offence. It has also been submitted that after institution of the FIR, the investigation is still pending and in such circumstances, it would be premature to interfere in the investigation and consequently in the criminal proceedings instituted against the petitioners.

6. After hearing learned counsel for the parties and after going through the records, I find that the FIR, which has been instituted by the informant, clearly speaks of an allegation against the petitioners to the effect that after the period for disbursement came to an end the Directors of the Company all of a sudden stopped operating the cash credit account and that when the bank officials had inspected the business premises of the petitioners, the hypothecated stocks were found to be nil. It has also been alleged that the loan, which was taken, was diverted and in terms of the agreement, the Directors of the Company should have deposited the sale proceeds of the hypothecated stocks every day in the loan account but the same was not done and for the purpose of personal gain, fund was diverted. The acts of the petitioners do speak that there is a deception on the part of the petitioners and considering the allegations made against the petitioners, the deception can be said to be from the very inception and in such circumstances, it cannot be said that no offence has been committed by the petitioners. Learned senior counsel for the petitioners has stressed much on the case instituted by the bank before the Debt Recovery Tribunal to highlight the fact that the case is purely of a civil nature and in such circumstances, the entire criminal proceedings are liable to be quashed. This argument of learned senior counsel for the petitioners cannot be accepted in view of the fact and as discussed above, the written report itself discloses the criminal intent on the part of the petitioners in diverting the loan amount for the personal gain of the petitioners. It is a settled principle of law that an act may give rise to a civil as well as a criminal proceeding. The real test to determine as to whether in the given set of facts whether a civil liability or a criminal offence is made out. Even at the cost of repetition, it can be concluded that for recovery of the loss, which has been caused to the bank, recourse has been taken by the bank by filing an application before the Debt Recovery Tribunal. However, so far as the manner in which the petitioners had conspired and had diverted the funds for their own

personal gain as well as by various acts, which have been enumerated in the written report itself, the bank is not precluded from seeking a remedy under criminal law. Moreover, it appears that investigation into the allegations made by the informant is still pending and in such circumstances, it would not be just and proper to interfere in the investigation when the same is at its nascent stage. The investigation would reveal the truthfulness or otherwise of the allegations made by the informant in his written report and this Court under Section 482 Cr.P.C. should normally refrain from interference in the criminal proceedings when the factual assertions had to be ascertained only in course of investigation.

7. The petitioners having failed to make out a case so as to cause interference in the criminal proceedings and this application being devoid of any merits, the same is hereby dismissed.