2020 INSC 261

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 377 OF 2020
(Arising out of SLP (Criminal) No.5701 of 2019)

K. Virupaksha & Anr. ....Appellant(s)

Versus

The State of Karnataka & Anr. .... Respondent(s)

J U D G M E N T

A.S. Bopanna,J.

Leave granted.

2. The appellants herein were the petitioners in Criminal Petition No.100323/2018 which was dismissed by the High Court of Karnataka, Dharwad Bench through the order dated 21.01.2019. The said order was passed by the High Court while considering the petition filed by the

appellants herein under Section 482 of the Cr.P.C. seeking that the order dated 20.05.2016 passed by the Principal Civil Judge & JMFC in PC No. 389/2016 referring the matter for investigation and consequential registration of FIR in Crime No. 152/2016 by the Hubballi Sub-Urban Police Station for the alleged offences punishable under Sections 511, 109, 34, 120-B, 406, 409, 420, 405, 417 and 426 of IPC be quashed. In the said proceedings the appellants herein are arrayed as Accused Nos. 9 and 11 respectively. The appellants herein were at the relevant point in time working as the Deputy General Managers in the Canara Bank (Accused No.1), Circle Office at Hubbali, Karnataka.

3. The brief facts leading to the present situation is that the respondent No.2 herein (hereinafter referred to as the 'Complainant') had approached the Canara Bank at Hubballi pursuant to which credit facilities were sanctioned on 16.03.2009. The total credit facility sanctioned amounted to Rs.2.68 crores. The property bearing Survey No. 213/2002 situated at Anchatageri

Village, Hubballi measuring 3 acres 2 Guntas was offered as security for the said loan and a charge was created. The said property is hereinafter referred to as the 'Secured Asset'. As per the case of Canara Bank, the Complainant had not repaid the loan amount and in that view having committed default, the account of the Complainant was classified as 'Non-Performing Asset' ('NPA' for short) on 15.01.2013. The Canara Bank thus having invoked the power under Section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ('SARFAESI Act' for short) had issued appropriate notices and ultimately the possession of the secured asset as contemplated under Section 14 of the SARFAESI Act was taken on 22.03.2013. The secured asset was thereafter evaluated and was brought to auction through the public notice dated 13.10.2013 indicating the date of auction as 15.11.2013. The reserve price of the secured asset was fixed at Rs.2,28,51,000/-. Though publication was made, no bids were received in the auction proposed on

15.11.2013 and since the same was a public holiday declared in the State of Karnataka the auction was postponed to 04.12.2013. Even on the said date no bids were received.

4. Accordingly, the Canara Bank had revised the valuation, indicating the reserve price as Rs.1.10 Crore since the earlier reserve price at a higher rate had not attracted purchasers and issued the fresh auction notice dated 30.12.2013. The Complainant claiming to be aggrieved by such action, assailed the auction notice in a Writ Petition filed before the High Court of Karnataka, Dharwad Bench in Writ Petition No. 100382/2014. The learned Single Judge having considered the matter, apart from taking note of the contentions put forth by the Complainant had also taken into consideration the alternate remedy available to the Complainant under the SARFAESI Act and accordingly dismissed the writ petition with cost of Rs.10,000/-, on 22.01.2014. The Complainant assailed the said order by filing a Writ Appeal before the Division Bench in WA No.

100349/2014. The Division Bench through the order dated 19.08.2014 dismissed the Writ Appeal. The Complainant thereafter availed the remedy under Section 17(1) of the SARFAESI Act by filing an application in IR No.3044/2014 (SA) and also accompanying the same with an application under Section 5 of the Limitation Act bearing IA No. 4482/2014. The application seeking condonation of delay and consequently the main application were dismissed by the Debts Recovery Tribunal ('DRT' for short) through its order dated 12.06.2015. Pursuant thereto the Complainant is stated to have filed an Appeal before the Debts Recovery Appellate Tribunal, Chennai ('DRAT' for short) which is also stated to be dismissed.

5. It is in the said backdrop the Complainant filed the complaint under Section 200 of the Cr.P.C in the Court of the Principal Civil Judge (Junior Division) & JMFC, Hubballi in P.C. No.389/2016 alleging that the Officers of the Canara Bank in connivance with the auction purchaser had caused wrongful loss to the Complainant.

To the said complaint, apart from the Canara Bank, the highly placed officials, the appellants herein, the valuers and the auction purchaser were shown as the accused. The said complaint being taken on record, the learned Magistrate has referred the same for investigation under Section 156(3) of Cr.P.C. and to submit a report. Based on such direction the FIR No.0152/2016 is registered. The appellants, therefore, claiming to be aggrieved had preferred the Criminal Petition under Section 482 of Cr.P.C in Criminal Petition No.100323/2018, which was dismissed by the High Court through the order dated 21.01.2019 which is assailed herein.

6. Heard Mr. Brijesh Kumar Tamber, learned counsel appearing for the appellants, Ms. Kiran Suri, learned senior counsel for the Complainant, Mr. Shubhanshu Padhi, learned counsel for the State of Karnataka and perused the appeal papers.

7. The learned counsel for the appellants would contend that apart from the appellants having no role in the transaction between the Complainant and the Canara

Bank, being the Deputy General Managers and working at the Circle Office, even otherwise cannot be held liable to face a criminal action of the present nature. It is contended that the loan transaction and the account being treated as NPA due to the non-repayment of loan cannot be disputed. In that circumstance the entire action taken, upto the stage of the sale of the property is as regulated under the provisions of the SARFAESI Act which provides not only for the procedure but also for redressal of the grievance of the parties concerned. In that circumstance even if the grievance as sought to be made out by the Complainant are taken note, the same cannot form the basis for maintaining the criminal complaint and in such event the learned Magistrate without application of mind has directed investigation under Section 156(3) of Cr.P.C. which has led to the registration of the FIR. It is contended that in respect of the action taken by the Canara Bank, the complainant in fact has availed the remedy of filing the Writ Petition, Writ Appeal and thereafter the proceedings before the

DRT as also DRAT and having failed therein has set criminal law into motion which is not bonafide and not sustainable in law. It is contended that the learned Judge of the High Court of Karnataka has not appreciated the matter in its correct perspective. Instead, the learned Judge has arrived at the conclusion that the investigation would not prejudice the appellants, which is not justified. It is contended that when action is taken against a defaulter, if the instant action is permitted, it would not be possible to discharge the official functions and as such the instant case is a fit case where interference was required but the High Court has failed to appreciate this aspect of the matter. Further, it is also pointed out that the learned Judge was not justified in rejecting the petition filed by the appellants merely because the other petitions filed in Criminal Petition No.101258/2016 and Criminal Petition No.101162/2016 filed by certain other accused had been dismissed and a direction was issued to the police to file the final report.

8. The learned senior counsel for the Complainant would on the other hand rely on the identical criminal petitions which had been dismissed by the High Court insofar as Accused Nos.1 and 12 are concerned. It is contended that though the loan of Rs.2.68 Crores was sanctioned, only a sum of Rs.90 lakhs was disbursed and the remaining amount was adjusted as repayment. It is further contended that the secured asset which was worth more than Rs.4 Crores was undervalued and ultimately sold for Rs.1.10 Crores in connivance with the auction purchaser who is arrayed as Accused No.15. It is further contended that the under valuation of the mortgage property is not the only issue but the issue with regard to the non-disbursement of the entire loan and the non-consideration of the three offers made by the Complainant for One Time Settlement ('OTS' for short) are all aspects which are to be investigated upon. It is contended that in such circumstance the investigation as ordered by the learned Magistrate was justified and the High Court has appropriately refrained from interfering in

the matter at this stage. It is, therefore, contended that the contention as urged in the instant appeal by the appellants does not merit consideration and the appeal is liable to be rejected. The learned counsel for the State of Karnataka would contend that pursuant to direction issued by the learned Magistrate the FIR had been registered and the investigation is in progress and therefore, the same be permitted to be taken to its logical conclusion.

9. Before adverting to the rival contentions urged on behalf of the parties we have kept in perspective the decision of this Court in the case of ***State of Haryana vs. Bhajan Lal*** (1992) Supp (1) SCC 335 placed for consideration by the learned senior counsel for the Complainant which lays down the parameters that are to be kept in view while exercising the extraordinary power/inherent power to quash the criminal proceeding. On stating the parameters, this Court has cautioned that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and

that too in rare cases. In that background, keeping in view the nature of transaction and the manner in which the earlier proceedings were resorted to on the same subject matter, the present situation is required to be considered.

10. As noted, the undisputed fact is that the Complainant had approached the Canara Bank for financial assistance, wherein the appellants herein were the Officers in the Circle Office. The Complainant had availed the loan facility to the tune of Rs.2.68 Crores on 16.03.2009. Though the Complainant contends that the entire amount of Rs.2.68 Crores was not released, but only a sum of Rs.90 lakh was released and the remaining amount was adjusted as repayment, the question would be as to whether that aspect and the other aspects as raised with regard to the non-consideration of the OTS as also the value for which the property was sold and the manner in which it was sold could be investigated into by the police merely because allegations are made and certain sections of the Indian

Penal Code are invoked when the action is resorted to and regulated under SARFAESI Act. While taking note of the sequence of events it is noticed that the secured asset though sold in the auction conducted on 31.01.2014 and the grievances as sought to be put forth at this point in the criminal complaint was available at that juncture, it is not as if the complaint was immediately filed. On the other hand, when the auction notice dated 13.10.2013 was issued, no grievance was made out by the Complainant before any judicial forum. However, the sale did not take place for want of purchasers and a fresh auction notice dated 30.12.2013 was issued indicating the reserve price at Rs.1.10 Crores.

11. At that stage the Complainant approached the High Court of Karnataka, Dharwad Bench in a Writ Petition filed under Articles 226 and 227 of the Constitution of India in W.P. No.100382/2014. The auction notice dated 30.12.2013 was impugned therein. The allegation which is now sought to be put forth in the complaint filed under Section 200 of the Cr.PC wherein

the appellants herein along with others have been accused of with regard to the under valuation of the secured assets was the very contention which was urged in the said Writ Petition. The learned Single Judge in the said Writ Petition had taken note of the contention that the reserve price in respect of the secured assets was fixed at Rs.228.51 Lakhs initially, thereafter in the subsequent auction conducted the same was fixed at Rs.1.10 Crores and has thereafter concluded as hereunder:

> "Undisputedly, petitioner is the debtor and has suffered an order passed by jurisdictional Debt Recovery Tribunal. The Debt Recovery Tribunal, Bangalore has issued recovery certificate in favour of respondent-Bank to recover the said amount. Property mortgaged to respondent-Bank by the petitioner has been brought for sale by auction. In the event of Bank not adhering to provisions of SARFAESI Act in conducting the sale or there being any infraction in this regard, petitioner has an alternate remedy available under SARFAESI Act. Hence, at the stage of auction being conducted by respondent-Bank for recovery of its legitimate dues, this Court would not interfere with said auction in the normal course."

"In the instant case, reserve price earlier fixed at Rs.228.51 lakhs has not fetched customers and as such, respondent-Bank has fixed the reserve price at Rs.110 lakhs which would be the price with which the public auction starts and auction bidders are not permitted to give bids below the floor value or reserve price. If the petitioner is able to secure a customer or a bidder who can offer his bid for the value as proposed by the petitioner itself, it would be needless to state that secured creditor would definitely accept the said bid since earlier attempts by it to auction the property has been in vain."

"In the instant case, as already noticed hereinabove, petitioner is a borrower and it had defaulted in payment of monies due to the Bank. In other words, public money due by petitioner to the Bank has not been repaid. Petitioner loan account having been classified as a 'non-performing asset', respondent-Bank has initiated proceedings under the SARFAESI Act to recover the dues. In the earlier auctions conducted, reserve price fixed was Rs.228.51 lakhs i.e., in the auction which was to be held on 15.11.2013 and 04.12.2013. However, in the paper publication that has been issued on 30.12.2013 Annexure-C in the auction proposed to be held on 31.01.2014 at 3.30 p.m. (E-auction), reserve price has been fixed at Rs.110 lakhs. The grievance of the petitioner is that value of the property is more than Rs.405.21 lakhs and as such, property in question cannot be sold for a pittance. If value of the property as contended by petitioner is Rs.405.21 lakhs,

nothing prevents the petitioner from getting a purchaser or a bidder to purchase the property for the said value and clear off the debts due by it to the respondent which even according to petitioner is around Rs.285.71 lakhs as on 31.01.2014 (which was Rs.261 lakhs as on 11.10.2013). However, without taking said recourse, petitioner is attempting to stall the auction proceedings which is not permissible inasmuch as the respondent-Bank being a nationalised Bank which is the custodian of public money is taking steps to recover its dues by auctioning the property through e-auction and the action of respondent-Bank cannot be flawed. Respondent-Bank has adopted one of the courses suggested by the Hon'ble Apex Court in United India Assurance case referred to supra namely "Public Auction" by which process there would be larger participation. If at all the auction is to be set-aside for any reason whatsoever, petitioner can take recourse to the remedy available under SARFAESI Act and get the sale set aside. However, petitioner cannot be permitted to stall the auction itself under extraordinary jurisdiction of this Court."

(emphasis supplied)

12. While arriving at such conclusion the learned Single Judge had kept in view the provisions as contained in the SARFAESI Act, as also the decisions of this Court, more particularly in the case of ***United Bank***

of India vs. Satyawati Tondon & Ors. (2009) 1 SCC 168. In that view though the learned Single Judge did not accept the contentions as put forth had also indicated that if at all the auction is to be set aside for any reason whatsoever, the Complainant who was the petitioner therein can take recourse to the remedy under SARFAESI Act and get the sale set aside. In that view the learned Single Judge was of the opinion that the Complainant cannot be permitted to stall the auction itself through the prayer made in the Writ Petition. The Complainant had assailed the said order in an intra-court appeal bearing W.A. No.100349/2014. The Division Bench by its order dated 19.08.2014 had taken note of the consideration made by the learned Single Judge with reference to the case of ***Satyawati Tondon & Ors.*** (Supra) and had accordingly dismissed the Writ Appeal.

13. Having taken note of the nature of consideration made by the High Court in the said writ proceedings and keeping in view the proceedings on hand, in order to

come to a conclusion as to whether in a matter of the present nature the appellants should be exposed to the ignominy of going through the process of criminal proceedings, it is also appropriate to take note of the provisions as contained in the SARFAESI Act. The fact that the issue relates to the exercise of remedy relating to a secured asset as defined under the Act cannot be in dispute. The fact that the account of the Complainant was classified as NPA is also the admitted position. In that regard when a right accrues to the secured creditor to enforce the security interest, the procedure as contemplated under Sections 13 and 14 of the SARFAESI Act is to be resorted to. Further the Security Interest (Enforcement) Rules, 2002 provides the procedure to be adopted with regard to the valuation and sale of the secured asset. If the Complainant, as a borrower had any grievance with regard to any of the measures taken by the secured creditor invoking the provisions of Section 13 of the SARFAESI Act, the remedy as provided under Section 17 of the SARFAESI Act was to be availed. It is in

that light the High Court in the writ proceedings had arrived at such conclusion. At that point in time the Complainant availed the remedy under the Act by filing the application under Section 17 in I.R. No.3044/2014. Since there was delay in filing, an application in I.A. No.4482/2015 was filed under Section 5 of the Limitation Act seeking condonation of delay. The same was rejected on the ground of delay against which an appeal is said to have been filed before the DRAT and it was pending though it is now stated to be dismissed. It is at that stage when it was still pending the impugned complaint in P.C. No.389/2016 was filed, wherein through the order dated 20.05.2016 it had been referred to an investigation under Section 156 (3) of the Cr.PC.

14. The learned senior counsel for the Complainant no doubt referred to the Criminal Petition No.101162/2016 and Criminal Petition No.101258/2016 filed by the Accused Nos.1 and 12 being dismissed by the High Court and the same not being carried further and attaining finality. Though that be the position, in the instant case

the appellants are before this Court to exercise the remedy available and as such the dismissal of the said petitions cannot prejudice their case when this Court is required to take a view on the matter though it has not been availed in the earlier cases. Further the learned senior counsel has also referred to the statements of two former Officers of the Canara Bank, namely, Gurupadayya and Bapu which was recorded during the course of the investigation and a reference was made by the learned senior counsel to the detailed report regarding investigation wherein the Investigating Officer, namely, the Assistant Police Sub-Inspector, Sub-Urban Police Station, Hubballi had concluded that as per the investigation it is found that all the accused persons with conspiracy and in collusion with each other have cheated the Complainant by releasing only Rs.90 Lakhs out of the sanctioned amount of Rs.2.68 Crores and by later not releasing the remaining amount had caused economic stumbling block and sold the property mortgaged to one of the accused.

15. The issue however is, as to whether such proceedings by the police in the present facts and circumstances could be permitted. At the outset the sanction of loan, creation of mortgage and the manner in which the sanctioned loan was to be released are all contractual matters between the parties. The Complainant is an industrialist who had obtained the loan in the name of his company and the loan account was maintained by the Canara Bank in that regard. The loan admittedly was sanctioned on 16.03.2009. When at that stage the amount was released and if any amount was withheld, the Complainant was required to take appropriate action at that point in time and avail his remedy. On the other hand, the Complainant had proceeded with the transaction, maintained the loan account until the account was classified as NPA on 15.01.2013. Initially the issue raised was only with regard to the under valuation of the property when it was brought to sale. On that aspect, as taken note the writ proceedings were filed and the learned Single Judge

having examined, though did not find merit had reserved liberty to raise it before the DRT, which option is also availed. It is only thereafter the impugned complaint was filed on 20.05.2016.

16. The SARFAESI Act is a complete code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstance as already taken note by the High Court in writ proceedings if there is any discrepancy in the manner of classifying the account of the appellants as NPA or in the manner in which the property was valued or was auctioned, the DRT is vested with the power to set aside such auction at the stage after the secured creditor invokes the power under Section 13 of SARFAESI Act. This view is fortified by the decision of this Court in the case of ***Authorised Officer, Indian Overseas Bank & Anr. vs. Ashok Saw Mill*** (2009) 8 SCC 366 wherein it is held as hereunder:

"**34.** The provisions of Section 13 enable the secured creditors, such as banks and financial institutions, not only to take possession of the secured assets of the borrower, but also to take over the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realising secured assets, subject to the conditions indicated in the two provisos to clause (*b*) of sub-section (4) of Section 13.

35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even

though possession may have been made over to the transferee.

37. The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr Gopalan and Mr Altaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted."

(emphasis supplied)

17. We reiterate, the action taken by the Banks under the SARFAESI Act is neither unquestionable nor treated as sacrosanct under all circumstances but if there is discrepancy in the manner the Bank has proceeded it will always be open to assail it in the forum provided. Though in the instant case the application filed by the Complainant before the DRT has been dismissed and the Appeal No.523/2015 filed before the DRAT is also stated to be dismissed the appellants ought to have availed the

remedy diligently. In that direction the further remedy by approaching the High Court to assail the order of DRT and DRAT is also available in appropriate cases. Instead the petitioner after dismissal of the application before the DRT filed the impugned complaint which appears to be an intimidatory tactic and an afterthought which is an abuse of the process of law. In the matter of present nature if the grievance as put forth is taken note and if the same is allowed to be agitated through a complaint filed at this point in time and if the investigation is allowed to continue it would amount to permitting the jurisdictional police to redo the process which would be in the nature of reviewing the order passed by the learned Single Judge and the Division Bench in the writ proceedings by the High Court and the orders passed by the competent Court under the SARFAESI Act which is neither desirable nor permissible and the banking system cannot be allowed to be held to ransom by such intimidation. Therefore, the present case is a fit case

wherein the extraordinary power is necessary to be invoked and exercised.

18. The appellants herein had also referred to the provision as contained in Section 32 of the SARFAESI Act which provides for the immunity from prosecution since protection is provided thereunder for the action taken in good faith. The learned senior counsel for the Complainant has in that regard referred to the decision of this Court in the case of ***General Officer Commanding, Rashtriya Rifles vs. Central Bureau of Investigation & Anr.*** (2012) 6 SCC 228 to contend that the defence relating to good faith and public good are questions of fact and they are required to be proved by adducing evidence. Though on the proposition of law as enunciated therein there could be no cavil, that aspect of the matter is also an aspect which can be examined in the proceedings provided under the SARFAESI Act. In a circumstance where we have already indicated that a criminal proceeding would not be sustainable in a matter of the present nature, exposing the appellants even on

that count to the proceedings before the Investigating Officer or the criminal court would not be justified.

19. In that view, for all the reasons stated above we pass the following:

O R D E R

(i) The complaint bearing P.C. No.389/2016 and the order dated 20.05.2016 passed therein as also the FIR No.0152/2016 insofar as the appellants herein are concerned stand quashed.

(ii) Insofar as the grievance of the Complainant, he is at liberty to avail his remedies in accordance with law if he chooses to assail the order dated 12.06.2015 passed in I.R. No.3044/2014 and the order dated 31.05.2017 passed in Appeal No.523/2015 by the DRT and DRAT respectively in accordance with law.

(iii) The appeal is accordingly allowed with no order as to costs.

(iv) Pending applications if any, shall also stand disposed of.

.....J.
(R. BANUMATHI)

.....J.
(S. ABDUL NAZEER)

.....J.
(A.S. BOPANNA)

New Delhi,
March 03, 2020