Sudhir Kumar & Ors. vs State Of Nct Of Delhi & Ors. on 30 August, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 30

+ W.P.(CRL) 2152/2022 and CRL.M.A. 18607/2022, 25544/2022
14320/2023

SUDHIR KUMAR & ORS. ..... Petitione
Through: Mr. Ramji Srinivasan, Ms. Rebecca
M. John, Senior Advocates with Mr. R.P. Vat
Mr. Apoorv Sarvaria, Ms. Yashika Sarvaria,
Sahaj Aggarwal, Ms. Simran Chadha and Ms.
Anushka Baruah, Advocates.

versus

STATE OF NCT OF DELHI & ORS. ..... Respon
Through: Mr. Anand V. Khatri, ASC with
Inspector Mukesh Kumar, PS: Barakhamba Ro
for State/Respondent No.1.
Mr. Madhav Khurrana, Ms. Jyoti Taneja, Ms
Aarzoo Aneja, Ms. Muskan Puri and Mr. Sha
Singh, Advocates for Respondents No. 2 an

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This writ petition has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India read with Section 482 Cr.P.C. for quashing of FIR No. 106/2022, registered on 26.08.2022 under Sections 409/120B IPC at PS: Barakhamba Road against the Petitioners and the consequential proceedings emanating therefrom.

2. Shorn of unnecessary details, factual matrix to the extent necessary and as averred in the writ petition is that Petitioners No. 1 and 2 are the Assistant General Managers of State Bank of India ('SBI') and Petitioner No.3 is the Chief Manager. Respondent No.2/LR Builders Pvt. Ltd. is the guarantor in the loans advanced by SBI to two Partnership concerns M/s. P.P. Jewellers (Exports)

and M/s. P.P. Jewellers (Delhi). Both the Partnership Firms belong to the family of Kamal Kumar Gupta. In M/s. P.P. Jewellers (Exports), Kamal Kumar Gupta is a Partner with his wife Veena Gupta and in M/s. P.P. Jewellers (Delhi), Kamal Kumar Gupta is a Partner with his relative Mukesh Gupta. Respondent No.2 is promoted and managed by the family of Kamal Kumar Gupta. Rahul Gupta/Respondent No.3 is one of the Directors of Respondent No.2 and is the person who filed the criminal complaint as well as the application under Section 156(3) Cr.P.C. on behalf of Respondent No.2.

3. In 2007, M/s. P.P. Jewellers (Exports) sought and availed loan/limits of Rs.56 Crores from SBI. Respondent No.2 stood surety by executing the Capital Guarantee Agreement and mortgaged property bearing No.H-5, Netaji Subhash Place, New Delhi (hereinafter referred to as 'subject property'). Original title deeds of the subject property were deposited with the Bank on 12.09.2007. Respondent No.2 confirmed the creation of mortgage by letter dated 12.09.2007 stating therein that the said mortgage shall also be the security for all the indebtedness past, present and future towards the Bank. On 03.02.2015 and 21.01.2016, Board of Directors of Respondent No.2 passed Resolutions authorizing Kamal Kumar Gupta, Veena Gupta, Arjun Gupta, Pawan Kumar Gupta and Krishan to execute the necessary documents in favour of the Bank.

4. The loan account became irregular and on 22.02.2017, SBI filed a Suit for recovery of Rs.21,35,64,326.72/- against the borrowers, Respondent No.2 and the Guarantors, being OA No. 298/2017. However, the borrower subsequently availed the benefit of One Time Settlement ('OTS') Scheme of the Bank and settled the loan account in the year 2020-2021 and resultantly SBI withdrew the OA on 14.06.2021.

5. M/s. P.P. Jewellers (Delhi) availed loan-I/limit of Rs.40 Crores and on 31.12.2011, loan/security documents were executed by the borrower and Guarantee Agreement was executed by Respondent No.2. In this loan account, one property on pari passu basis was also mortgaged by Respondent No.2, however, the realizable value of the same was only Rs.17.21 Crores. This loan account became bad/irregular and on 10.06.2016, SBI filed OA No. 364/2016 for recovery of Rs.24,69,00,073.04/-, which is pending before Debts Recovery Tribunal-II ('DRT'), Delhi.

6. Loan-II/limit of Rs.60 Crores was sanctioned and advanced by State Bank of Bikaner & Jaipur ('SBBJ') on 01.02.2012 in favour of M/s. P.P. Jewellers (Delhi). Loan/security documents by the borrower and the Guarantee Agreement by Respondent No.2 were executed on 01.02.2012. In this loan account, one property on pari passu basis was mortgaged by Respondent No.2, however, the realizable value of the same was only Rs.19.57 Crores. This loan account also became bad/irregular and SBBJ/SBI, on 10.06.2016, filed OA No. 643/2016 for recovery of Rs.62,86,96,292.98/- against the borrower, Respondent No.2 as Guarantor and others. This OA is pending before DRT-III, Delhi.

7. It is averred in the petition that after taking into account the realizable value of the properties mortgaged in the loan account of M/s. P.P. Jewellers (Delhi), SBI exercised its lien over the subject property and filed applications in both the OAs bearing Nos. 364/2016 and 643/2016 for attachment before judgment of this property under Section 19(13)(A) of the Recovery of Debts and Bankruptcy Act, 1993 and in the application filed in OA No. 364/2016 being IA No. 261/2021, in the

presence of counsel for Respondent No.2, learned Presiding Officer, DRT-II passed an order restraining Respondent No.2 from creating any third party interest or dealing with the property in any manner and the order is in force till date.

8. It is further averred that Rahul Gupta, who is the son of Kamal Kumar Gupta and Veena Gupta filed a police complaint at PS: Barakhamba Road in July, 2021 in his capacity as one of the Directors of Respondent No.2. Further, Pawan Gupta, who is the paternal uncle of Rahul Gupta is also a Director in Respondent No.2 and Kamal Kumar Gupta, Veena Gupta, Pawan Gupta and Respondent No.2 are Guarantors in the account of M/s. P.P. Jewellers (Delhi). However, police did not register the FIR on the basis of this complaint and Respondent No.2 through Rahul Gupta then filed an application under Section 156(3) Cr.P.C. before the Metropolitan Magistrate (MM), Patiala House Courts, seeking registration of FIR against the Petitioners and for further investigation in the matter.

9. During the pendency of the application, learned MM passed an interim order on 02.09.2021 directing that the IO must take custody of the original title deeds of subject property till the final disposal of the application. Aggrieved by this order, SBI preferred a writ petition in this Court being W.P.(Crl.) No. 1726/2021 titled 'SBI and Ors. v. Commissioner of Police, Delhi and Ors.'. This petition was finally disposed of by the Court on 21.01.2022 inter alia observing that the impugned order was passed by the MM disregarding the fact that Bank is retaining the documents as a security for a loan of Rs.145.48 Crores and there was no reason why the Bank officials would destroy or use those documents for ulterior purposes, as apprehended by Respondent No.2 and invite legal action against them. It was also observed that the Bank being a secured creditor has a lien over the property in terms of the judgment of this Court in Raj Kumar & Anr. v. Syndicate Bank, 2016 SCC OnLine Del 4726. Liberty was granted to the IO to seek permission of the Court or approach the Bank Manager if the documents were required for investigation.

10. It is averred that despite being aware of this order dated 21.01.2022, wherein the Court recognized the lien of the Bank over the subject property, the SHO, PS Barakhamba Road registered FIR No. 106/2022 on 26.08.2022 under Sections 409/120B IPC against the Petitioners, who are officials of SBI and were merely acting in their official capacity. It is alleged in the FIR that Petitioners conspired with Kamal Kumar Gupta, Partner in M/s. P.P. Jewellers (Exports) and M/s. P.P. Jewellers (Delhi) and committed criminal breach of trust by not releasing the title deeds of the subject property to Respondent No.2, thereby causing wrongful loss to the Firm.

11. Case of Respondent No.2 as emerging from reading of the FIR is that:

> (a) Respondent No.2 is a Private Limited Company incorporated under the Companies Act, 1956 and is the sole and exclusive owner of the subject property. Kamal Kumar Gupta is an active partner in both the entities, i.e., M/s. P.P. Jewellers (Delhi) and M/s. P.P. Jewellers (Exports) and is looking after their day to day affairs. Petitioners, who are accused Nos.1, 2 and 3 as officials of SBI, in connivance with Kamal Kumar Gupta hatched a criminal conspiracy to dishonestly and fraudulently usurp the subject property, thereby causing wrongful loss to Respondent No.2. M/s.

> P.P. Jewellers (Exports) had taken a loan from SBI, for which the corporate guarantee was extended by Respondent No.2 and title deeds of the subject property were kept with the Bank in lieu of which loan was extended to M/s. P.P. Jewellers (Exports). Corporate guarantee was liable to be released as SBI entered into OTS with M/s. P.P. Jewellers (Exports) and the amount stipulated therein was fully paid by M/s. P.P. Jewellers (Exports). Basis this settlement, OA No. 298/2017 filed by SBI was withdrawn. Despite this, Petitioners are wrongfully withholding the property documents and not releasing them to Respondent No.2, being the lawful owner of the subject property and legally entitled to receive back the title deeds.
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> (b) The unique modus operandi adopted by the Petitioners was that M/s.

P.P. Jewellers (Exports) availed a loan of Rs.56 Crores from SBI and all its current assets were given as primary security along with all fixed assets as collateral security. Corporate guarantee was given by M/s. Akash Nirman Udyog Pvt. Ltd., a 100% subsidiary of M/s. P.P. Jewellers Pvt. Ltd., by mortgaging its immoveable property bearing No.16/2699, Khasra No.198, Block-L, Naiwala Road, Karol Bagh. In addition to the security, Respondent No.2 also gave corporate guarantee and mortgaged the subject property. In 2017, loan account of M/s. P.P. Jewellers (Exports) was declared as Non-Performing Asset ('NPA') and SBI initiated proceedings for recovery before DRT and filed OA No. 298/2017. Despite entering into an OTS, Petitioners dishonestly and fraudulently and without the consent and knowledge of Respondent No.2 inserted Clause No.4 in the OTS dated 20.10.2020 (hereinafter referred to as "OTS 2020") which provided that the collateral security offered by Respondent No.2 for the credit facilities of M/s. P.P. Jewellers (Exports) would not be released after settlement under OTS 2020 since corporate guarantee of Respondent No.2 had been extended for credit facilities of M/s. P.P. Jewellers (Delhi) against which Bank filed OA in DRT. The said clause was incorporated behind the back of Respondent No.2 and without its consent and Respondent No.2 learnt of the same much later during the DRT proceedings, whereafter it filed IA No. 1503/2020 to delete the said clause and DRT being prima facie satisfied, vide order dated 16.12.2020 directed that the clause will be subject to the outcome of the IA. OA 298/2017 was withdrawn on 14.06.2021 by SBI but title deeds have been withheld by the Bank predicating its case erroneously on Clause No.4, which reads as follows:

> "4. Please note that the collateral security offered by L R Builder Pvt Ltd for the credit facilities of P P Jewellers Exports would not be released after settlement under OTS 2020 since corporate guarantee of L R Builder Pvt Ltd has been extended for the credit facilities of P P Jewellers Delhi against which Bank has filed OA in DRT for recovery of its Dues."

(c) In 2011, M/s. P.P. Jewellers (Delhi), another entity of Kamal Kumar Gupta availed a loan of Rs.40 Crores from SBI and secured the same from its current assets as primary security with all fixed assets as collateral and corporate guarantee was given by M/s. P.P. Jewellers (Exports) and Respondent No.2. Property bearing No.02, Commercial Centre, Sector-3, Rohini, Delhi, was also mortgaged. This loan account also became irregular/bad and SBI filed OA No. 364/2016 for recovery, which is pending before DRT but significantly, it is in respect of a different loan and has

nothing to do with the subject property. Petitioners are hand in glove with Kamal Kumar Gupta and are acting in collusion with him with an eye on the subject property and are not willing to consider a more viable option available to the Bank for recovering the public money from assets of Kamal Kumar Gupta, which are sufficient to pay off the debts of the Bank. Bank is legally bound to return the title deeds of the subject property entrusted to it as a collateral security at the time of sanction of the loan of Rs.56 Crores. Petitioners are vicariously liable and guilty of criminal breach of trust by withholding the title deeds with an ill intent.

12. Learned Senior Counsels for the Petitioners contend that Petitioners are innocent and are being falsely and maliciously prosecuted for the alleged offence under Section 409/120B IPC. No criminal liability can be attached to the Petitioners and the FIR deserved to be quashed. Petitioners are Bank officers and are performing official duties assigned to them, in accordance with law and as per the charter of duties. Their actions are bona fide and in the interest of the Bank they are bound to recover public money from the entities whose accounts have become bad/irregular and declared NPA.

13. It is urged that SBI has exercised its right of general lien over the subject property mortgaged as collateral security by a corporate debtor against a loan sanctioned and advanced by SBI. This course of action is in consonance with Section 171 of the Indian Contract Act, 1872 (hereinafter referred to as '1872 Act'). Section 171 provides that bankers etc. may, in the absence of a contract to the contrary, retain as security for a general balance of account, any goods bailed to them and Section 148 defines bailment as delivery of goods by one person to another for some purpose, upon a contract that the same shall be returned when the purpose is accomplished. Albeit lien is a right given under law and is not required to be supported by any document from the person against whom the right is exercised, however, in the present case, Respondent No.2 has in its letter of confirmation dated 12.09.2007 while creating mortgage of the subject property stated that "We confirm that the said security shall also be for all other liabilities and indebtedness past, present and future to the Bank....". General lien of a Bank has been recognized by the Courts from time to time and in support of the plea, learned Senior Counsels relied on the judgments of the Supreme Court in Board of Trustees of the Port of Bombay and Others v. Sriyanesh Knitters, (1999) 7 SCC 359; Syndicate Bank v. Vijay Kumar and Others, (1992) 2 SCC 330; judgements of this Court in Raj Kumar & Anr. v. Syndicate Bank, 2016 SCC OnLine Del 4726; and Sadhna Gupta & Ors. v. R.C. Gupta & Ors., 2009 SCC OnLine Del 2334; and of Madras High Court in C.R. Ramachary and Another v. Indian Overseas Bank and Others, 2018 SCC OnLine Mad 3298.

14. It is argued that registration of the FIR by the police is wholly illegal and based on false accusations. The allegation in the FIR is that Petitioners have colluded with Kamal Kumar Gupta to retain the title deeds so that he can continue to enjoy the property, whereas the fact is that it is Rahul Gupta, one of the Directors of Respondent No.2, who in connivance with his father Kamal Kumar Gupta and other family members/relatives filed a motivated and malicious complaint and later an application under Section 156(3) Cr.P.C. only to stall the recovery of loans availed and arm twist the Petitioners to release the title deeds of the subject property, which relief he has so far been unable to get from this Court and the DRTs as well as Debts Recovery Appellate Tribunal ('DRAT'), despite several applications.

15. The dispute sought to be raised by Respondent No.2 is purely civil in nature and both OA Nos.364/2016 and 643/2016 involving the same subject matter are pending before the DRTs and will be adjudicated on merit. The criminal proceedings are an abuse of process of law and a purely civil dispute has been given a colour of criminality. Supreme Court has from time to time held that High Courts should not hesitate to quash criminal proceedings where disputes are essentially civil in nature and to buttress this submission, reliance was placed on the judgment of the Supreme Court in Dr. Sonia Verma and Another v. State of Haryana and Another, 2024 SCC OnLine SC 349, wherein referring to an earlier judgment in Paramjeet Batra v. State of Uttarakhand and Others, (2013) 11 SCC 673, the Supreme Court observed that a closer examination of the surrounding facts and circumstances fortified the conclusion that an attempt was made to shroud a civil dispute with a cloak of criminality and when the High Court was apprised that the substance of the criminal complaint served only to cast doubt on the validity of a commercial transaction, a sale deed for the transfer of the property and appropriate civil remedy had been pursued, the High Court ought to have quashed the criminal proceedings.

16. It was further contended that before registration of an FIR, the concerned SHO ought to have been mindful of the fact that dispute with regard to release of the title deeds of the subject property was pending in DRTs and this Court had set aside the order of the learned MM to release the deeds to the IO and thus the allegations had no basis and an FIR could not be registered. Registration of an FIR is a serious matter and even in cases where applications are filed under Section 156(3) Cr.P.C., the Supreme Court has cautioned that Magistrates must apply their minds before directing registration of FIRs and prima facie be satisfied that the allegations disclosed a cognizable offence and ingredients of the offences alleged are made out. [Ref.: Ramdev Food Products Private Limited v. State of Gujarat, (2015) 6 SCC 439].

17. It was argued that in the instant case, ingredients of Section 405 IPC are not even prima facie made out so as to constitute an offence of criminal breach of trust. In Sardar Singh v. State of Haryana, (1977) 1 SCC 463, the Supreme Court succinctly held that an essential ingredient of Section 405 IPC is that the accused being in any manner entrusted with property or with dominion over property, dishonestly misappropriates or converts to its own use that property or dishonestly uses or disposes of that property in violation of any direction of law. In N. Raghavender v. State of Andhra Pradesh, CBI, (2021) 18 SCC 70, the Supreme Court observed that Section 405 IPC pre-supposes existence of mens rea, i.e., mere retention of property entrusted to a person, without any misappropriation cannot fall within the ambit of criminal breach of trust. In the present case, there is no misappropriation of the title deeds and/or the subject property by the Petitioners and even in the complaint/application under Section 156(3) Cr.P.C., Respondent No.2 was unable to show how Petitioners can be accused of misappropriating the subject property and/or the title deeds, considering that the title deeds are in lawful custody of the Bank under a lien, by virtue of Section 171 of 1872 Act.

18. It was also argued that the only objective behind filing a complaint against the Petitioners was to somehow and circuitously seek release of the title deeds of the subject property. This is fortified by some of the orders which need a special mention. During the pendency of the application under Section 156(3) Cr.P.C., learned MM passed an interim order dated 02.09.2021 in Criminal Case No.

5714/2021 and directed the IO to take custody of the original title deeds of the subject property till final disposal of the application. This order was challenged by the SBI before this Court in W.P.(Crl.) No. 1726/2021 on 07.09.2021. The writ petition was disposed of by the Court on 21.01.2022 recognizing the lien of the Bank over the subject property and observing that the direction to the IO to take custody of the documents was in total disregard of the fact that Bank was retaining the documents as a security for the loan and had no reason to destroy them or use them for ulterior purposes.

19. It was urged that the same relief was repeatedly sought before DRTs/DRAT and was declined. Applications bearing IA Nos. 902/2022 and 102/2023 filed by Respondent No.2 in OA 364/2016 seeking discharge of corporate guarantee and release of original title deeds of the subject property, were dismissed by DRT-II vide order dated 13.07.2023. IA No. 1210/2023 again seeking release of original title deeds, was dismissed vide order dated 24.01.2024. Significantly vide order dated 25.04.2024, DRAT in Misc. Appeal No. 54/2024 declined to stay the order dated 24.01.2024 of DRT-II and observed that prima facie no ground was made out by Respondent No.2 to restrain SBI from proceeding against the subject property. On 11.01.2024, DRT-I in OA No. 643/2016 (re-numbered as TA No. 248/2023) restrained all defendants therein including Respondent No.2 from creating third party interests not only in the subject property, but all other properties being the subject matter of the OA. In these facts and circumstances, Petitioners seek exercise of inherent powers of this Court to quash the FIR based on false allegations and being an abuse of process of the Court and rely on the judgments of the Supreme Court in State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) SCC 335; P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24; and Neeharika Infrastructure Private Limited v. State of Maharashtra and Others, (2021) 19 SCC 401.

20. Mr. Madhav Khurana, learned counsel appearing on behalf of Respondents No. 2 and 3 submits that no case is made out by the Petitioners for quashing of the FIR at this stage. Relying on the judgment of the Supreme Court in Neeharika Infrastructure (supra), it is argued that police has the statutory right and duty under the provisions of Cr.P.C. contained in Chapter-XIV to investigate into cognizable offences and Courts would not thwart any investigation. Power of quashing should be exercised sparingly and with circumspection in the rarest of rare cases and while examining an FIR/complaint, quashing of which is sought, Court cannot embark upon an inquiry as to the reliability or genuiness of the allegations made therein. It is urged that FIR is not an encyclopaedia which must disclose all facts in detail and therefore, since the investigation is in progress, criminal proceedings ought not be scuttled at the initial stage.

21. It was argued that Respondent No.2 is the sole and exclusive owner of the subject property. Kamal Kumar Gupta is the active partner in both the entities, i.e., M/s. P.P. Jewellers (Delhi) and M/s. P.P. Jewellers (Exports) and is looking after their day to day affairs. Petitioners in connivance and criminal conspiracy with Kamal Kumar Gupta are dishonestly and fraudulently trying to usurp the subject property, thereby causing wrongful loss to Respondent No.2. M/s. P.P. Jewellers (Exports) had taken a loan from the Bank for which corporate guarantee was extended by Respondent No.2 and title deeds were deposited with the Bank. The said corporate guarantee is liable to be released as the Bank entered into OTS 2020 with M/s. P.P. Jewellers (Exports) and the

money having been received, OA No. 298/2017 was withdrawn by the Bank in DRT. Therefore, SBI is bound to return the title deeds of the subject property that were entrusted by Respondent No.2 as collateral security at the time of sanction and advancement of the loan.

22. It was further argued that in 2011, M/s. P.P. Jewellers (Delhi), another entity of Kamal Kumar Gupta, availed a loan of Rs.40 Crores from SBI and to secure the loan, all current assets of M/s. P.P. Jewellers (Delhi) were given as primary security along with all fixed assets as collateral. Corporate guarantee was given by M/s. P.P. Jewellers (Exports) and Respondent No.2 with mortgage of its immoveable property at Rohini. SBI entered into an OTS 2020 with M/s. P.P. Jewellers (Exports), Kamal Kumar Gupta and Veena Gupta and unilaterally, in the OTS 2020 incorporated Clause No.4 providing that the collateral security offered by Respondent No.2 for the credit facilities of M/s. P.P. Jewellers (Exports) would not be released after settlement under OTS 2020 since corporate guarantee of Respondent No.2 was extended for credit facilities of M/s. P.P. Jewellers (Delhi) against which SBI had filed OA in DRT for recovery of dues. This unilateral insertion was without the knowledge and consent of Respondent No.2 and cannot bind it as it had furnished corporate guarantee only for the loan of Rs.56 Crores, which was settled and paid off. Respondent No.2 had filed an IA 1561/2020 before the DRT vide order dated 16.12.2020 and DRT directed that this unilateral clause in the OTS will be subject to outcome of the IA. The loan transactions, which are subject matter of OA Nos. 364/2016 and 643/2016, have nothing to do with the loan transaction of Rs.56 Crores, for which the subject property was offered as corporate guarantee. It is obvious that the Bank officials including Petitioners have joined hands with Kamal Kumar Gupta and for illegally withholding the title deeds, they are vicariously liable for criminal breach of trust and conspiracy and no case is made out for quashing the FIR. This petition is an abuse of process of law and the investigation must proceed unhindered to unearth the conspiracy to misappropriate the property.

23. Mr. Khatri, learned Additional Standing Counsel appearing for the State, relying on the Action Taken Report/Status Report submitted that M/s. P.P. Jewellers (Exports) had taken a loan from the Bank for which corporate guarantee was extended by Respondent No.3 and title deeds of the subject property of Respondent No.2 were deposited in lieu thereof. The corporate guarantor is entitled to be discharged and his property ought to be released from encumbrances, as SBI had entered into OTS 2020 with M/s. P.P. Jewellers (Exports) and moreover, Clause No.4 of the OTS 2020 is without the knowledge and consent of Respondent No.2. SBI has sufficient security to recover the loan amount and the entire issue is sub-judice before the DRT. The subject property has no relation with the loan advanced to M/s. P.P. Jewellers (Delhi). The subject property is currently under possession of P.P. Jewellers Pvt. Ltd. and a showroom is being run out of the said property. Basement, first floor and second floor of the property have been licensed to P.P. Design Estate.

24. Mr. Khatri argued that investigation revealed that proper audit/ account of hypothecated stock was neither sought nor maintained by the Bank during the loan tenure and Bank made no effort to secure the said stock legally. SBI has ensured that the title deeds of the subject property are not released so that Kamal Kumar Gupta can enjoy uninterrupted possession over the said property. It is alleged that neither requisite steps were taken by SBI to secure the stocks, nor has it taken any criminal action against the borrowers for siphoning off the stocks, which is indicative of a collusion between the borrowers acting through Kamal Kumar Gupta and Bank officials i.e. Petitioner No.1

and Petitioner No.3 herein.

25. Heard learned Senior Counsels for the Petitioners and learned counsel for Respondents No. 2 and 3 as well as learned ASC for the State.

26. Before proceeding further, it would be useful to have a bird's eye view of the loan transactions involved in the present case. In 2007, M/s. P.P. Jewellers (Exports), which is a partnership concern of Kamal Kumar Gupta and his wife Veena Gupta, availed a loan of Rs.56 Crores from SBI for which Respondent No.2 stood as a guarantor and executed the guarantee agreement as also mortgaged the subject property with the deposit of original title deeds on 12.09.2007. In the letter of confirmation dated 12.09.2007, it was stated on behalf of Respondent No.2 that 'we confirm that the said security shall also be for all other liabilities and indebtedness past, present and future to the Bank and shall subsist and continue notwithstanding the granting of totally new limits and facilities and all accounts coming into credit and/or interchangeability of limits and/or cancellation of limits etc.'.

27. Admittedly, the loan account became irregular/bad and on 22.02.2017, Bank filed an OA bearing No.298/2017 for recovery of Rs.21,35,64,326.72/- against the borrowers, Respondent No.2 and other guarantors. The matter was settled and OTS 2020 was executed between M/s. P.P. Jewellers (Exports), Kamal Kumar Gupta and Veena Gupta and OA was withdrawn by SBI. Significantly, in the OTS 2020, Clause No.4 was incorporated, which reads as follows:

> "4. Please note that the collateral security offered by L R Builder Pvt Ltd for the credit facilities of P P Jewellers Exports would not be released after settlement under OTS 2020 since corporate guarantee of L R Builder Pvt Ltd has been extended for the credit facilities of P P Jewellers Delhi against which Bank has filed OA in DRT for recovery of its Dues."

28. On 31.12.2011, Loan-1 was advanced by SBI to M/s. P.P. Jewellers (Delhi) to the tune of Rs. 40 Crores, for which security documents were furnished by the borrower and guarantee agreement was executed by Respondent No.2 along with one property being mortgaged on pari passu basis with a realizable value of Rs.17.21 Crores, as per the Petitioners. This account also became bad/irregular and SBI filed OA No. 364/2016 before DRT-II on 10.06.2016 for recovery of Rs.24,69,00,073.04/- against the borrower, Respondent No.2 as guarantor and others. The OA is pending consideration. Loan-II was sanctioned and advanced to M/s. P.P. Jewellers (Delhi) on 01.02.2012 for which Respondent No.2 stood as a guarantor and mortgaged a property with realizable value of Rs.19.57 Crores. The loan account became irregular leading to filing of OA No. 643/2016 by SBI before the DRT-III on 10.06.2016 and this OA is also pending.

29. Rahul Gupta, who is one of the Directors of Respondent No.2 approached SBI to issue 'No Dues Certificate' ('NDC') and release of the original title deeds of the subject property. NDC was given by the Bank and the charge created on the assets of Respondent No.2 was also discharged, but title deeds were not released. Several reminders are stated to have been sent by him seeking release of the title deeds and failure of the Bank to do so led to filing of the complaint in July, 2021 at PS: Barakhamba Road, but FIR was not registered by the police. Respondent No.2 through Rahul Gupta

filed an application under Section 156(3) Cr.P.C. registered as Criminal Case No. 5714/2021 seeking registration of the FIR against the Petitioners. During the pendency of the application, police registered FIR No.106/2022 at PS: Barakhamba Road and the application was thereafter dismissed as withdrawn by the learned MM vide order dated 05.09.2022.

30. The first and foremost argument raised on behalf of the Petitioners is that Bank has exercised its right of general lien over the subject property in accordance with Section 171 of 1872 Act, which it was entitled to do in law and thus the subject property and consequentially the title deeds are in lawful custody of SBI. Court finds merit in this contention. In Raj Kumar (supra), the issue before the Co-ordinate Bench of this Court was whether the Bank was obliged to release the title documents of the property deposited by Petitioner No.1 to secure repayment of the dues of the cash- credit limit availed by Petitioner No.1 in the name of Petitioner No.2, of which Petitioner No.1 was the sole proprietor. It was an admitted position that Petitioner No.1 was also a guarantor of the advances made by the Bank to one M/s. K.B. International and another individual and the advances were outstanding. Bank had invoked the guarantee given by the Petitioner for dues of M/s. K.B. International and the other individual and instituted proceedings before DRT for recovery. The contention of the Petitioners was that the title deeds were deposited to create equitable mortgage of the property only to secure dues in account of Petitioner No.2 and not as guarantor for dues of M/s. K.B. International and therefore, the security given for dues in one account cannot be utilized for dues of another account. The Court held that the right under Section 171 of the 1872 Act could be exercised with respect to title deeds of immoveable property deposited with the Bank as security. Relevant paragraphs of the judgment are as follows:

> "12. The counsel for the petitioner then contended that the respondent Bank is also holding security of another property of M/s. K.B. International/Mr. Dayanand Basoya for recovery of its dues and the recovery can be made from that property and not from the property of the petitioner.
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> 13. I am afraid, the petitioner cannot compel the Bank to make any such choice. Till the dues of the respondent Bank from M/s. K.B. International and Mr. Dayanand Basoya for whom the petitioner had admittedly stood as guarantor are re-paid, no direction for return of the title deeds can be given.
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> xxx xxx
> 17. My search has yielded:
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> (a) Paget's Law of Banking, Twelfth Edition in Chapter 29 titled "Lien and Set-off" and under the Head "The banker's lien" to be opining that "what class of securities may be the subject of lien is not entirely clear" and under the heading "Documents of title to land" authoring as under:
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> "29.5 The lien does not extend to title deeds (or any other property) which is delivered to a banker for mere safe custody. Until the Law of Property (Miscellaneous Provision) Act, 1989, a deposit of title deeds could create an equitable mortgage. However, by S. 2(1) of the Act, a contract for the sale or other disposition of an

interest in land must be in a signed document which incorporates all the terms which the parties have expressly agreed. It is therefore no longer possible to create an equitable mortgage by a mere deposit of title deeds. It seems doubtful whether an ineffective mortgage can give rise to a lien because the banker would not be exercising a right of retention over property delivered to him for some other purpose.

In Wylde v. Radford, a customer deposited with his bankers a deed of conveyance of two distinct properties, giving them at the same time a memorandum charging one of the properties as security both for a specific sum and also for his general balance. The bankers later claimed a general lien over the other property. This claim was rejected, but on the basis of the construction of the memorandum rather than on the ground that the general lien does not extend to conveyances. The case is therefore of little assistance. As Buckley J. said of Wylde v. Radford in Re London and Globe Finance Corpn:

'All that Kindersley V-C held was that, upon the true construction of the memorandum, the result of the transaction in that case was that property B was never intended to be charged at all; that the deed was deposited because it contained property A, and not because it contained property B; and that as regarded B there was no security given'

(b). A Single Judge of this Court in Sadhna Gupta v. R.C. Gupta 2009 (112) DRJ 376 to have held title deeds to be goods within the meaning of Section 171 of the Contract Act and to have further held that it cannot be considered as immovable properties as long as possession of the property was not taken over by the bank.

(c). Single Judges of this Court in State Bank of India v. Diwanji Buildwell (India) Pvt. Ltd. 111 (2004) DLT 267 and Texla Towers Ltd. v. Punjab National Bank (2004) 109 DLT 975 to have also proceeded on the premise that the banker's lien extends to title deeds of immovable property deposited with the bank.

(d). A Single Judge of the High Court of Andhra Pradesh in Mohan Enterprises v. Andhra Bank to have held the right of a banker to general lien to extend to title deeds of immovable property deposited with it though without discussion whether the same are goods or not.

(e). Yet another Single Judge of the High Court of Andhra Pradesh in V. Srinadha Reddy v. The Branch Manager, Indian Bank to have held the right of general lien to extend to gold deposited for a gold loan also and to be a valuable right of the banker judicially recognized.

(f) Justice H.J. Kania speaking for the High Court of Bombay in The Indian Cotton Company Ltd. v. Huri Poonjoo AIR 1937 Bom. 39 to have observed "it cannot be disputed that title deeds of immovable property would fall under the definition of

goods, within the meaning of the Indian Contract Act" though not in the context of banker's lien.

(g) Supreme Court in R.D. Saxena v. Balram Prasad Sharma (2000) 7 SCC 264 to have held "thus understood goods to fall within the provision of Section 171 of the Contract Act should have marketability and the person to whom it is bailed should be in a position to dispose it of in consideration of money. In other words, the goods referred to in Section 171 of the Contract Act are saleable goods. There is no scope for converting the case files into money, nor can they be sold to any third party. Hence, the reliance placed on Section 171 of the Contract Act has no merit".

(h) A Single Judge of the High Court of Calcutta in R.K. Agencies Ltd. v. Central Bank of India AIR 1992 Cal. 193 to have also observed that "the concept of banker's lien is generally in respect of what are called collaterals, i.e. documents, securities etc. which come into the hands of the banker and are intended to cover the banker's claim against the customer.

(i). A Single Judge of the High Court of Calcutta in Nayabuddin v. Union of India to have though without considering the said aspect held the bank to be having a general lien over title deeds of immovable property, deposited with it as a security.

(j). A Division Bench of the High Court of Madras in The Committee representing RBF Nidhi Limited v. Vipanchi Investments Pvt. Ltd. to have again though without going into the said aspect held the right of general lien to extend over title deeds of immovable property deposited with it.

(k). A Single Judge of the High Court of Karnataka in Sri. Nagendra Prasad v. The Manager, State Bank of Mysore to have also proceeded on the premise that the banker's lien extends to title deeds of immovable property deposited with the bank.

(l). A Single Judge of the High Court of Madras in Sree Vadivambigai Ginning Industries Pvt. Ltd. v. Tamil Nadu Mercantile Bank Limited to have also proceeded on the premise that the banker's lien extends to title deeds of immovable property deposited with the bank.

(m). State Bank of India v. Jayanthi, Aarthi Lakshmi and Sanjai Balaji AIR 2011 Mad. 179 to have also proceeded on the premise that the banker's lien extends to title deeds of immovable property deposited with the bank.

(n). A Division Bench of the Bombay High Court in Shri Surendra v. Chief Manager & Authorized Officer State Bank of India to have also proceeded on the premise that the banker's lien extends to title deeds of immovable property deposited with the bank.

18. In view of the aforesaid position, the doubt which had arisen stands cleared and I hold that the rights under Section 171 of the Contract Act can be exercised with respect to title deeds of immovable property deposited with the Bank as security."

31. In Board of Trustees of the Port of Bombay (supra), the Supreme Court observed as follows:

> "17. Having come to the conclusion that the MPT Act does not oust the provisions of Section 171 of the Contract Act what we have now to see is whether the appellants can claim any relief or benefit under the said section. Section 171 of the Indian Contract Act, 1872 reads as follows:
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> "171. General lien of bankers, factors, wharfingers, attorneys, and policy-brokers.--Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

This section is in two parts. The first part gives statutory right of lien to four categories only, namely, bankers, factors, wharfingers and attorneys of High Court and policy-brokers subject to their contracting out of Section 171. The second part of Section 171 applies to persons other than the aforesaid five categories and to them Section 171 does not give a statutory right of lien. It provides that they will have no right to retain as securities goods bailed to them unless there is an express contract to that effect. Whereas in respect of the first category of persons mentioned in Section 171 the section itself enables them to retain the goods as security in the absence of a contract to the contrary but in respect of any other person to whom goods are bailed the right of retaining them as securities can be exercised only if there is an express contract to that effect.

18. The appellants in the present case are contending that they are wharfingers and the goods which were imported and off-loaded at the Port were with them as bailee. The submission of the learned counsel for the appellants was that in the absence of a contract to the contrary as bailee of the goods now imported, namely, acrylic fibre the said consignment could be retained by the appellants as security for the amount due to them towards wharfage and demurrage charges in respect of the earlier consignment of woollen rags. While considering this contention we have also to examine whether the claim for wharfage and demurrage could be covered by the expression "general balance of account" occurring in Section 171 of the Contract Act.

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28. It was also contended on behalf of the respondents that even if Section 171 of the Contract Act applies the appellants can exercise their lien under Section 171 of the Contract Act for the recovery of their dues for the services rendered by them as wharfingers only and not for any other services provided by them as detailed in the MPT Act. It was contended that wharfage is the money paid for landing goods at a wharf or for shipping and taking goods into a boat or barge. The general lien of wharfinger as understood under Section 171 of the Contract Act would limit to the charges due to a wharfinger for the services rendered as a wharfinger and not otherwise. On this premise it was submitted that once the appellant takes charges of the goods from the ship-owner it does not act as a wharfinger but acts in another capacity which may be that of warehouse-owner, bailee etc. and,

therefore, lien cannot be claimed in respect of demurrage etc. but, at best, can be claimed only for wharfage charges.

29. Attractive as it may appear, we do not find any merit in the aforesaid submission. The first part of Section 171 of the Contract Act identifies five categories of persons who can have a general lien and retain the goods bailed to them. Wharfinger is one of them. The submission of the learned counsel for the respondents does not take into account the fact that Section 171 of the Contract Act enables these five categories to retain as security the goods bailed to them in respect of "general balance of account". The general balance of account has to be of the amount legally due to bankers, factors, wharfingers, attorneys and policy-brokers. The appellants come in the category of wharfingers, namely, the owners of the wharf. The duties which they are required to perform are provided in the statute itself, namely, Section 42 of the MPT Act. In other words the services which are undertaken under Section 42 have to be paid for and any amount due in respect thereof will be regarded as "general balance of account". There is no reason to give a restricted meaning to the expression "general balance of account" to mean only wharfage charges which, according to the respondents, would imply the charges for loading or unloading of goods, and would not include demurrage. Once goods are taken charge of by the appellants as wharfingers then in respect of the services rendered, as contemplated by Section 42, if there is any amount which is due and payable to it the same would be regarded as "general balance of account" in respect of which it has a general lien over the goods bailed to it.

30. In our opinion the circular dated 2-10-1979 issued by the appellants was valid and the appellants could retain the goods which were in their possession as bailees as security for realisation of the amount of wharfage, demurrage and other charges which were due to them. We accordingly allow these appeals and set aside the judgment of the High Court with the result that the writ petitions filed by the respondents in the High Court stand dismissed. The appeals are allowed with costs throughout."

32. In Vijay Kumar (supra), the Supreme Court examined the meaning and scope of the expressions 'banker's lien' and 'bank guarantee' and passages relevant to the present context are as follows:

> "6. In Halsbury's Laws of England, 2nd Edn., Vol. 20, p. 552, para 695, lien is defined as follows: [Ed.: In 4th Edn. see Vol. 28, para 502] "Lien in its primary sense is a right in one man to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied. In this primary sense it is given by law and not by contract."

In Chalmers on Bills of Exchange, 13th Edn., p. 91 the meaning of "Banker's lien" is given as follows:

> "A banker's lien on negotiable securities has been judicially defined as 'an implied pledge'. A banker has, in the absence of agreement to the contrary, a lien on all bills received from a customer in the ordinary course of banking business in respect of any balance that may be due from such customer."

In Chitty on Contract, 26th Edn., p. 389, para 3032 the Banker's lien is explained as under:

> "Extent of lien.-- By mercantile custom the banker has a general lien over all forms of commercial paper deposited by or on behalf of a customer in the ordinary course of banking business. The custom does not extent to valuables lodged for the purpose of safe custody and may in any event be displaced by either an express contract or circumstances which show an implied agreement inconsistent with the lien ....
>
> ... The lien is applicable to negotiable instruments which are ... remitted to the banker from the customer for the purpose of collection. When collection has been made the proceeds may be used by the banker in reduction of the customer's debit balance unless otherwise earmarked."

(emphasis supplied) In Paget's Law of Banking, 8th Edn., p. 498 a passage reads as under:

> "The Banker's Lien Apart from any specific security, the banker can look to his general lien as a protection against loss on loan or overdraft or other credit facility. The general lien of bankers is part of law merchant and judicially recognised as such."

In Brandao v. Barnett [(1843-60) All ER 719 : (1846) 12 Cl & Fin 787 : 8 ER 1622] , it was stated as under: (All ER p. 722-H) "Bankers, most undoubtedly, have a general lien on all securities deposited with them, as bankers, by a customer, unless there be an express contract, or circumstances that show an implied contract, inconsistent with lien."

The above passages go to show that by mercantile system the Bank has a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customer in the ordinary course of banking business and that the general lien is a valuable right of the banker judicially recognised and in the absence of an agreement to the contrary, a Banker has a general lien over such securities or bills received from a customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer's debit balance. Such a lien is also applicable to negotiable instruments including FDRs which are remitted to the Bank by the customer for the purpose of collection. There is no gainsaying that such a lien extends to FDRs also which are deposited by the customer.

7. Applying these principles to the case before us we are of the view that undoubtedly the appellant Bank has a lien over the two FDRs. In any event the two letters executed by the Judgment-debtor on September 17, 1980 created a general lien in favour of the appellant Bank over the two FDRs. Even otherwise having regard to the mercantile custom as judicially recognised the Banker has such a general lien over all forms of deposits or securities made by or on behalf of the customer in the ordinary course of banking business. The recital in the two letters clearly creates a general lien without giving any room whatsoever for any controversy.

8. The High Court, however, found that the two FDRs were given only by way of securities for the Bank guarantee and when once the guarantee is discharged, the amounts covered by the said two

FDRs would belong to the Judgment-debtor since the charge is limited to the amount of the Bank guarantee. The High Court, in this context relied on the words "Lien to BG 11/80" which are found on the back of each FDR and according to the High Court in view of this endorsement, the Bank has no right to hold the security in their own favour after the Bank guarantee has been released and they are bound to return it to the customer namely the Judgment-debtor when he makes a demand on the Bank. The High Court also observed that the terms of the contract namely furnishing FDRs as security for the bank guarantee are inconsistent with the general lien that the Bank claims and the Bank can claim only a particular lien for the bank guarantee. It also observed that since the Bank guarantee has been discharged, the Bank has no right to hold the security for something more than what was agreed upon. We are unable to agree with this reasoning. As already noticed, the recital in the covering letters as extracted above clearly established that a general lien was created in favour of the Bank on the two FDRs. Merely because the two FDRs were also furnished as security for the issuance of the bank guarantee, the general lien thus created cannot come to an end when the Bank guarantee is discharged. The words "Lien to BG 11/80" do not make any difference.

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13. In this context it is also necessary to consider the extent to which the Court can go into the nature of the securities offered for the Bank guarantee in the light of the banker's lien. In United Commercial Bank v. Bank of India [(1981) 2 SCC 766 : AIR 1981 SC 1426] this Court referred to a passage from R.D. Harbottle (Mercantile) Ltd. v. National Westminster Bank [(1977) 2 All ER 862 : (1977) 3 WLR 752] with approval which runs as under: (All ER p. 870) "It is only in exceptional cases that the courts will interfere with the machinery of irrevocable obligations assumed by banks. They are the life-blood of international commerce.... The machinery and commitments of banks are on a different level. They must be allowed to be honoured, free from interference by the courts. Otherwise, trust in international commerce could be irreparably damaged."

In R.D. Harbottle (Mercantile) Ltd. case [(1977) 2 All ER 862 : (1977) 3 WLR 752] it was stated in the Headnote as under:

> "(i) Only in exceptional cases would the courts interfere with the machinery of irrevocable obligations assumed by banks. In the case of a confirmed performance guarantee, just as in the case of a confirmed letter of credit, the bank was only concerned to ensure that the terms of its mandate and confirmation had been complied with and was in no way concerned with any contractual disputes which might have arisen between the buyers and sellers ...."

The above passage has also been referred in U.P. Cooperative Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. [(1988) 1 SCC 174] wherein this Court held that the aforesaid represents the correct state of the law. In this case, this Court has affirmed the obligation of payment without dispute by the Bank in the Indian context in cases relating to Bank guarantees. But it is equally obvious that the same liability or obligation on the part of the Bank will not be there when the Bank guarantee is discharged and this needs no emphasis.

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16. We have already held that the appellant Bank has a general lien over those two FDRs. The High Court having held that the two FDRs can be attached gave a further direction dismissing the objection of the Bank that the Bank should deposit an amount of Rs 35,000. As rightly contended by the learned counsel for the appellant Bank, the Bank in the instant case has the liberty to adjust from the proceeds of the two FDRs towards the dues to the Bank and if there is any balance left that will only be the amount which would belong to the depositor namely the Judgment-debtor in this case and only such amount, if any, can be attached in discharge of a decree. It is also submitted that the liability of the Judgment-debtor to the appellant Bank was far in excess of the amounts covered by the two FDRs and therefore nothing is due from the Bank to the Judgment-debtor. This is a matter for verification. However, in the view taken by us above namely that the Bank has a general lien over the two FDRs we set aside the order of the High Court directing the appellant Bank to deposit an amount of Rs 35,000. The High Court shall, however, consider the objections raised by the Bank, namely that no amounts are due to the Judgment-debtor, in the light of the above principles laid down by us and then decide whether there is any amount left for being attached by the Decree-holder in execution of his decree. With the above directions the appeal is accordingly allowed. In the circumstances of the case, there will be no order as to costs."

33. In Sadhna Gupta (supra), a Co-ordinate Bench of this Court observed as under:-

> "24. Thus, Section 171 creates a general as distinguished from a particular lien of bankers. This section, however, limits the right to a general lien, i.e., a right of the bankers to retain goods in their possession as a security for a general balance of account to them. This general lien can be excluded by special agreement whether expressed or implied from the circumstances but such agreement must be clearly in consistent with the existence of general lien. When a person has a number of accounts kept in the books of the bank, the customer cannot take the plea in the absence of any special contract to say that securities which he deposited are only applicable to one particular account and not subject to a general lien. In other words Section 171 is clear and categoric that unless a contract to the contrary is established by the plaintiff the bank's right of lien has to be accepted.
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> 25. As per mercantile customs recognised by the judiciary, the banker has a general lien over all forms of deposits or securities made on behalf of the borrower in the ordinary course of banking business. The documents on the record placed by the bank as well as by the plaintiffs clearly create a general lien of the defendant bank on the title deeds deposited by defendant No. 1 in his individual capacity as sole proprietor of defendant No. 2 for the loans raised by him. Syndicate Bank v. Vijay Kumar, AIR 1992 SC 1066 is referred to.
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> 26. Learned counsel for the plaintiffs has placed reliance on Tilendra nath Mahanta v. United Bank of India, AIR 2002 Gauhati 1 to support his submissions. Therein it was observed that banker's lien can properly arise only over things which belong to

customers but which are held by the bank as security. There is no bailment in case of fixed deposits or separate accounts as fixed deposits are basically loans in the hands of bankers. This judgment is of no help to the plaintiffs in the facts and circumstances of this case.

27. In State Bank of Mysore v. Lakshmi Construction P. Ltd., (2001) 103 Co. Cases 258 (Mad.), 'a general lien' appearing in Section 171 has been explained as:

"20. This "general lien" as it is realized from the section is culled by way of distinction from the "particular lien" of an artificer for work done by him on the goods in question was the basis for the English law and proved trade usage of relationship between bankers and customers. But it is also made clear that a banker's lien, when it is not excluded by special contract, express or implied, extends to all bills, cheques, and money entrusted or paid to him and all securities deposited with him, in his character as a banker. Thus, the statute does not seem to expressly refer to banker's lien in respect of deposits but, however, money has been held to be a species of goods over which, lien may be exercised. Looking into the provision of law stated above, there appears to be no lien or liability created by defendants Nos. 5 and 6 in favour of the plaintiff in the instant case over their money for loan due to the plaintiff.

"By mercantile custom the banker has a general lien over all forms of commercial paper deposited by or on behalf of a customer in the ordinary course of banking business."

is a passage found in Chitty on Contracts, Vol. 11, para. 473 (23rd edition). At page 474, it is found further that a banker may not claim the protection of the lien in respect of advances made after notice that the security belongs to or is subject to some interest of a stranger. Thus, from the facts of the instant case, with reference to the contents of exhibit P-18, by applying the above legal ratio, it is made clear that the lien can be created only by prevailing over the property of the customer that is defendants Nos. 1 to 4 herein and not against the deposits made by defendants Nos. 5 and 6 pursuant to Section 171 of the Indian Contract Act."

28. Thus, it is clear that defendant bank has a general lien over the papers deposited by defendant No. 1 with the bank at the time of raising loan for and on behalf of defendant No. 2. Title deeds are goods within the meaning of Section 171 and cannot be considered as immovable properties. Possession of the property remained with defendants No. 1 and 2 and it was never taken over by the bank."

34. It will be useful to refer to the judgment of the Division Bench of the Madras High Court in C.R. Ramachary (supra). In the said case, contention of the Petitioner was that in view of the fact that earlier two loan accounts were settled and only the third loan account to the tune of Rs.63 lacs was declared as NPA, there was sufficient collateral security and therefore, documents in relation to the mortgaged properties with respect to the loans which were settled be released. Case of the Bank, refusing to return the documents, was that first Petitioner had obtained another loan as sole

proprietor of Petitioner No.2 from the Bank and had committed default for which a suit for recovery was pending before the DRT. Since first Petitioner was liable to pay substantial amount to the Bank, Bank exercised its general lien over the mortgaged properties and was not in a position to release the collateral security until closure of all loans. The Madras High Court dismissed the petition and relevant passages are as follows:

> "5. The learned counsel for the petitioners submitted that as the earlier two loan accounts were settled, the documents relating to the properties which were furnished as security for the said two loan accounts cannot be withheld by the respondent bank. In support of his contention, he has placed reliance on two decisions of this Court.
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> 6. The first decision relied on by the learned counsel for the petitioners is State Bank of India v. Jayanthi, reported in 2011 (3) MLJ 245 : 2011 (2) CTC 465. He pointed out that in the said case it was observed that the deposit of title deeds by which the mortgage was created by the deceased borrower, N.P.S. Mahendran, was for a specific purpose to cover an advance for a specific loan. When such is the situation, the borrower having deposited the documents in order to secure a specific transaction, the bank cannot contend that they could hold the documents for a balance due in a different loan account, where the said N.P.S. Mahandran is not a borrower. We have carefully perused the said decision and we find that as far as the second loan account is concerned, the deceased N.P.S. Mahendran was not a borrower. In such circumstances, it was held that the documents furnished as security in relation to the first loan account could not be withheld in relation to the other loan account where deceased N.P.S. Mahandran was not the borrower. However, such are not the facts in the present case. In the present case, admittedly, the first petitioner is the borrower in relation to all the three loans. Hence, this decision would not apply to the case of the petitioners.
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> 7. Thereafter, the learned counsel for the petitioners placed reliance on another decision of this Court dated 9.8.2017 in W.P.(MD) No. 12613 of 2016 in the case of M. Shanthi v. Bank of Baroda. The learned counsel for the petitioners specifically placed reliance on para 11 of the said decision. He pointed out that in the said case, the decision of the Supreme Court in the case of Syndicate Bank v. Vijay Kumar, reported in (1992) 2 SCC 330 : AIR 1992 SC 1066, relied upon by the learned counsel for the respondent has been specifically considered and thereafter it was held that unless the customer/debtor has expressly agreed that his properties can be retained as security for the outstanding balance in the account of the bank, the bank cannot exercise lien over the properties of such customer under Section 171 of the Indian Contract Act, 1872.
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> 10. The specific case of the learned counsel for the respondent bank is that the bank exercises a banker's lien/general lien over all the properties of the petitioner and in

such case, as the third loan was declared as NPA, they were well within their rights not to return the documents relating to the properties which were furnished as guarantee in the earlier two loan accounts.

11. The question of banker's lien/general lien fell for consideration before the Supreme Court in Syndicate Bank v. Vijay Kumar, supra. The provision of Section 171 of the Indian Contract Act, 1872 was also noticed in the said case.....

12. As per Section 171 of the Indian Contract Act, the bank may, in the absence of a contract to the contrary, have lien over the security for a general balance of account. However, no other person shall have a right to retain as security for such balance, unless there is an express contract to that effect. In the case on hand, the bank had created a lien over the petitioner/borrower's property which was mortgaged with the bank in respect of the other two loan accounts.

13. In the decisions relied upon by the learned counsel for the petitioners all the properties did not belong to the borrower. In the present case, the properties belong to the first petitioner/borrower. Therefore, in view of the finding of the Supreme Court, as reproduced above, we are of the view that the respondent bank has a general lien over the securities and other instruments deposited by the petitioner with the bank in the ordinary course of banking and such general lien being a valuable right of the bank as per the decision of the Supreme Court, it cannot be ignored in the absence of an agreement to the contrary. In such case, the respondent bank is well within its rights to retain the documents furnished by way of collateral security in relation to the earlier two loan accounts which were settled, as the third loan was not settled. In such view of the matter, we do not find any merit in the submissions made by the learned counsel for the petitioners.

14. At this stage, the learned counsel for the petitioners submits that the Original Application, which is pending before the Debts Recovery Tribunal, may be directed to be disposed of expeditiously. In view of the prayer made, the Debts Recovery Tribunal is requested to dispose of the Original Application expeditiously.

15. In the result, the writ petition is dismissed. No costs. Consequently, W.M.P. No. 19994 of 2018 is closed."

35. There is thus wealth of judicial precedent which fortifies the stand of the Petitioners that in the mercantile system, Banks have a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customers in the ordinary course of banking business and the general lien is a valuable right of the banker judicially recognized and in the absence of an agreement to the contrary, Banker has a general lien over such securities or bills received from a customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer's debit balance. In the instant case, SBI has exercised lien over the subject property pending the recovery of Loan-I and

Loan-II invoking Section 171 of the 1872 Act and was justified in doing so and Petitioners cannot be faulted, least of all accused for criminal misappropriation for their actions in refusing to release the title deeds, acting in their capacity as Bank officials. Additionally, it was confirmed on behalf of Respondent No.2, while creating the mortgage through its letter dated 12.09.2007 that the security by way of mortgage of the subject property shall be security for all other liabilities and indebtedness past, present and future to the Bank, notwithstanding new limits and facilities etc. and cannot now turn around and seek release of the title deeds once the dues are outstanding to the Bank under two separate loans. It is also important to note that when OTS 2020 was entered between M/s. P.P. Jewellers (Exports), Kamal Kumar Gupta and Veena Gupta, Clause No.4 was incorporated, whereby it was undertaken that collateral security offered by Respondent No.2 for credit facilities of M/s. P.P. Jewellers (Exports) would not be released after settlement under OTS since corporate guarantee of Respondent No.2 had been extended for credit facilities of M/s. P.P. Jewellers (Delhi) against which Bank had filed recovery suits in DRTs.

36. Respondent No.2 through Rahul Gupta is now seeking to distance itself by urging that the corporate guarantee by mortgaging the subject property was with respect to the loan of Rs.56 Crores, which was settled and paid off and the property has nothing to do as a security for the other two loans. In fact, the allegation levelled in the FIR is that Kamal Kumar Gupta is in hand and gloves with the Bank officials and all are conniving to usurp the subject property. This argument is wholly misconceived and cannot be accepted firstly, for the reason that the Bank has a right in law to exercise lien with respect to all loan accounts taken by the borrowers in which Respondent No.2 is a guarantor and secondly, Rahul Gupta is the son of Kamal Kumar Gupta and Veena Gupta and all three are Directors of Respondent No.2. Further, Pawan Gupta who is the paternal uncle of Rahul Gupta is also a Director of Respondent No.2 and Kamal Kumar Gupta, Veena Gupta and Pawan Gupta as well as Respondent No.2 are guarantors in the account of M/s. P.P. Jewellers (Delhi). Therefore, initiating criminal proceedings against the Petitioners through the mode of an FIR is nothing but a desperate attempt to seek release of title deeds of the mortgaged subject property, which Respondent No.2 and the borrowers have been unable to achieve despite several attempts before the MM, this Court and the DRTs/DRAT and for the sake of completeness, it would be useful to refer to the litigation in this context hereinafter.

37. Going sequentially, after the application under Section 156(3) Cr.P.C. was filed by Respondent No.2 through Rahul Gupta, an interim order was passed on 02.09.2021 by the learned MM directing the IO to take custody of the original title deeds of the subject property till final disposal of the application and keep the same in safe custody. This order was assailed by SBI in W.P.(Crl.) No. 1726/2021 in case titled 'State Bank of India Through: Sudhir Kumar, Asst. General Manager & Ors. v. Commissioner of Police & Ors.'. The petition was disposed of by this Court on 21.01.2022 setting aside the order to the extent it was directed that documents be handed over to the IO with liberty to the IO to move the Court for permission or approach the Bank Manager, if he required the documents for investigation. Certain observations in this order are relevant and I quote:

> "7. Vide order dated 02.09.2021, Metropolitan Magistrate directed the IO to take custody of the property documents of respondent no. 3 who is the guarantor to the loan without assigning any reasons for the same. It is also not the case that any fraud

> or forgery has been committed in regard to documents, order in respect of which has been passed by Metropolitan Magistrate. In the order dated 02.09.2021, Metropolitan Magistrate has observed that the complainant i.e respondent no. 3 herein has apprehension that original title deeds may be destroyed or used for ulterior purpose but Metropolitan Magistrate without due application of mind and assigning proper reason directed the IO to take the custody of the original documents, totally disregarding the fact that bank is retaining the documents as a security for a loan of Rs.145.48/- Crores and why the bank officials would destroy or use those documents for ulterior purposes as apprehended by respondent no. 3 and invite legal action against them. The petitioner bank being the secured creditor has lien over the property as mentioned in the judgment of Raj Kumar & Anr. V. Syndicate Bank (2016) SCC Online DEL 4726."

38. The Court recognized that being a secured creditor, SBI had lien over the subject property in light of the judgment in Raj Kumar (supra) and that the Bank was retaining the documents as a security for a loan of Rs.145.48 Crores and there was no reason why Bank officials would destroy or use these documents for ulterior purposes and invite legal actions against them. After the OTS 2020 was executed, an application being IA No. 1297/2022 was filed by Defendant No.4 before DRT-I praying for attachment of the properties of the borrowers which included Kamal Kumar Gupta and Veena Gupta on the same grounds, which are subject matter of the FIR. DRT restrained all Defendants including Respondents No.2 and 3 from dealing with all properties, assets and shares mentioned in the application till the disposal of the matter. The contentions raised by Respondent No.2 in the said application and the observations of DRT-I in the order dated 11.01.2024 are relevant and are extracted hereunder:

> "2. The present application has been filed by the defendant no.4 praying therein to attach the properties bearing No. C-19, Rana Pratap Bagh, Delhi and Property No. 2129-2130 Karol Bagh, Delhi or any other properties belonging to the Defendant No.l, Defendant No.3 & his wife to secure the claim of the Bank; to Appoint a receiver to receive, attach and secure the stocks including but not limited to gold and/or diamond and/or silver jewellery whether finished or unfinished, gold bars, silver bars, loose diamonds etc. lying at the business premises of the Defendant No.l at Kucha Mahajajani, Chandni Chowk, Delhi - 110006 and/or at Gali Number 2, Gurudwara Road Karol Bagh, Delhi 110005 and/or at 129 - G/l7 NSEZ Noida, U.P. and/or at any other place; restrain the Defendant No.1 from transferring the ownership/shareholding in companies mentioned in the OA.
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> 4. It has further been submitted on behalf of the defendant no.4 that the Defendant no.l had purportedly availed the credit facility from the original applicant Bank, to the tune of Rs.60 Crore vide date of sanction being 20.12.2011, wherein the charges were created, with respect to Hypothecation of entire current assets, including stocks of raw-materials, SIP Finished goods, stores & spares lying at the firm's factory and

other stock points. Book-debts on pari-passu basis with other working' capital lenders and equitable mortgage of commercial property situated at Plot No.2, Block CC, Sector 3, Rohini, New Delhi standing in the name of M/s LR. Builders Pvt. Ltd. having Market & Realizable value at Rs.38.24 crore & Rs.34.08 crore respectively. It has further been submitted that the Defendant No.l is a partnership concern of Defendant No.2 & 3 and Mrs. Veena Gupta, is the wife of Defendant No.3 who along with Defendant No. 4 stood as a Guarantors to the said loan amount. It has further been submitted that the applicant had allegedly stood as a Corporate Guarantor for the Defendant no.1 and allegedly mortgaged its property bearing No.2, Commercial Complex, Sertor-3, Rohini, Delhi with the Bank for allegedly securing the said loan amount (hereinafter referred to as "Rohini property"), under alleged pari-pasu charge which was valued at Rs.38 crores. It has further been submitted that as a term and condition of the EPC/FBP facility, the Defendant No.1 was under an obligation to submit a monthly stock statement to the Bank and the Bank was to inspect the stocks and books of the Defendant No.1 firm every quarter or as and when considered necessary by the Bank and two quarters out of the 4 quarters were to be inspected by external agencies and two by the Bank officials. It has further been submitted that since the Defendant No.1 defaulted in the payment of the loan amount, the Bank filed the subject noted O.A. 643 of 2016 seeking recovery of Rs.62,86,96,292.98 along with interest under Section 19 of Recovery of Debts due to Banks and Financial Institutions Act, 1993, from the Creditor and their Guarantors. It has further been submitted that the Bank has not taken any steps so far with respect to the security interest having been created over assets of the Defendant No.l and moreover, clearly, the erring officers pf the Applicant Bank have either intentionally turned a blind eye or have allowed the Defendant No.l to deplete its assets and stocks and the Defendant No.3 & his wife have various other assets which can easily be secured and utilized for repayment of the loan amount. It has further been submitted that the Bank has already taken possession of the "Rohini property" belonging to the applicant herein in 2016-17 and attempted to auction the said property with the undervalued Reserve price of approximately Rs.20 crores, however, neither the bank has taken any further steps with respect to the said property nor informed the applicant herein of the fate of the same and the bank officials are acting hand in glove with the Defendant No.3 and have even clandestinely attempted to extend the Mortgaged Property of the answering Defendant as collateral security in some other proceedings in the instant OA without even obtaining the consent from the owner of the said property. It has further been submitted that the Bank has sought various interim prayers in OA No.643/2016 has sought directions against Defendant No.3 & his wife from selling, alienating and dealing in any manner various immovable properties as well as the stocks lying at the business premises of the Defendant No.l at Kucha Mahajajani, Chandni Chowk, Delhi -110006 and at 129-G/17y NSEZ Noida, U.P. or at any other place and it also sought directions to issue ad-interim injunction restraining the Defendant No.5 its agents, representatives; etc. from transferring, alienating, disposing of the mortgaged property i.e. Industrial Plot No.15, sector-16, HSIIDC, Bahadurgarh, Haryana, admeasuring 4050 sq. mts. or creating third party interest

therein and also sought directions to direct the defendants to disclose on oath, in their respective affidavits before this Tribunal, ail their present assets both moveable and immovable, whatsoever and where so ever situated. However, for reasons best known, the Bank has not pressed the said prayers nor taken any steps towards sale of the said property or for that matter any and all other securities that had been created in its favour by the other Defendants and thus the instant application, in any case, is in support of the case made out by the Bank. It has further been submitted that the Bank has not taken any steps towards valuation or securing the stock of jewellery of P.P Jewellers (Delhi) which is worth Hundreds of Crores and which may be lying at the business premises at 1178 Kucha Mahajajani, Chandni Chowk, Delhi 110006 or at its Branch at Ground floor, 2681, Gall Number 2, Gurudwara Road Karol Bagh, Delhi 110 005 and/or at 129 - G/17, NSEZ Noida, U.P. or at any other place. It has further been submitted that it is not out of place to mention that the Defendant No.1 firm is maintaining accounts with two branches in Delhi which are stated as (i) Ground floor, 2681, Gall Number 2, Gurudwara Road Karol Bagh, Delhi 110 005 (ii) 1178, Kucha Mahajani, Chandni Chowk, Delhi 110006 and N/s P.P. Jewellers (Delhi) wherein Defendant No.2 and 3 are partners, is having substantial stock worth crores but it appears that the Applicant Bank's staff is not interested in recovering the outstanding dues of Defendant No.1/ Borrower firm and the bank has been most negligent and lackadaisical in proceeding against the Defendant no.1 and therefore till date have failed to take any actions against Defendant No.l. It has further been submitted that this Tribunal vide order dated 06.09.2016 had appointed a Local Commissioner (L.C) to prepare an inventory of the entire stocks of Defendant No. 1 at 1178, Kucha Mahajani, Chandni Chowk, Delhi and at 129-G/17. NSEZ Noida and the L.C. Visited both the premises on 20.10.16 and stated that he was informed that all the stock lying at 1178, Kucha Mahajani, Chandni Chowk, Delhi belongs to P.P Jewellers Pvt. Ltd, even, though the signboard of P.P. Jewellers (Delhi) were affixed. It has further been submitted that neither was the LC provided with the stock register and documentary proof regarding the ownership of the stock and in fact, even, the applicant bank did not have any documentary proof of the stock of M/s P.P. Jewellers Delhi and hence he was unable to prepare the inventory as directed. It has further been submitted that recently, in the third week of June 2021, the Defendant No.4 has reliably learnt that Defendant No.3 & his wife are in the process of selling and alienating the said property C-19, Rana Pratap Bagh, Delhi and of Property No. 2129-2130 Karol Bagh with a view to defeat the claim of the Bank and even various buyers have been visiting the said properties lately and the Defendant No.3 & his wife are taking swift steps to alienate and create third party rights qua the said property. It has further been submitted that the applicant herein is under the apprehension that the defendant no.1 is aiming to dispose of the properties in question with a view to defeat and defraud the appellant and other creditors and the bank was under an-obligation to utilise the properties in question for the satisfaction of its debt from the corporate debtor. Rather, the bank is acting hand in glove with the other arrayed defendants and has not taken appropriate steps to safeguard the public money and the applicant herein has apprehension that the arrayed defendants in order to

obstruct, delay and further frustrate the present proceedings will dispose of the whole or part of the properties, create third party interest which will result in undue difficulties to the applicant herein to secure its interest in the present OA and to further exercise it remedies under the relevant statutes for the recovery of its monies. Accordingly, it has been prayed for allowing the present application.

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11. Apparently, in the year 2011, the defendant no.1 had availed certain loan facilities from the applicant Bank wherein the charges were created with respect to Hypothecation of entire current assets, including stocks of raw-materials, SIP Finished goods, stores &. spares lying at the firm's factory and other stock points. Book-debts on pari-passu basis with other working capital lenders and equitable mortgage of commercial property situated at Plot No.2, Block CC, Sector 3, Rohini, New Delhi standing in the name of defendant no.4 i.e. M/s LR. Builders Pvt. Ltd. That the Defendant No.l is a partnership concern of Defendant No.2 & 3 and Mrs. Veena Gupta, is the wife of Defendant No.3 who along with Defendant No.4 stood as a Guarantors to the loan facilities availed by the defendant no.1 from the applicant bank. Admittedly, the defendant no.4 had stood as a Corporate Guarantor for the Defendant no.1 and mortgaged its property bearing No.2, Commercial Complex, Sector-3, Rohini, Delhi with the Bank against the loan facilities availed by the defendant no.1. Apparently, Sh.Rahul Gupta is the Director of defendant No.4 company and he is also the son of Defendant No.3 and Veena Gupta and the defendant no.1 is the partnership firm of the defendants no.2 and 3 (who is the father of Shri Rahul Gupta) and the defendants no.1 to 4 are the family members and these defendants are in collusion with each other is filling such application just to delay the recovery proceeding of the applicant bank. Even otherwise, after declaring the account as NPA, the defendants have not paid the dues of the applicant bank. Further, the defendant no.4 is claiming as the corporate guarantor and the liability of the guarantor is co-extensive with that of the principal borrower, thus, the defendant no.4 being guarantor alongwith borrower is also liable to pay the entire dues of the applicant bank.

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13. In the light above submissions and keeping in view of the aforesaid judgment of Hon'ble DRAT, Delhi, this Tribunal is of the view that the defendant in a suit cannot invoke provision of attachment before judgement against a co-defendant, accordingly, the present application moved by the defendant no.4 is liable to be dismissed, accordingly, the same stands dismissed. Though, it has been submitted on behalf of the applicant bank that it has moved three application being IA No. 1260 of 2020, IA No. 69 of 2022 and I.A. no.46/2022 for attachment of properties/ assets/shares of the defendants and the same have not been decided till date. Thus, keeping in view of the facts and circumstances of the case and since the public money

> of more than Rs.62 crores (as on the date of filing of the O.A. i.e. 01.08.2016) is involved In the present matter and there is apprehension that the defendants may create third party interest with respect to the properties/assets/shares, therefore, the defendants no.l to 5 are hereby restrained from dealing with the properties/assets/shares mentioned in the applications i.e. IA No.l260 of 2020, IA No. 69 of 2022 and I.A. no.46/2022 and the present application being I.A. no. 1297/2022 till the final disposal of the present matter. However, the applicant bank is at liberty to take immediate steps against the defendants no.1 to 5 for the recovery of the public money as per law."

39. This order was not challenged by any party. Interestingly, Respondent No.2 thereafter filed an application being IA No 1210/2023 seeking release and return of original title deeds of the subject property on various grounds; viz. (a) OTS dated 30.11.2022 was reached between the Bank and other Defendants therein behind the back of Respondent No.2 and it was neither privy nor bound by it and in any case, the borrowers had paid the upfront amount of Rs.13.50 Crores and were to pay at least Rs.27,51,18,000/- to the Bank till 31.07.2023; (b) subject property was never mortgaged for the loan account of M/s. P.P. Jewellers (Delhi); (c) Bank in connivance with other Defendants and without consent or knowledge of Defendant No.6, unilaterally included a clause in the OTS 2020, which was not binding on Defendant No.6; and (d) Since OTS 2020 was executed and money was paid off, Bank had no further right to exercise lien on the subject property. This application was dismissed by DRT-II on 24.01.2024 and paragraph 3 capturing the contention of Respondent No.2 and paragraph 7, wherein relevant observations are made by the DRT are extracted hereunder:

> "3. The Ld. counsel of the defendant no.6 has submitted that the applicant bank and the other defendants except D-6 have executed an OTS dated 30.11.2022 behind its back. The OTS reached for Rs.54 Crores is a joint OTS that covers two loan accounts of D- 1, recovery of which is being done through the present matter and TA 248/2023 before DRT-I. It is submitted that the applicant bank and other defendants have made submissions that the money is being paid as per the terms of the OTS and the bank is satisfied with the same. According to the terms and conditions of the OTS, the entire OTS amount has to be paid within 10 months from the date of the OTS i.e. till 30.09.2023. The principal borrowers have paid the upfront amount of Rs.13.5 Crore along with CIRP cost of Rs.1,18,000/- As per the terms and conditions of the OTS, the defendants would have paid at least Rs.27,51,18,000/- to the applicant bank till 31.07.2023. It is further submitted that property bearing No. H-5 Netaji Subhash Place, Pitampura, Delhi was never mortgaged for the loan accounts of D-1 i.e. PP Jewellers (Delhi). The Wazirpur property was mortgaged with the State Bank of India only with respect to the credit facilities advanced to M/s P.P. Jewellers (Exports), in which the OTS amount has already been paid to the complete satisfaction of the bank and the respective OA 298/2017 against M/S PP Jewellers (Exports) has already been disposed of being settled as withdrawn vide order dated 14.06.2021 passed by Ld. DRT-II. However, the applicant bank in connivance with other defendants, and without the consent or knowledge of the D-6, unilaterally, included a clause in the OTS, as per which the Wazirpur property was to be transferred as a guarantee for

M/s P.P Jewellers (Delhi). It is further submitted that the bank has filed IA no. 261/2021 in the captioned OA for the attachment of the Wazirpur property of D-6 as additional security, which is a separate property that was never mortgaged for the present loan accounts of D-1. The Ld. DRT, in the present OA, granted an interim order dated 12.04.2021 restraining D-6 from creating third-party rights with respect to Wazirpur property and IA No. 261/2021 has not been decided till date with interim order continuing till date. It is further submitted that since an OTS has been executed, the applicant bank has no further right to exercise general lien on Wazirpur property u/s 171 of the Indian Contract Act, 1872 and neither there is any need left for additional security. It is further submitted that the Rohini property of D-6 having a market value around Rs.38 Crores, is already fraudulently mortgaged with the bank and is also under the bank's possession. It is further submitted that the applicant bank is in collusion and connivance with the principal borrowers which is clearly evident from the status report dated 05.12.2022 filed by the police in WP (Crl) No. 2152/2022 titled Sudhir Kumar & Ors v. State of NCT, Delhi and Ors. which was filed by the applicant bank for quashing of the FIR No. 106/2022, u/s 409/120b of IPC dated 26.08.2022 registered against the bank officials. The applicant bank also exercises first charge upon the movable assets and stocks of the principal borrowers which tunes up to around Rs.83 crores along with the shares in various companies, personal guarantee of the partners of D-1, third party guarantee of D-4 and the corporate guarantee as also extended by D-5 upon which the bank also exercises charge. The applicant bank has more than enough security which tunes to multiple times of the amount remaining to recover and there exists no reason whatsoever with the bank to withhold the original title deeds of the property that was not even mortgaged for the credit facilities advanced to D-1. Accordingly, it is prayed to direct the applicant bank to return the original title deeds of property No. H-5 Netaji Subhash Place, Pitampura, Delhi to D-6 as the same was never mortgaged for the credit facilities advanced by the applicant bank to D-1 and also dismiss the IA No. 261/2021 filed by the bank and vacate the order dated 12.04.2021 passed by this Tribunal.

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7. The second contention of the defendant no.6 is that the property bearing no. H-5, Netaji Subhash Palace, Pitam Pura, Delhi has not been mortgaged with the applicant bank and therefore, the papers of the said property should be released to the defendant no.6. In the application the applicant has also mentioned the description of the other properties which according to the defendant no.6 has not been mortgaged with the bank. From perusal of the file it is clear that the applicant has moved two IAs, IA no.902/2022 and IA no. 102/2023 for the release of the properties which has been heard and decided by this Tribunal on 13.07.2023. In that order all the aspects have been considered and the matter was decided. The defendant no.6 has again moved this IA on the same ground Therefore, this IA cannot be entertained again on the same ground. More over the question whether the

> property at Pitampura has been mortgaged with the bank or not is a question of fact which can be decided only after filing of the evidence by both the parties. At this preliminary stage it cannot be decided that the property has not been mortgaged with the applicant bank. The defendant no.6 has also submitted that the interim order passed by this Tribunal in IA no.261/2021 should be set aside. As discussed above, at this stage there is no ground to set aside the order dated 12.04.2021 passed by this Tribunal. Therefore, the IA of the applicant is liable to be rejected."

40. This order was challenged by Respondent No.2 before the DRAT in Misc. Appeal No.54/2024 and in the order dated 25.04.2024, DRAT observed that prima facie no ground was made out for grant of ad interim relief of restraining the Bank from proceeding against Respondent No.2's property. Two things emerge from a conjoint reading of the aforesaid orders of this Court and of DRTs/DRAT: (a) Lien of the Bank was recognized over the subject property; and (b) neither this Court nor DRTs/DRAT found merit in the contention of Respondent No.2/Respondent No.3 that the title deeds of the subject property ought to be released only for the reason that subject property was mortgaged against the loan of Rs.56 Crores, which was settled under the OTS 2020. In view of these orders, no infirmity can be found with the action of the Bank exercising lien over the subject property till the loan amounts are outstanding and/or the recovery proceedings pending before the DRTs are concluded. Therefore, no criminality can be attached to the actions of the Petitioners in not releasing the title deeds of the subject property once the Bank has lawfully exercised lien over the subject property.

41. Petitioners have also contended and in my view rightly so, that the issues arising inter se the parties are essentially civil in nature and various OAs in this regard are pending before the DRTs and thus criminal proceedings are an abuse of process of law. SBI has stay orders in its favour in respect of the subject property in both the OAs filed against M/s. P.P. Jewellers (Delhi). In this light, the contention is well founded that this Court ought to exercise its inherent power under Section 482 Cr.P.C. and quash the FIR and the criminal proceedings arising therefrom. The law on this issue is also no longer res integra.

42. In Paramjeet Batra (supra), the Supreme Court held that a complaint disclosing civil transactions may also have a criminal texture but the High Court must see whether a dispute, which is essentially of a civil nature, is given a cloak of criminal offence and in such a situation, if a civil remedy is available, High Court should not hesitate to quash the criminal proceedings to prevent abuse of the process of a Court. Close to the facts of this case is the judgment of the Co-ordinate Bench of this Court in Satish Mohan Aggarwal v. State and Others, 2022 SCC OnLine Del 1646, wherein relying on the judgment in Paramjeet Batra (supra) and other judgments of the Supreme Court, the Court held that the complainant being fully aware of the mortgage of the concerned property with the Bank chose to proceed and purchased the property and the FIR was completely motivated as also the fact that a civil remedy was available and had been exhausted by the complainants. Relevant passages are as under:

> "16. It has been repeatedly held by the Supreme Court, including in Paramjeet Batra v. State of Uttarakhand, (2013) 11 SCC 673, that while exercising its jurisdiction

under Section 482 Cr.P.C., the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of a criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is being given a cloak of a criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted, as has happened in the case at hand, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.

17. Even in Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home, (2019) 11 SCC 706, the Supreme Court noticed in anguish the growing trend in business circles to convert purely civil disputes into criminal cases. In Krishna Lal Chawla v. State of U.P., (2021) 5 SCC 435, the Supreme Court underlined the obligation on the judiciary to nip the frivolous litigation in the bud, whether civil or criminal. It observed as below:--

"26. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends."

18. The Supreme Court also underlined how the criminal procedure was being used to harass adversaries and frivolous litigation had become the order of the day. It further underlined how a falsely accused person would suffer not only monetary damages, but also in his reputation as he would be stigmatized in the society.

19. One may refer to the decision of the Supreme Court in State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, where the categories of cases in which inherent powers under Section 482 Cr.P.C. could be exercised, has been listed, though not in an exhaustive manner, nevertheless, providing sufficient guidance to the High Courts while exercising these inherent powers. Para 102 of Bhajan Lal (supra) is reproduced for ready reference:--

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any

court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

20. The present case would be covered under clauses (1), (3) and (7).

21. The admitted facts in the present case are such that would show that the respondents No. 2 to 5 while being fully aware of the mortgage with the Bank, and the possession not completely with the petitioner and his siblings, chose to proceed further in the matter and purchased the property in question, withholding a sum of Rs. 62.50 lakhs, clearly to cover up an eventuality if they were to pay the amount due to the Bank. Since June, 2007 and August, 2007, they have remained in possession of very valuable property, viz. No. 1595 to 1600, situated at Main Bazar, Pahar Ganj, New Delhi-110055, yet they seem to claim that they were induced to part with money by some

misrepresentation. This is difficult to believe. The FIR is completely motivated with oblique motives. In fact, subsequently, the respondents No. 2 to 5 have also filed a civil suit for recovery, being CS DJ/2564/2017. The liability to pay off the Bank would no doubt be decided as per law by the learned Civil Court. But, this FIR cannot stand.

22. In the light of the foregoing discussion, the petition [Crl.M.C.1933/2020] is allowed and FIR No. 41/2012, registered at Police Station Pahar Ganj, Delhi under Sections 420/467/34 IPC and all the proceedings emanating therefrom, including the revision petition pending before the learned District and Session Judge, Central District, Tis Hazari Courts, Delhi, being CRL. REV.279/2020 titled Sanjeev Kumar v. State, stand quashed."

43. Applying the aforesaid judgments to the facts of this case, the question is whether the disputes between the parties are civil disputes, which have been given a complexion of criminal culpability and the answer in my view, is in the affirmative. The transactions are purely commercial transactions where the Bank advanced some loans to the borrowers and Respondent No.2 gave corporate guarantee by mortgaging properties including the subject property. Bank exercised lien on the subject property in view of outstanding dues against two loans and the matters are pending before the appropriate forums, i.e. DRTs. The allegations in the FIR centre around the discharge of the liability of a corporate guarantor and release of the title deeds of the mortgaged property. To my mind, this is essentially a civil dispute. It cannot be overlooked that the Bank has filed two suits of recovery pertaining to Loan-I of Rs.40 Crores and Loan-II of Rs.60 Crores and both OAs are pending. Respondent No.2 and Respondent No.3 have made several unsuccessful attempts for release of the title deeds on the grounds, which are identical to the allegations in the FIR. DRTs being the forums of competent jurisdiction are ceased of the disputes and as and when the proceedings conclude, it will be decided whether the title deeds have to be released or not depending on the outcome of the OAs, in light of various factors, such as the lien exercised by the Bank under Section 171 of 1872 Act, outstanding liabilities of the borrowers, liability of Respondent No.2 as well as Respondent No.3 as a director of Respondent No.2 etc. One of the contentions raised on behalf of Respondent No.2 is that Clause 4 was unilaterally incorporated in OTS 2020, whereby it was agreed that collateral security offered by Respondent No.2 for the credit facilities of M/s. P.P. Jewellers (Exports) would not be released under OTS 2020 since corporate guarantee of Respondent No.2 also extended to credit facilities of M/s. P.P. Jewellers (Delhi). This dispute is admittedly pending before the DRT in I.A. No.1561/2020 and vide order dated 16.12.2020, DRT directed that this issue will be subject to outcome of the I.A. Being aware of the pendency of all these disputes before the DRTs and significantly being party to the disputes, Respondent No.2 through Respondent No.3 maliciously chose to resort to criminal proceedings and the police also registered the FIR entering into the arena of a civil dispute which is beyond their domain and jurisdiction. In my view, the disputes being essentially of a civil nature and being sub-judice before the DRTs, it would be an abuse of the process of law if the criminal proceedings continue against the Petitioners.

44. The question that next arises is whether Petitioners could be said to have committed criminal breach of trust in their capacity as officials of the Bank where the Bank has exercised lien under Section 171 of the 1872 Act and the title deeds of the mortgaged property have been retained by the Petitioners, an action which now stands fortified by an order of this Court and several orders by

DRTs. In Sardar Singh (supra), the Supreme Court held that an essential ingredient of the offence under Section 405 IPC is that the accused being in any manner entrusted with property or with dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust and Section 409 IPC can be invoked only if it can be shown that being entrusted with the property, accused committed criminal breach of trust which would require something much more than mere failure or omission to return the property. Relevant passage is as follows:

> "2. The only question which arises for consideration in this appeal is whether the appellant could be said to have committed criminal breach of trust in respect of the receipt-book. There can be no doubt and that is amply proved by the oral evidence on record read with the list Ex. PA, that the receipt-book was entrusted to the appellant in his capacity as patwari on November 6, 1967 when he took charge of his post. It must equally be taken to be established that the receipt-book was not in the room of the appellant when the lock was broken open and charge was forcibly taken from him on December 29, 1967. Vide Ext. PF and PG. The receipt-book was thus not returned by the appellant though he was bound to do so at the time of handing over of charge to his successor. But from this it does not necessarily follow that the appellant committed criminal breach of trust in respect of the receipt-book. Section 409 can be invoked only if it can be shown that the accused being in any manner entrusted with property or with dominion over property in his capacity as public servant committed criminal breach of trust in respect of that property. The offence of criminal breach is defined in Section 405 and an essential ingredient of this offence is that the accused being in any manner entrusted with property or with dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust. Here, as we have already pointed out, the appellant was admittedly entrusted with the receipt-book or in any event with dominion over it, but there is no evidence to establish that he dishonestly misappropriated the receipt-book or converted it to his own use or dishonestly used or disposed of the receipt-book. It is quite possible that the appellant might have lost or mislaid the receipt-book and hence he might have been unable to return it to the superior authorities. What the section requires is something much more than mere failure or omission to return the receipt-book. The prosecution has to go further and show that the appellant dishonestly misappropriated or converted the receipt-book to his own use or dishonestly used or disposed of it. That, we are afraid, the prosecution has not been able to do in the present case. We are, therefore, of the view that the appellant was wrongly convicted under Section 409."

45. This issue again came up for consideration in N. Raghavender (supra) and the Supreme Court observed as under:

"41. We may point out that in the case before us, neither the trial court or the High Court has discussed the ingredients of Sections 409, 420, or 477-AIPC, nor have they made any effort to refer to the specific evidence which may satisfy such ingredients. There is no gainsaying that the role of the trial court and the High Court is not just to decipher and bring to light the relevant evidence, but also to apply the relevant laws to the factual matrix before it. It further appears that the courts below have interchanged and mixed up the allegations against the appellant. While the charges were framed primarily with respect to the issuance of the three loose cheques and the alleged unlawful withdrawal of Rs 10 lakhs from Account No. 282, the courts below have proceeded to convict the appellant on the ground that he prematurely and fraudulently enchased the two FDRs, which stood in the name of B. Satyajit Reddy.

42. Further, the High Court, while acknowledging that no loss was caused to the Bank, held that a loss had been incurred by B. Satyajit Reddy. But the charges against the appellant, as can be seen in para 5 above, were that the three accused, by their fraudulent and illegal actions, caused a loss to the Bank. Even further, as pointed out by the learned Senior Counsel for the appellant, the High Court held that the actions of the appellant were not to his benefit, but to the advantage of his brother- in-law i.e. Accused 3. The brother-in-law of the appellant was, however, acquitted by the trial court and no appeal was preferred by the State against his acquittal. Keeping these contradictions in mind, we are of the opinion that the boundaries of judicial temperance would not be disturbed if the present matter is looked at more closely.

43. Within these broader contours, the litmus test is whether a case under Sections 409, 420 and 477-AIPC, and under Section 13(2) read with Section 13(1)(d) of the PC Act is made out against the appellant?

44. Before we advert to the relevant evidence on record, we deem it appropriate to brace ourselves with the relevant statutory ingredients necessary to bring home the guilt of an accused when charged under Sections 409, 420 and 477-AIPC.

Ingredients necessary to prove a charge under Section 409IPC

45. Section 409IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust. (See Sadhupati Nageswara Rao v. State of A.P. [Sadhupati Nageswara Rao v. State of A.P., (2012) 8 SCC 547 : (2012) 3 SCC (Cri) 979 : (2012) 2 SCC (L&S) 638])"

46. In the instant case, the essential ingredients of Section 405 IPC are not made out. Petitioners are merely acting as officials of the Bank in their official capacity. Bank has retained the title deeds in exercise of its right of lien, which it is entitled to do in law. Even going by the contents of the FIR, it is not the case of Respondent No.2 that Petitioners have misappropriated the title deeds in any

manner. The subject property has not been sold by the Bank and title deeds are simply retained. Petitioners are not accused of selling away the property and taking away the sale proceeds or putting the property to any personal use or for any personal gain. Therefore, applying the principles laid down by the Supreme Court, there is no misappropriation of the property entrusted to the Bank and the FIR deserves to be quashed.

47. There is plethora of judicial precedent examining the scope, ambit and extent of powers of the High Court under Section 482 Cr.P.C. and it no longer res integra that power under Section 482 Cr.P.C. can be exercised for: (a) giving effect to any order passed under Cr.P.C.; (b) preventing abuse of the process of any Court; or (c) securing the ends of justice. It is equally settled that the power under Section 482 Cr.P.C. has to be exercised sparingly and with caution and learned counsel for Respondents No.2 and 3 is right that ordinarily, Courts should not come in the way of an investigation and scuttle the same, especially in serious offences. In Bhajan Lal (supra), the Supreme Court illustratively highlighted categories where power under Section 482 Cr.P.C. ought to be exercised by the High Courts to prevent abuse of process of law and secure ends of justice and I quote:-

> "102.....
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> xxx xxx xxx (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> xxx xxx xxx (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

48. In R. Nagender Yadav v. State of Telangana and Another, (2023) 2 SCC 195, the Supreme Court observed as under:-

> "19. While exercising its jurisdiction under Section 482CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted,

> as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court."

49. Relevant would it be to refer to observations of the Supreme Court in Prof. R.K. Vijayasarathy and Another v. Sudha Seetharam and Another, (2019) 16 SCC 739, as follows:-

> "10. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code."

50. Applying the aforesaid principles to the facts of the present case, in my view, the criminal proceedings initiated against the Petitioners are an abuse of the process of the Court and it would secure the ends of justice if the FIR is quashed and criminal proceedings are terminated. Accordingly, the writ petition is allowed and FIR No. 106/2022, registered on 26.08.2022 under Sections 409/120B IPC at PS: Barakhamba Road, against the Petitioners herein is hereby quashed along with the proceedings emanating therefrom.

51. Pending applications also stand disposed of accordingly.

JYOTI SINGH, J AUGUST 30 , 2024/jg