

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 34 of 2020

Authorised Officer, Central Bank of India, Regional Office, represented through Mr. Anil Kumar Suman, aged about 55 years, son of Baldeo Sharma, presently working as Chief Manager, Regional Office Ranchi, both having their office at Krishna Arcade, 2nd Floor, Booty More, P.O. & P.S. -Bariyat, Dist. Ranchi Petitioner

Versus

1. The State of Jharkhand
2. Ritesh Kumar Keshri, S/o Late Shankar Prasad Keshri, R/o Lakarka
Colliery, P.O. -Katrashgarh, P.S. -Katras, District -Dhanbad,
.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

• • • •

For the Petitioner : Mr. P.A.S. Pati, Advocate
For the State : Mrs. Nehala Sharmin, Spl. P.P.

• • • •

By the Court:-

1. Heard the parties.
 2. No one turns up on behalf of the opposite party no.2 in-spite of repeated calls.
 3. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the entire criminal proceeding in connection with Dhansar P.S. Case No. 92 of 2019 registered for the offences punishable under Sections 323/406/420/506 of the Indian Penal Code.
 4. It is submitted by the learned counsel for the petitioner that charge sheet has not yet been submitted in this case.

5. The allegation against the petitioner is that the petitioner floated an E-Auction. The complainant was declared the highest bidder in the E-Auction for the sale of an immovable property and the complainant deposited the sale price. Sale Certificate was issued by the petitioner wherein it has been mentioned that physical possession of the immovable property concerned has been delivered to the complainant on 09.07.2015 but in fact no physical possession of the property was delivered. The complainant sent a legal notice but to no avail and the physical possession has not yet been handed over to the complainant. The learned Chief Judicial Magistrate, Dhanbad referred the complaint to the police and on the basis of the same, Dhansar P.S. Case No. 92 of 2019 has been registered and investigation of the case is going on.

6. It is submitted by the learned counsel for the petitioner relying upon the Judgment of Hon'ble Supreme Court of India in the case of **Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others**, reported in (2015) 6 SCC 287, para -33 of which reads as under:-

"33. At this juncture, we may fruitfully refer to Section 32 of the Sarfaesi Act, which reads as follows:

"32. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."

In the present case, we are obligated to say that the learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) CrPC. It is because Parliament in its wisdom has made such a provision to protect the secured

creditors or any of its officers, and needless to emphasise, the legislative mandate has to be kept in mind."

That there is no allegation against the petitioner of having done anything, otherwise than in good faith. So once the petitioner is accepted to have done the alleged acts in good faith; the protection under Section 32 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is attracted.

7. In this respect, the learned counsel for the petitioner also relied upon the Judgment of Hon'ble Supreme Court of India in the case of **K. Virupaksha and Another Vs. State of Karnataka and Another**, reported in **(2020) 4 SCC 440**.
8. It is then submitted by the learned counsel for the petitioner that the petitioner is a post and a criminal proceeding cannot be instituted against a post. It is next submitted that the allegation made against the petitioner is frivolous and vexatious one and do not make out any offence. It is next submitted that in the E-Auction sale concerned, the property mortgaged by the defaulted borrower Ishwar Yadav was sold by E-Auction on "as is where is basis and as is what is basis" which the bank was authorized to do under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Subsequent to the said auction, the defaulted borrower filed W.P.(C) No. 2796 of 2015 before this Court. The second property in the name of Bharat Vishwakarma was free from litigation and the same was handed over to the informant on 31.12.2018 after

obtaining physical possession with the help of District Administration. It is next submitted that W.P.(C) No. 2796 of 2015 has been disposed of on 12.07.2019. The bank officials as a good gesture also made an offer to the informant to move a proposal to the higher officers to cancel the auction sale but the informant was not agreeable for the same. It is lastly submitted that the continuation of the criminal proceeding against the petitioner will amount to abuse of process of law; therefore the prayer as prayed for in this criminal miscellaneous petition be allowed.

9. The learned Spl. P.P. on the other hand vehemently opposes the prayer made by the petitioner in this criminal miscellaneous petition and submits that as the petitioner has taken money on behalf of the bank in an auction and has not delivered the physical possession of the property, hence at this nascent stage, the prayer made by the petitioner ought not to be allowed. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

10. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law that the Magistrate should keep himself alive to the provisions of Section 32 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 before venturing into directing registration of F.I.R. under Section 156(3) Cr.P.C. There is no allegation against the petitioner of committing any act except

in good faith. The authorized person of Central Bank of India is neither an individual nor a legal entity. There is no allegation of causing hurt by him to anybody nor there is any allegation of criminally intimidating anybody, hence the question of the offence punishable under Section 323 and 506 of the Indian Penal Code does not arise, even if the allegations made in the complaint which has subsequently been registered as F.I.R.; is considered to be true. There is no allegation of dishonest misappropriation of any entrusted property or having dominion of any property by the petitioner. In the absence of the same, the offence punishable under Section 406 of the Indian Penal Code is not made out. There is no allegation against the petitioner of having playing deception since the beginning of the transaction between the parties. Admittedly, the physical possession has been given to the informant by mentioning the same in the paper by issuing sale certificate. Under such circumstances, this Court is of the considered view that the complaint case which led to registration of the F.I.R. has been instituted for wrecking vengeance and continuation of the same will amount to abuse of process of law. Therefore, this is a fit case where the entire criminal proceeding in connection with Dhansar P.S. Case No. 92 of 2019 registered for the offences punishable under Sections 323/406/420/506 of the Indian Penal Code be quashed and set aside qua the petitioner.

11. Accordingly, the entire criminal proceeding in connection with Dhansar P.S. Case No. 92 of 2019 registered for the offences

punishable under Sections 323/406/420/506 of the Indian Penal Code is quashed and set aside qua the petitioner.

12. This criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 27th August, 2024
AFR/Sonu-Gunjan/-