

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal No 207 of 2023
(Arising out of SLP(Crl) No 9192 of 2021)**

**Yes Bank Limited
Appellant(s)**

....

Versus

State of U P and Ors

....Respondent(s)

ORDER

1 Leave granted.

2 The appeal arises from an order dated 25 November 2021 of a Single Judge of the High Court of Judicature at Allahabad. The High Court declined to entertain the petition under Article 226 of the Constitution seeking to impugn FIR No 821 of 12 September 2021 registered at Police Station Gautambudh Nagar for alleged offences punishable under Sections 420, 467, 468, 409, 107, 109, 120B and 34 of the Indian Penal Code 1860. Notices dated 5 November 2021 were issued by the second respondent to the appellant under Section 102 of the Code of Criminal Procedure 1973¹. The High Court held that the appellant has a statutory remedy under Sections 451 and 457 of CrPC and, hence, the exercise of the writ jurisdiction was not warranted.

3 While entertaining the Special Leave Petition, this Court passed the following order on 30 November 2021 recording the respective contentions of the parties:

“1 The principal issue which has been canvassed in the Special Leave Petition, which arises from a judgment and order

1 “CrPC”

of the Division Bench of the High Court of Judicature at Allahabad dated 25 November 2021, is that the notices which were issued under Section 102 of the Code of Criminal Procedure 1973² by the second respondent (the investigating officer of the Crime Branch in the Police Commissionerate, Surajpur, Greater Noida) are beyond jurisdiction.

2 Dr Abhishek Manu Singhvi, Senior Counsel appearing on behalf of the petitioner, submits that:

(i) A loan of Rs 5,270 crores was disbursed by Yes Bank to the Essel Group and its sister concerns between 2016-2018 against a pledge of shares;

(ii) The pledge of (approximately) 44.53 crores shares was invoked following which, between May and July 2020, an intimation was furnished to the BSE, NSE and RBI;

(iii) Invocation of the pledge was sought to be interdicted in proceedings before the Civil Court at Saket, which have been withdrawn;

(iv) A complaint was lodged on 22 June 2020 by the third respondent, complaining that the borrowers had been induced or pressurized to take loans;

(v) An FIR on the basis of the complaint under the provisions of Sections 420, 467, 468, 409, 120B and 34 of the Indian Penal Code 1860 was registered on 12 September 2020;

(vi) The AGM of the Company was to take place on 30 November 2021, but was deferred; and

(vii) On 5 November 2021, the IO issued notices under Section 102 CrPC preventing the transfer of the shares and the exercise of rights under them.

3 In the above backdrop, it has been submitted that the notices under Section 102, which have been issued by the second respondent, directing the petitioner not to transfer the 44.53 crores shares or to exercise rights in respect of the shares "till completion of investigation or further orders" are beyond jurisdiction. Moreover, it has been urged that there has been a misuse of the criminal process to restrain the petitioner from exercising its rights under the pledged shares.

4 The High Court of Judicature at Allahabad dismissed the petition on the ground that an alternate remedy is available under the provisions of Sections 451 and 457 of the CrPC.

5 Mr Kabir Sibal, Senior Counsel, appears on behalf of the "CrPC"

third respondent, on caveat. While seeking an opportunity to file a counter affidavit, Mr Sibal submitted that there was neither a genuine loan transaction nor a valid pledge of shares in favour of the petitioner. The Senior Counsel submitted that, given an opportunity to do so, it would be possible to demonstrate before this Court that the order of the second respondent does not suffer from want of jurisdiction having regard to the provisions of Section 102 CrPC.

6 *Prima facie*, at this stage, we are of the view that it would be necessary to protect the interest of the petitioner in respect of the pledged shares, the pledge having been admittedly invoked. Hence, we issue notice and direct that, pending further orders, there shall be a stay of the operation of the impugned notices dated 5 November 2021 (Annexure P-9 of the paper book). There shall also be a stay of further proceedings in connection with FIR No 0821 dated 12 September 2020 lodged at Police Station Noida Sector 20 (Annexure P-7).

7 Counter affidavit be filed within a period of three weeks.

8 List the Special Leave Petition on 12 January 2022.”

4 As a result of the interim order, this Court stayed the operation of the notices stayed further proceedings in connection with FIR.

5 We are of the considered view that the High Court was in error in rejecting the petition on the ground that an alternative remedy was available under Sections 451 and 457 of CrPC. The High Court ought to have addressed itself to the merits of the petition, which it has failed to do.

6 In the above circumstances, we set aside the impugned order of the High Court dated 25 November 2021 and restore the proceedings back to the High Court for fresh disposal on merits.

7 We request the High Court to take up the proceedings for early disposal preferably within a period of two months of the date on which a certified copy of this order is placed on the record.

8 Until the High Court takes up the proceedings and disposes them of, the interim order passed by this Court on 30 November 2021 shall continue to hold the field.

9 Since this Court has restored the proceedings before the High Court for fresh consideration of the petition, it needs to be clarified that this Court has not expressed any opinion on the merits of the rival contentions of the parties.

10 The appeal is accordingly disposed of.

11 In view of the disposal of the appeal in the above terms, no orders are passed on the application for impleadment/intervention which is accordingly disposed of.

12 Pending application, if any, stands disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Pamidighantam Sri Narasimha]

.....J.
[J B Pardiwala]

New Delhi;
January 24, 2023
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ITEM NO.21

COURT NO.1

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).9192/2021

(Arising out of impugned final judgment and order dated 25-11-2021 in CRLMWP No. 11135/2021 passed by the High Court of Judicature at Allahabad)

YES BANK LIMITED

Petitioner(s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

(WITH IA No. 155065/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 155067/2021 - EXEMPTION FROM FILING O.T., IA No. 155517/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 24-01-2023 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Raunak Dhillon, Adv.
Ms. Madhavi Khanna, Adv.
Ms. Niharika Shukla, Adv.
M/S. Cyril Amarchand Mangaldas, AOR

For Respondent(s) Mr. Siddhartha Dave, Sr. Adv.
Mr. Aman Varma, AOR

Ms. Garima Prashad, Sr. A.A.G.
Ms. Ruchira Goel, AOR
Mr. Adit Jayeshbhai Shah, Adv.

Mr. K.K. Venugopal, Sr. Adv.
Mr. Apoorv Shukla, AOR

UPON hearing the counsel the Court made the following
O R D E R

1 Leave granted.

- 2 The appeal is disposed of in terms of the signed order.
- 3 In view of the disposal of the appeal in the above terms, no orders are passed on the application for impleadment/intervention which is accordingly disposed of.
- 4 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR