

2023 LiveLaw (SC) 500

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION/CRIMINAL ORIGINAL JURISDICTION/EXTRAORDINARY JURISDICTION

KRISHNA MURARI; J., SANJAY KUMAR; J.

4 JULY, 2023

CONTEMPT PETITION (CIVIL) NO. 774 of 2023 in CRIMINAL APPEAL NO. 463 of 2022

GAGAN BANGA versus SAMIT MANDAL & ANR.

Code of Criminal Procedure, 1973; Section 482 - Trend of projecting a purely civil financial dispute as a criminal matter with a view to intimidate and in abuse of the criminal process - In “*Priyanka Srivastava Vs. State of U.P.*”, (2015) 6 SCC 287, this Court had noticed that taking recourse to criminal law by bypassing statutory remedies to bring the financial institutions on their knees, has the inherent potentiality to affect the marrows of economic health of the nation. Further, in “*Vijay Kumar Ghai & Anr. Vs. State of W.B. & Ors.*” (2022) 7 SCC 124, this Court quashed the criminal proceedings being abuse of law in a purely civil financial dispute and being a case of forum shopping. Despite these judgments, continuation of such trend appears extremely disturbing.

WITH WRIT PETITION (Crl.) NO. 166/2023 AND SPECIAL LEAVE PETITION (Crl.) NOS. 4639-4641/2023

For Petitioner(s) Mr. Mukul Rohtagi, Sr. Adv. Mr. Ashish Batra, Adv. Mr. Gautam Awasthi, AOR Mr. Mukul Rohatgi, Sr. Adv. Mr. Karan Bharihoke, Adv. Mr. Ashish Batra, AOR

For Respondent(s) Mr. Sunil Fernandes, Adv. Ms. Anju Thomas, Adv. Ms. Mantika Haryani, Adv. Mr. Divyansh Tiwari, Adv. Ms. Astha Sharma, AOR Mr. Sanjay Jain, A.S.G. Mr. Shreekanth Neelappa Terdal, AOR Mr. Arkaj Kumar, Adv. Mr. Gautam Bhardwaj, Adv. Mr. Ishaan Sharma, Adv. Mr. Digvijay Dam, Adv. Dr. N. Visakamurthy, Adv. Mr. Zeeshan Diwan, AOR Mr. Rajender Wali, Adv. Mr. B. K. Satija, AOR Dr. Abhishek Manu Singhvi, Sr. Adv. Mr. Ravi Prakash Mehrotra, Sr. Adv. Mr. L. Zafeer Ahmed, Adv. Mr. Rudra Pratap, Adv. Mr. Amit Bhandari, Adv. Ms. Deepti R. Mehrotra, Adv. Mr. M. Shaz Khan, Adv. Mr. Prasenjit K. Chakarvarti, Adv. Mr. Apoorv Srivastava, Adv. Ms. Gayatri Dahiya, Adv. Mr. Adnan Yousuf, Adv. Mr. Talha Abdul Rahman, AOR (N.P.)

ORDER

Interlocutory applications for impleadment and to bring on record additional facts are allowed.

2. The petitioners’ case is that there is trend of initiating mala fide criminal proceedings against financial institutions/lenders and their officers, representatives and managers, to somehow restrain them from pursuing recovery proceedings of their enforceable debts, and/or to compel them to make settlement of their dues. FIRs are registered to circumvent legally owed debts by scuttling the statutory regime of SARFAESI, and also by projecting a purely civil financial dispute as a criminal matter with a view to intimidate and in abuse of the criminal process.

3. In “*Priyanka Srivastava Vs. State of U.P.*”, (2015) 6 SCC 287, this Court had noticed that taking recourse to criminal law by bypassing statutory remedies to bring the financial institutions on their knees, has the inherent potentiality to affect the marrows of economic health of the nation. Further, in “*Vijay Kumar Ghai & Anr. Vs. State of W.B. & Ors.*” (2022) 7 SCC 124, this Court quashed the criminal proceedings being abuse of law in a purely civil financial dispute and being a case of forum shopping. Despite these judgments, continuation of such trend appears extremely disturbing.

4. Vide order dated 28.04.2023 passed in W.P. (Crl.) No. 166/2023, criminal proceedings in three such FIRs instituted by borrowers in different States, namely FIR No. 646/2022 dated 26.10.2022 registered at P.S. Titagarh, FIR No. 427/2023 dated

09.04.2023 registered at P.S. Indirapuram and FIR No. 25/2021 dated 27.01.2021 registered at P.S. EOW, Delhi were stayed.

5. Further FIR No. 197/2023 dated 15.04.2023 was filed by YEIDA at PS Beta-2, Greater Noida, UP, which also refers to the aforesaid FIR No. 427/2023 dated 09.04.2023 registered at P.S. Indirapuram with some overlapping facts. It is stated that on the basis of these two connected FIRs namely FIR No. 427/2023 and 197/2023, now the ED has registered ECIR bearing No. ECIR/HIU-I/06/2023 in Delhi. The petitioners have now challenged the said FIRs and ECIR.

6. In the circumstances, as it may also involve adjudication on facts, we deem it appropriate to permit the petitioners to approach the respective jurisdictional High Courts to challenge all four FIRs and the ECIR within two weeks from today, with a request to the respective High Courts to consider and decide the petitions expeditiously, not later than six months of their presentation.

7. We also direct DGPs of respective States to look into the matter, examine the contentions of the petitioners in respect of the contents of FIRs, and to take appropriate measures in accordance with law within a period of one month.

8. Till final disposal of the respective petitions, interim order dated 28.04.2023 passed in W.P.(Crl.) No. 166/2023 would continue in the three FIRs mentioned therein.

9. In so far as the further FIR No. 197/2023 dated 15.04.2023 filed by YEIDA and ECIR bearing No. ECIR/HIU-I/06/2023 are concerned, no coercive steps would be taken against the petitioner financial institution and its officers, representatives and managers till final disposal of such petitions by the High court, and it would be open for the petitioners to seek stay of proceedings which would be considered by the High Court on its own merits. It is clarified that this interim protection would only be applicable to the petitioner financial institution and its officers, representatives and managers, and not to any other person.

10. All contentions available to the parties in law are being kept open to be raised before the High Court and the High Court shall decide the petitions strictly on their own merits and in accordance with law.

11. Accordingly, all the petitions including contempt petition and pending applications, stand disposed of.

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