

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 11837 of 2023

Petitioner :- Reena Bagga And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Raghav Dwivedi

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Rajendra Kumar-IV,J.

1. In the present petition mention was made before the Bench of Hon'ble The Chief Justice that the matter is extremely urgent, therefore, this matter has been placed before this Court as supplementary fresh.

2. Learned A.G.A. submits that as this matter has come out of turn, therefore, he is not having instructions as on date and shall seek instructions if sometime is granted.

3. Sri Manish Tiwari, learned Senior Counsel at a subsequent stage after arguments were advanced by learned Senior Counsel appearing for the petitioners also submitted that he wants sometime to seek proper instructions.

4. In view of the urgency as accepted by the Bench of Hon'ble The Chief Justice we proceed to consider the matter on the basis of records as available and permitted learned counsel for the parties to advance certain arguments.

5. Heard Sri Rakesh Dwivedi, learned Senior Advocate assisted by Sri Raghav Dwivedi, learned counsel for the petitioners, Sri Manish Tiwari, learned Senior Advocate assisted by Sri Sayed Imran Ibrahim, learned counsel appearing for respondent no. 3 and Sri Ratan Singh, learned AGA for the State.

6. This writ petition has been filed praying to quash the first information report dated 22.07.2023, registered as Case Crime No.611 of 2023, under sections 420 and 120-B I.P.C. and Section 82 of Registration Act, 1908, Police Station : Kavi Nagar, District : Ghaziabad.

7. Arguments were advanced by both the sides by drawing attention to various aspects on merits of loaning; default in

payment; auction; and possession of the property; various first information reports and various orders of different Courts including this Court and the Hon'ble Apex Court as well as the orders passed under the provisions of the SARFAESI Act.

8. Sri Rakesh Dwivedi, learned Senior Counsel for the petitioners further submitted that it is, therefore, clear that the proceedings are arising out of same loan transaction in respect whereof different properties were mortgaged but in respect of every property a different first information report is being filed.

9. Per contra, Sri Manish Tiwari, learned Senior Advocate further submits that due to the fact that this petition has been taken up out of turn on the ground of urgency mentioned before the Bench of Hon'ble The Chief Justice and has been placed before this Court today itself, he wants some time to seek proper instructions. However, he submits that individual offence would attract individual first information report and has to be proceeded individually, therefore, the present matter stands on a different footing.

10. Though, we have heard learned counsel for the parties for sometime, in the interest of justice, as on date, in view of the interim protection granted by the Hon'ble Apex Court wherein while permitting the petitioners to approach respective High Courts having jurisdiction, interim protection was granted and also by this Court as well in other petition, we are inclined to pass an interim order till the next date of listing.

11. Paragraph nos. 18 and 19 of the order dated 13.07.2023 passed in Criminal Misc. Writ Petition No. 10893 of 2023 (Neeraj Tyagi and another vs. State of U.P. and 3 others) are quoted as under :

*"18. Further, on 4 July, 2023, in the case **Ganga Banga vs. Samit Mandal & Anr. (Contempt Petition (Civil) No.774 of 2023)**, the Supreme Court has passed the following order:*

"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.166/2013 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."

19. In view of the above, we are of the opinion that the petitioners have made out a case for grant of the interim as relief prayed for. Accordingly, in furtherance of the protection granted by the Apex Court to the petitioners by the order dated 4th July, 2023, while disposing of the Contempt Petition (Civil) No. 774 of 2023, it is provided that further proceedings, including summoning of the officers, consequent to the F.I.R. No. 197 of 2023 dated 15.4.2023 under Sections 420, 467, 468, 471 and 120-B IPC, Police Station Beta-2, Greater Noida, Gautam Budh Nagar, registered by Respondent No.2 and consequent ECIR No. ECIR/HIU-I/06/2023 registered by Respondent No. 4, shall remain stayed so far as it confines to the petitioners only and no coercive action shall be taken against them.

20. The parties are granted six weeks' time to exchange pleadings.

21. List the case in the week commencing 28 August, 2023."

(emphasis supplied)

12. In view of the aforesaid, noticing the fact that interim protection has been granted by Hon'ble Apex Court, which was extended by this Court to the petitioners of the abovenoted petition it is provided that in the present case as well, the interim protection as granted in the aforesaid case vide paragraph no. 19 is also extended to the present petitioners till the next date of listing.

13. Put up this matter as fresh on **11.08.2023**.

Order Date :- 27.7.2023

Manoj

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 11837 of 2023

Petitioner :- Reena Bagga And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Raghav Dwivedi

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Rajendra Kumar-IV,J.

(Per : Rajendra Kumar-IV,J)

1. Heard Sri Rakesh Dwivedi, learned Senior Advocate assisted by Sri Raghav Dwivedi, learned counsel for the petitioners, Sri Manish Tiwari, learned Senior Advocate assisted by Sri Sayed Imran Ibrahim, learned counsel appearing for respondent no. 3 and Sri Ratan Singh, learned AGA for the State.

2. Learned A.G.A. submits that as this matter has come out of turn, therefore, he is not having instructions as on date and shall seek instructions if sometime is granted.

3. This writ petition has been filed praying to quash the first information report dated 22.07.2023, registered as Case Crime No.611 of 2023, under sections 420 and 120-B I.P.C. and Section 82 of Registration Act, 1908, Police Station : Kavi Nagar, District : Ghaziabad, with the following main prayer :-

"to issue an appropriate writ, order or direction in the nature of Certiorari quashing the impugned First Information Report dated 22.07.2023 (Annexure No.1 to the this petition) videe Crime No.611 of 2023, under sections 420 and 120-B I.P.C. and Section 82 of Registration Act, 1908, Police Station : Kavi Nagar, District : Ghaziabad"

4. Sri Rakesh Dwivedi, learned Senior Counsel for the petitioners has drawn attention to various aspects on merits of loaning; default in payment; auction; and possession of the property; various first information reports and various orders of different Courts including this Court and the Hon'ble Apex Court as well as the orders passed under the provisions of the SARFAESI Act, it is, therefore, clear that the proceedings are arising out of same loan transaction in respect whereof different properties were mortgaged but in respect of every property a different first information report is being filed. It is further contended that from the perusal of F.I.R.

no offence under the alleged sections is made out and material facts have not been disclosed, thus it is a matter of concealment of facts.

5. Per contra, Sri Manish Tiwari, learned Senior Advocate for informant submits that due to the fact that this petition has been taken up out of turn on the ground of urgency mentioned before the Bench of Hon'ble The Chief Justice and has been placed before this Court today itself, he wants some time to seek proper instructions. However, he submits that individual offence would attract individual first information report and has to be proceeded individually, therefore, the present matter stands on a different footing. It is further contended that perusal of F.I.R. constitutes a cognizable offence, thus, no interim order can be granted in favour of the petitioners without giving any opportunity of hearing to the informant at length and in the event, he is granted some short time, he will be in position to address / assist the Court in detail. It is further submitted that some petitions which are shown to be pending in the various Courts are related to different matter and they are not arisen out with the impugned F.I.R. and thus they are not able to support to the petitioners at this stage.

6. Paragraph nos. 18 and 19 of the order dated 13.07.2023 passed in Criminal Misc. Writ Petition No. 10893 of 2023 (Neeraj Tyagi and another vs. State of U.P. and 3 others), are quoted the Supreme Court order as under :

*"18. Further, on 4 July, 2023, in the case **Ganga Banga vs. Samit Mandal & Anr. (Contempt Petition (Civil) No.774 of 2023)**, the Supreme Court has passed the following order:*

"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.166/2013 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."

7. In the aforesaid petition in order dated 13.07.2023, Court noted the following paragraph :-

"19. In view of the above, we are of the opinion that the petitioners have made out a case for grant of the interim as relief prayed for. Accordingly, in furtherance of the protection granted by the Apex Court to the petitioners by the order dated 4th July, 2023, while disposing of the Contempt Petition (Civil) No. 774 of 2023, it is provided that further proceedings, including summoning of the officers, consequent to the F.I.R. No. 197 of 2023 dated 15.4.2023 under Sections 420, 467, 468, 471 and 120-B IPC, Police Station Beta-2, Greater Noida, Gautam Budh Nagar, registered by Respondent No.2 and consequent ECIR No. ECIR/HIU-I/06/2023 registered by Respondent No. 4, shall remain stayed so far as it confines to the petitioners only and no coercive action shall be taken against them.

20. The parties are granted six weeks' time to exchange pleadings.

21. List the case in the week commencing 28 August, 2023."

(emphasis supplied)

8. Further submission of learned Senior Counsel for petitioners is that in event, case is fixed for hearing to enable AGA to seek instruction in the matter, interim protection restraining police authority to arrest the petitioners till next date of listing be issued. I am not fully convinced with the submission made by learned Senior Counsel for petitioners as offence under the alleged section is punishable up to 7 years and in each case arrest of the accused is not essential by the police. I would like to add here that special provision of Section 41-A Cr.P.C. is there for protection from arrest. I am not inclined to issue interim protection in hasty manner that too without giving time to AGA to seek instructions.

9. So far as the non-disclosure some material fact in F.I.R. is concerned, it is well settled that F.I.R. is not an encyclopedia and each and every fact is not necessary to have mentioned in it.

10. Normal practice of this Bench is that without instruction to AGA, this Bench is not inclined to hear the matter and AGA seeks time to have instructions from the police station concerned. Proper way is to give time to AGA to take necessary instructions and later

to pass effective order causing damage to other side.

11. In my view, considering the facts and other circumstances of the matter and other material on record, no prima facie case for issuing interim protection, at this stage, is made out and I do not think it proper to issue any interim protection in favour of petitioners without having response from informant as well State. It would be appropriate to have response from other side before issuing any direction.

12. Put up this matter as fresh on **11.08.2023** for hearing.

Order Date :- 27.7.2023

Manoj

(Rajendra Kumar-IV,J)

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 11837 of 2023

Petitioner :- Reena Bagga And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Raghav Dwivedi

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Rajendra Kumar-IV,J.

In view of difference of opinion between the members of the Bench, let the record of these writ petitions be placed before Hon'ble the Chief Justice under Chapter VIII Rule 3 of the Rules of the Court for nomination of Bench.

Order Date :- 27.7.2023

Manoj