

ORDER BELOW EXH. 1 IN CRIMINAL REVISION NO. 516/2009

Revision petitioners are absent in the present proceeding since 13th April, 2010. After granting of two dates, ultimately the case today is fixed either for hearing or order on merit in absence of the revision petitioners. Learned counsel for the respondent No. 2, The Jammu and Kashmir Bank Ltd is present. Since the present petition is criminal revision petition, order have to be passed on merit of the case.

Heard Mr. D.J. Braganza, learned counsel for the respondent No. 2. Perused the contents of the revision application and the copy of the complaint, along with the order passed by learned Judicial Magistrate F.C., of issue of process against revision petitioners, which is challenged in the present revision.

The complaint shows that the private complaint was filed for the offences punishable under Sections 403, 406, 417, 420, 421, 422 r/w 34 of Indian Penal Code against present revision petitioners. The complaint was filed by the present respondent No. 2, i.e., The Jammu Kashmir Bank Ltd, alleging therein that the present revision petitioners i.e., Promoters and Directors of Athena Financial Services Ltd., had cheated the complainant bank by obtaining huge Cash Credit facility, Working Capital Demand Loans. Undertakings were given like, not entering into any borrowing arrangements with any other third party, not to change its constitution or share capital, not to

implement any scheme etc. From time to time, loan taken was accumulated to the tune of Rs. 144,56,00,000/- only by way of Cash Credit. However, the revision petitioners-accused, in breach of the the undertaking opened a current account with Centurion Bank and started depositing amount in that account. Further also they availed financial facilities from the said bank in breach of the undertakings. The funds were also diverted. It is thus, alleged that by making false misrepresentation with ulterior motive to misappropriate the funds, revision petitioner/accused entered into an agreement with the complainant and caused huge loss to them by non-payment of the loan amount.

Before learned J.M.F.C., the complainant examined Mrs. Kirti Sharma, Authorised Officer of the complainant and supported by documentary evidence. The learned J.M.F.C., after taking into consideration all these facts, observed that complaint is supported by the documents on record. The learned Judicial Magistrate F.C. further was satisfied that there is a prima-facie case which exhibited that revision petitioners-accused by diverting funds had cheated complainant Bank. In the circumstances, order to issue process, for the offences, as stated above came to be passed.

The said order is challenged in the present revision petition. In the present revision petition vide para No. 11, the revision petitioners had assailed the order on the following grounds

- 1.The order is illegal,
- 2.The period of joining the accused Nos. 3, 4 and 5, as a director is not disclosed,
- 3.Transaction is purely loan transaction.
- 4.The complaint is filed only to pressurize the revision applicant-accused and to recover amount without following remedies in Civil Court or DRT.

Mr. Braganza, learned counsel for the complainant submits that other complaints of similar nature are filed by other banks against the present accused for the similar offences. The orders to issue process in those complaints were challenged in the High Court and even in Supreme Court also. All these challenges, however, failed.

In the present case, we are concerned with the present transaction. The record prima-facie shows that in breach of undertaking given by the Company, the accused have diverted funds to other banks and have made various breaches of the undertaking as alleged in detail in the complaint. The order of the learned Judicial Magistrate F.C., cannot be called as perverse and without any material on record.

In the circumstances, the following order is passed.

ORDER

1. The Criminal Revision Application is hereby dismissed.
2. Record and proceeding be sent back to the concerned learned

Judicial Magistrate F.C.

3. Next date of the hearing before concerned Judicial Magistrate F.C., shall be 30th July, 2010.

Pune.

Date: 18.6.2010.

sd/--

(M.T.Joshi)

Sessions Judge,Pune.

(vnb)

I affirm that the contents of this P.D.F., file judgment are same word for word as per original Judgment.

Name of Steno :- Sou. V. N. Bankapure. (Steno L.G)

Court Name :- Sessions Judge, Pune

Date :- 26.11.2010.

Judgment signed by P.O.on:-18.06.2010.

Judgment uploaded on :26.11.2010.