

CASE NO.:
Appeal (crl.) 267 of 2007

PETITIONER:
MANAGER, I.C.I.C.I. BANK LTD

RESPONDENT:
PRAKASH KAUR & ORS

DATE OF JUDGMENT: 26/02/2007

BENCH:
AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (Crl.) 15/2007)

ALTAMAS KABIR, J.
Leave granted.

This appeal has been filed by the Manager, I.C.I.C.I. Bank Ltd. against the order dated 7th December, 2006, passed by the Allahabad High Court in Criminal Miscellaneous Petition No.11210/2006 disposing of the petition with a direction upon the S.S.P. Allahabad, to ensure the registration of a case on the basis of Annexure VII to the Writ Petition and its investigation by a competent police officer.

Before advertng to the subject-matter of the writ petition, it may be pointed out that in the writ petition, the writ petitioner has chosen to implead as respondents, not only the Union of India and other police authorities of Uttar Pradesh but also the President/Chairman/Managing Director of the I.C.I.C.I. Bank, the General Manager, Loans, I.C.I.C.I. Bank, Branch Sardar Patel Marg, Civil Lines, Allahabad and M/s. Kartik Associates, Banaras Automobiles, Kodopur, Ram Nagar, Varanasi, through its authorised Goonda Officers and Goonda Employees and Institutions created against the law for doing work and persons of the Institutes, Criminals to do work for I.C.I.C.I. Bank.

The subject matter of the writ petition relates to a loan taken by the writ petitioner from the I.C.I.C.I. Bank, Allahabad Branch for purchase of a truck. It appears that the writ petitioner defaulted in payment of the instalments and in terms of the agreement entered into between the writ petitioner and the Bank, the writ petitioner's truck was taken possession of by the bank authorities by use of force on 13th July, 2006. It also appears that the writ petitioner requested the Chief Manager (Loans), I.C.I.C.I. Bank, Sardar Patel Marg, Civil Lines, Allahabad, for release of the truck which was alleged to have been forcibly taken possession of by M/s. Kartik Associates, acting as the agents of the Bank. The writ petitioner appears to have also written to the said agents on 25th July, 2006, requesting them to provide details of the instructions given to them to seize the petitioner's truck.

Since the truck was not returned to the writ petitioner, she caused a legal notice to be served on M/s. Kartik Associates but the same was returned unserved as having been refused.

The writ petitioner contended that the Bank and its officials had systematically conspired to cheat the writ petitioner by advancing the loan for purchase of the truck and accordingly wrote to the police authorities on 3rd/4th September, 2006, requesting them to register the First Information Report of the alleged offences punishable under Sections 120-B, 400/ 403/ 406/ 409/ 417/ 418/ 419/ 420/

421/ 422/ 424/ 466/ 467/ 468/ 469/ 571 and 511 IPC. It was also urged that since no steps had been taken by the police authorities on the basis of the application dated 3rd/4th September, 2006, the respondent Nos. 1, 2, 5, 6, 7 & 8, being the Union of India and other officers of the U.P. Police, had committed offences punishable under Sections 166/ 167/ 212/ 217/ 218/ 221/ 120-B IPC and Section 13 of the Prevention of Corruption Act.

On the basis of the aforesaid allegations, the writ petitioner, inter alia, prayed for a direction upon the respondent Nos. 1, 2, 4, 5, 6, 7 & 8 to register a First Information Report in Civil Lines Police Station, Allahabad, against the respondent Nos. 9 to 13 and during the period of investigation, to save the losses of the writ petitioner by recovering the truck along with all the documents relating to the truck and to hand over the same to the writ petitioner. The writ petitioner also prayed for a writ of mandamus to direct the respondent Nos. 1 and 3 to cancel the licence of I.C.I.C.I. Bank and for other ancillary reliefs.

On the basis of the aforesaid writ application, the Division Bench of the Allahabad High Court while disposing of the writ petition passed the following order:-

"The relief sought in this Writ Petition is for issuance of a direction for Registration of the case against the Respondents.

Heard learned counsel for the petitioner and the learned AGA for the State and perused the record.

The contention for the learned counsel for the petitioner is that a perusal of Application dated 03/09/06 (Annexure VII) to the Writ Petition discloses commission of a cognizable offence. It was obligatory on the part of the police to have registered the case and to proceed with the investigation but it was not done. The petitioner is a lady and she has approached this Court for the relief sought therein and in support of his contention he has relied on Ramesh Kumari vs. State (N.C.T. of Delhi) & Ors., reported in 2006 (1) Crimes 229 (SC) wherein the Apex Court was pleased to issue direction for registration of the case.

We have perused the application dated 03.09.2006 which shows the alleged commission of cognizable offence. Consequently we direct the SSP Allahabad to ensure the registration of a case on the basis of Annexure-VII to the Writ Petition and its investigation by a competent police officer.

The Writ Petition stands disposed off accordingly."

Appearing for the appellant, Mr. Harish Salve, learned senior advocate with Mr. Mukul Rohatgi, learned senior advocate, submitted that the disputes between the parties, if any, were entirely of a civil nature relating to the instalments payable by the writ petitioner on the loan taken by her from the Bank and accounting of all payments actually made and there

was no element of criminal intent in the entire transaction. Mr. Salve submitted that while the writ petition had been filed with the intention of exerting pressure on the Bank and its authorities to release the truck, the High Court should have also looked into the pleadings and the frame of the writ petition before passing the impugned order dated 7th December, 2006. A glance at the pleadings would make it quite clear that the dispute involved was of a purely civil nature and did not warrant any direction as has been given.

However, while making his submissions, Mr. Salve also conveyed the Bank's willingness to compromise the matter by foregoing the interest which was payable on the outstanding dues which amounted to Rs.1,62,917/-. Mr. Salve also submitted that in the event the writ petitioner had any doubts regarding the payments made by her and credited to her account, she could sit with the officers of the Bank along with her agent and verify the accounts and in the event it was found that any payment made by her had not been credited to her account, she would be entitled to receive credit for the same.

Mr. Salve submitted that if the writ petitioner paid an initial sum of Rs.50,000/- (Rupees Fifty thousand) only, the truck could be returned to her and upon final accounting the balance principal amount found payable by her could be paid off in suitable instalments.

On behalf of the writ petitioner/respondent, it was contended that the amount said to be due towards principal was highly inflated since according to the writ petitioner she had defaulted in making payment of only one instalment.

Be that as it may, we are inclined to accept Mr. Salve's suggestion and we accordingly direct that upon deposit of a sum of Rs.50,000/- (Rupees Fifty thousand) only, the Bank shall forthwith release to the writ petitioner or her agent the truck bearing registration No.UP-78-AN-1951 which had been seized from the writ petitioner's possession. The writ petitioner assisted by her agent, will sit with the Bank officials for the purpose of reconciling the accounts and in the event it is found that the writ petitioner had not been given credit for certain payments made by her, such payments are to be taken into account and the balance principal amount will then be paid by the writ petitioner-respondent to the Bank in six equal monthly instalments, the last instalment being for any broken amount, if any. The writ petitioner-respondent undertakes not to encumber or dispose of the truck till the final accounting is completed and all dues are cleared. In case of default in payment of subsequent instalments, if any, the Bank will be entitled to re-possess the vehicle in accordance with law.

The Bank shall forego the interest said to be payable by the writ petitioner and the writ petitioner will also not be entitled to make any claim on account of any damage and wear and tear that may have been caused to the writ petitioner's vehicle while in the custody of the Bank and its officials.

The appeal is accordingly allowed and the order impugned in the appeal is set aside. If any First Information Report has already been registered in terms of the impugned order, the same shall also stand quashed along with the investigation commenced thereupon.

Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong arm tactics.

There shall be no order as to costs.

JUDIS