
evidence, in my considered opinion, would be unwarranted. Such an interpretation to the provisions of Section 311 of the Cr.P.C, does not flow from the language used therein. The learned trial Court, therefore, committed an error of jurisdiction and law, while dismissing the application, filed by the petitioner. Consequently, the present petition is allowed and the order dated 23rd November, 2002 is set aside. The learned trial Court shall consider and decide the application, filed by the petitioner/complainant, under Section 311 of the Cr. P.C, afresh, in accordance with law. The parties, through their counsel, are directed to appear before the trial Court on 9th October, 2006.

R.N.R.

Before R. S. Madan, J.

DEEPAK NARANG,—*Petitioner*

versus

STATE OF HARYANA & ANOTHER,—*Respondents*

CRIMINAL MISC. NO. 8850/M OF 2004

14th September, 2006

Code of Criminal Procedure, 1973—S.197—Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002—S.32—Default in payment to Bank pertaining to loan facilities—Bank initiated proceedings against respondent's father—Civil decree in favour of Bank—No payment even after passing of the decree—Bank initiating proceedings under the provisions of 2002 Act—Petitioners, officials of the Bank being public servant following the procedure laid down in 2002 Act—Petitioners under an obligation to affix notice on the outer gate of house of defaulter—Police present at the time of affixing notice also reporting that no untoward incident took place—Complainant not available in the house at the relevant time—No cause of action to sue petitioners—Action of petitioners to get the service of notice effected through affixation is in discharge of their official duties—Petitioner could not be prosecuted without obtaining sanction from the competent authority as required under section 197 Cr.P.C.—Complaint is an act of an abuse of the process of Court—Petition allowed, complaint as well as summoning order quashed.

Held, that the Bank has initiated proceedings of recovery against the respondents father Harbilas and others in the Civil Court at Chandigarh and a decree dated 23rd December, 1988 to this effect was obtained for a sum of Rs. 2,01,234.14 paise. After the passing of the decree, no amount was paid by the father of respondent No. 2 and the amount swelled into Rs. 7,06,275/-. The plea that Section 36 of the Act which provides limitation is not attracted to the facts of the present case, because of the continuous proceedings pending against the defaulters. It is a case in which the officials of the Bank being Public Servant were following the procedure laid down in 2002 Act and they were taking all steps which were warranted under the law in discharge of their official duties. It is also not disputed that at the time when the affixation of the notice on the outer gate of the house bearing No. 35, Sector 16, Panchkula was going on, these proceedings were being carried in the presence of two constables of the police who on return to the police station had reported that no untoward incident had taken place. The report of the Senior Superintendent of Police, Panchkula corroborates this fact. It is also the admitted case of the parties that at the relevant time Smt. Roshni Devi was present in the house but she had neither filed any complaint in the competent court of jurisdiction about the alleged act of the petitioner nor she lodged any first information report with the police concerned. The present complaint was filed by respondent No. 2 in the Court of Judicial Magistrate Ist Class, Panchkula. It is also not disputed that the defaulting party exhibited a threat to the petitioners to involve them in some false criminal cases and in order to achieve this object, the present complaint was filed against the present petitioners with a view to harass them so that they may not execute the recovery proceedings against the defaulters.

(Para 17)

I. P. Singh, Advocate, *for the petitioner(s)*.

S. S. Gouripuria, Deputy Advocate General, Haryana,
for respondent No. 1.

R. A. Yadav, Advocate, *for respondent No. 2.*

JUDGEMENT

R. S. MADAN, J.

(1) This order of mine shall dispose of the two Criminal Misc. No. 8850-M of 2004 and Criminal Misc. No. 8486-M of 2004, which have arisen out of the order dated 12th May, 2003 (Annexure P-7) passed by Judicial Magistrate Ist Class, Panchkula. In both the complaints, the facts are similar, so the facts have been taken from Criminal Misc. No. 8850-M of 2004.

(2) In brief the facts of the case are that the petitioner(s) was earlier posted as Assistant General Manager, Allahabad Bank, Regional Office, Sector 17-B, Chandigarh whereas Shri R. K. Sood was posted as Chief Manager, Allahabad Bank, Branch Office, Sector 17-B, Chandigarh. The petitioner(s) is at present posted as Assistant General Manager, Allahabad Bank, Regional Office, Ahmedabad whereas Shri R. K. Sood, is posted as Chief Manager, Allahabad Bank, Regional Office, Parliament Street, New Delhi and both are the permanent employees/officers of the Bank which is a Nationalized Bank, a Government of India undertaking, thus public servants. It is alleged that the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as Securitization Act, 2002), came into existence for speedy recovery of loans/debts which have become non performing assets. The Rules were enacted under the Securitization Act, called The Security Interest (Enforcement) Rules, 2002. As per Rule 2(a) of the Rules 2002, an authorized officer means an officer not less than a Chief Manager of a Public Sector Bank who can exercise rights of a Secured Creditor and could act and conduct the proceedings as an Authorized Officer against the Borrowers/Defaulters of the Bank. It is alleged that the petitioner Deepak Narang was holding the post of Assistant General Manager in the Bank and was the Regional Head of Regional Office, Chandigarh as such was declared as an Authorized Officer of the Allahabad Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Rules. Circular regarding authorized Officer and the steps to be taken for exercising the powers under the Securitization Act, 2002 was issued by the Bank on 12th November, 2002. M/s. Raju Flour Mills was the defaulter of the Bank pertaining to loan facilities availed of

from the Bank. The account of the said firm became non-performing Assets and as such a demand notice was required to be issued for payment of the outstanding debt in terms of Section 13(2) of the Securitization Act, 2002 to the Borrowers which included the Firm, Partners of the Firm and the Guarantors. The moveable and immovable properties were hypothecated and mortgaged with the Bank as such the Allahabad Bank was a Secured Creditor and entitled to recover the amount by sale of the same in case the amount is not paid within a period of 60 days from the date of notice as per provisions of the Act. The petitioner(s) exercising the powers of an authorized officer under the Act, 2002 issued Demand Notices dated 12th February, 2003 under Section 13(2) of the Act, 2002 to the borrowers i.e. M/s. Raju Flour Mills, 243, Industrial Area, Chandigarh, Rajeev Sharma, son of Shri J. P. Sharma, House No. 1043, Sector 2, Panchkula, Shri Sanjeev Sharma, son of Shri J. P. Sharma, House No. 1043, Sector 2, Panchkula, Padam Bhushan, son of Shri Harbilas, resident of House No. 80, Sector 28-A, Chandigarh and Smt. Parkasho Devi, wife of Siri Ram, Daya Nagar, Opposite New Mandi, Taraori, District Karnal to repay the amount of Rs. 7,06,275/- within a period of 60 days from the date of the receipt of the notice, which were received back un-served. The notices issued by the petitioner(s) under Section 13(2) of the Securitization Act, 2002, dated 12th February, 2003 to the borrowers/defaulters i.e. Rajeev Sharma, son of Shri J. P. Sharma, House No. 1043, Sector 2, Panchkula, Shri Sanjeev Sharma, son of Shri J. P. Sharma, House No. 1043, Sector 2, Panchkula, Shri Harbilas, son of Shri Ruli Ram, House No. 80, Sector 28-A, Chandigarh, Shri Padam Bhushan, son of Shri Harbilas, House No. 80, Sector 28-A, Chandigarh, Smt. Parkasho Devi, wife of Siri Ram, Daya Nagar, Opposite New Mandi, Taraori, District Karnal, M/s. Raju Flour Mills, 243, Industrial Area, Chandigarh were served except Shri Harbilas Jindal and Shri Padam Bhushan which were received bank un-served. Since the notice dated 12th February, 2003 (Annexure P-2) could not be served upon Harbilas Jindal and Shri Padam Bhushan, defaulters, through registered A.D. Post, and the same were received back un-served from the addresses mentioned therein, the notices were sent on the earlier addresses available as per the Bank record on which they were not served. Thus the notices were to be served upon the borrowers at the place where they were residing on the new addresses. Information in this regard,—*vide* letter dated 24th April,

2003 (Annexure P-3) regarding delivery of the notice to the defaulter at his resident i.e House No. 35, Sector 16, Panchkula was sent to the Senior Superintendent of Police, Panchkula with a request that police personnel may be deputed on 27th April, 2003 at 11 A.M. so that the notices could be delivered, and that the friends and the relatives of the borrowers may not involve the petitioner(s) or any other officer/official of the Bank in any false case.

(3) It is the case of the petitioner(s) that as per the provisions of Securitization Act, 2002 and the Rules framed thereunder, the Allahabad Bank was a Secured Creditor and the loan facilities were secured by way of hypothecation of all types of stocks and Book Debts of the Unit lying at 243, Industrial Area, Chandigarh and also equitable mortgage of the property constructed on one Kanal plot situated at Daya Nagar opposite New Mandi, Taraori, District Karnal owned by Smt. Parkasho Devi, wife of Shri Siri Ram. Thus the above properties were the Secured Assets and the Allahabad Bank was a Secured Creditor and could proceed against these properties under the provisions of the Securitization Act, 2002, pertaining to which notices were issued to the abovesaid borrowers for compliance. Since the borrowers failed to comply with the notice Annexure P-1 and the amount was not deposited as such proceedings under Section 13(4) of the Act read with Rule 9 were initiated against the secured assets of the borrowers for taking possession, which was to be taken by the petitioner being the Authorized Officer. The notices under Rule 3 of the Security Interest (Enforcement) Rules, 2002 were to be served upon the borrowers at the place where they were residing personally or by affixation. The petitioner being Authorized Officer, with Shri R. K. Sood who was the Chief Manager of the Allahabad Bank, Sector 17-B, Chandigarh Branch and the other staff members reached House No. 35, Sector 16, Panchkula on 27th April, 2003 for service of notice. When the petitioner and the other staff members as well as the police personnel so deputed by the Superintendent of Police were present outside the house in question for service of notice upon the borrowers, who were reported to be not available there. The male family members of the borrowers refused to accept the notices issued under the Act, 2002, there being no other option, a copy of the notice was affixed on the outer wall of the house bearing No. 35, Sector 16, Panchkula on 27th April, 2003 for service of the notice upon the borrowers under the provisions of the Securitization Act, 2002. The notice Annexure

P-2 as well as the notice under Section 13(4) Annexure P-4 were affixed/pasted on the outer wall of the House No. 35, Sector 16, Panchkula where the borrowers were residing. The copy of the notice alongwith report of service in the presence of police deputed in this regard is Ex.P-2. The police personnel as well as the Press Reporters were also present during the entire proceedings. Neither the petitioner nor any body else entered into the residential house as alleged in the complaint. The entire proceedings were conducted under the provisions of the Act and Rules applicable in this regard in good faith and the action of the petitioners is fully protected under Section 32 of the Securitization Act, 2002.

(4) That the borrowers/defaulters as well as their other associates threatened the petitioner(s) and others to involve them in a false case since their reputation has been damaged in the locality by the Bank Officers by affixing the notice of defaulter of the Bank on their house. The respondent No. 2 alongwith Smt. Roshani Devi, wife of Harbilas Jindal, Shri Suresh Jindal and Shri Vinod Jindal, son of Shri Harbilas Jindal issued a Legal Notice dated 10th May, 2003 through Shri A. P. Manchanda, Advocate for payment of Rs. 50 Lacs as damages pertaining to the alleged incident as mentioned in the complaint. A reply to the said notice was given through Shri Ram Chander, Advocate on 25th May, 2003 on behalf of the bank. In order to further harass and humiliate the petitioner(s), Shri R. K. Sood and other officers of the Allahabad Bank respondent No. 2 filed a false criminal complaint dated 1st May, 2003 in the Court of Judicial Magistrate Ist Class, Panchkula under Section 166, 167, 355, 448, 452, 500, 504, 506, 148 and 149 of the Indian Penal Code. The copy of the complaint is attached as annexure P-5. Some evidence was recorded of respondent No. 2, being complainant, and Shri Rajesh Gupta on 1st May, 2003 and thereafter the evidence was closed. It is pertinent to mention here that respondent No. 2 filed a list of witnesses of as many as 24 witnesses alongwith complaint and only examined himself and another person in support of the allegations made in the complaint. The petitioner and Shri R. K. Sood were ordered to be summoned by the court of Shri P. K. Yadav, Judicial Magistrate, Panchkula,—*vide* order dated 12th May, 2003 under Sections 452/500/506/148 read with Section 149 of the Indian Penal Code and they were ordered to be summoned for 12th September, 2003, the copy of the order is Annexure P-7. It is further alleged that

the notices/summons of appearance were issued in terms of the order P-7 and after the receipt of the summons of appearance in person or through attorney, appearance was made through their counsel. The petitioner(s) being Authorized Officer of the Bank requested the Senior Superintendent of Police, Panchkula,—*vide* letter Annexure P-3 to provide police help for effecting service on the defaulters at their place of residence.

(5) It is alleged that the petitioner(s) being Authorized Officer has taken action in good faith being a Secured Creditor against the borrowers. Section 32 of the 2002 Act comes to the rescue of the petitioner(s) wherein it is mentioned that no proceedings could be initiated against the petitioner(s) as well as other officers of the Bank since they are protected under the provisions of the aforesaid Act. The learned Trial Court while entertaining the Complaint (Annexure P-5) and while passing the impugned summoning order Annexure P-7 failed to take into consideration the provisions of Section 32 of the 2002 Act. The petitioners being Public Servants are protected under the provisions of Section 197 of the Code of Criminal Procedure because they acted in discharge of their official duties. This aspect has also not been taken into consideration in a legal and proper manner by the learned Trial Court while passing the impugned summoning order Annexure P-7 as such the same is liable to be quashed. It is further alleged that the complaint Annexure P-5 is false, *mala fide* act of respondent No. 2. It is pertinent to mention here that since the entire proceedings were conducted in the presence of the police personnel deputed by S. P. Panchkula and no untoward incident as being alleged by the respondent No. 2 took place as such no action was taken on the false and frivolous complaint filed by the petitioner(s). The Assistant General Manager, Allahabad Bank, Regional Office, Sector 17-B, Chandigarh,—*vide* letter dated 11th February, 2004 Annexure P-13 requested the Superintendent of Police, Panchkula to give the report regarding service of notice on 27th April, 2003 at House No. 35, Sector 16, Panchkula and also about the complaint dated 28th April, 2003 made by respondent No. 2 and also about the action taken on the telegram dated 30th April, 2003 sent to the Director General of Police, Haryana by the respondent No. 2 for registering criminal case against the Bank officials as referred to in the complaint annexure P-5. The Superintendent of Police,—*vide* his letter dated 13th February, 2004 Annexure P-14 confirmed the deputation of the police officials to

assist the Bank Officials for service of notice on 27th April, 2003 and it has also been confirmed that no cognizable offence was made out on the complaint of respondent No. 2.

(6) Upon notice the respondents filed reply. In the written reply filed on behalf of respondent No. 2 it was projected by way of preliminary objection that the present petition under Section 482 of the Code of Criminal Procedure is not maintainable because it is not the stage where complaint is to be quashed on the basis of version given in the petition under Section 482 Cr.P.C. Courts are not to enter into controversy which of the version is correct. It is further pleaded that no sanction was taken for prosecution of the petitioner(s) and other officials, because the stage has not come as to when this question is to be decided. It was further projected that the petitioner should have raised all such pleas before the Magistrate before approaching the Hon'ble High Court under Section 482 Cr.P.C. as laid down in **K. M. Mathew versus State of Kerala, (1)** It was pleaded that the petitioner(s) cannot taken the shelter of Section 32 of the 2002 Act. It was further pleaded that service of notice under Section 13(2) of the 2002 Act was not available to the petitioner(s) because Civil Suit bearing No. 399 of 1986 was already instituted against the father of the answering respondent and a decree was obtained from the Court on 23rd December, 1988. Execution proceedings are stated to be pending in the Courts at Karnal for the attachment and sale of the mortgaged property in dispute. On merits, the averments made in the petition were denied and it was reiterated that the petitioner(s) has harassed the father of the complainant with a view to defame him in the vicinity. Alongwith the reply Annexure R-1, copy of the judgment rendered by the learned Sub Judge, Ist Class, Chandigarh and the decree sheet were attached. Annexure R-2 reply to the notice was also placed on the record. Annexure R-3 is the News alleged to have been published in the Hindustan Times, New Paper, with respect to the affixation of notice. Typed copy has been placed on the record. The summoning order Annexure P-7 was also placed on the record.

(7) It is pertinent to mention here that the State of Haryana has also filed reply supporting the averments of the petitioner that no such untoward incident had taken place as alleged in the complaint

(1) 1992 Cr.L.J. 3779 and 1996 (3) R.C.R. 777

and it was admitted that the Local Police accompanied the petitioner(s) for affixing/pasting the notice on the outer wall of House No. 35, Sector 16, Panchkula. He thus prayed for the dismissal of the proceedings *qua* the answering respondents.

(8) Feeling aggrieved against the complaint Annexure P-5 and the order dated 12th May, 2003 (Annexure P-7), the petitioner(s) has impugned the same by filing petition under Section 482 of the Code of Criminal Procedure.

(9) I have heard the learned counsel for the parties and have gone through the record available on the file.

(10) On behalf of the petitioner(s) it is contended by the learned counsel for the petitioner that the petitioners were acting in discharge of their official duties and were under an obligation to get the service of notice effected through affixation, as per the conditions mentioned in the circular Annexure P-1. In order to get the service effected on the defaulting party, the petitioners apprehended that Harbilas may not give shape to any untoward incident, it was with this apprehension that the Bank Officers/officials sought the police help by writing a letter Annexure P-3 to the Senior Superintendent of Police, for providing police help, on the basis of which two constables namely Inder Singh and Vikram Singh, were detailed for duty with the bank officers for getting the service of notice affixed on the conspicuous place of residence of the defaulting party, namely, Harbilas who was residing in House No. 35, Sector 16, Panchkula, being partner of Raju Flour Mills. Thus, according to the learned counsel for the petitioner, the petitioner had taken the *bona fide* steps to get the service of notice effected on the defaulting party. It was never the intention of the petitioner to defame the defaulter in the vicinity.

(11) The learned counsel for the petitioner(s), further contended that the present complaint has been filed in the court of Judicial Magistrate Ist Class, Panchkula with a view to take revenge from them as well as to restrain them from further proceedings in recovery case. He contended that the learned Magistrate without appreciating these facts has mechanically passed the summoning order. Hence, the complaint is liable to be quashed as it is an abuse of the process

of the Court. Reference was made to **Punjab National Bank and others versus Surendra Prasad Sinha (2)**, wherein it was observed as under :—

“Judicial process should not be an instrument of oppression of needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the persons needlessly. Therefore, in case of default in repayment of bank loan, when the debt became time barred and the bank had adjusted the debt from the F.D.Rs in its possession which were deposited by the guarantor by way of security, after their maturity, and a complaint was laid by the guarantor impleading the Chairman, Managing Director of the Bank and a host of officers on the charges under Sections 109, 114 and 409 of the Penal Code, it would be the responsibility and duty of the Magistrate to find whether the concerned accused were legally responsible for the offenses charged for, before issuing the process. Thus the complaint on the basis of which the process was issued was filed as vendetta to harass the persons needlessly, the complaint was quashed”.

(12) Another contention of the learned counsel was that the petitioners had acted in discharge of their duties by serving the notices through affixation at the outer wall of the house of the defaulter, so they could not be prosecuted without obtaining proper sanction from the competent authority. In support of his contention reference was made to **State of H.P. versus M.P. Gupta (3)**, wherein it was observed as under :—

“Sanction for prosecution of public servant would be required if it is *prima facie* found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty-Section 197 Cr. P.C. would apply.

(2) AIR 1992 S.C. 1815

(3) 2004 (1) RCR (Criminal) 197 (S.C.)

Criminal Procedure Code. Section 197—Meaning of word “Official duty”.—Sanction for prosecution of public servant is required for any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty—official duty implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature—Section 197 Cr. P.C. will apply to those acts which are discharged in course of duty”.

(13) The main grievance of the respondent No. 2 in the complaint is that alleged incident took place in the house of Mrs. Roshni Devi and she was present in the house at that time. Neither she has filed any complaint nor reported the matter to the police. Even she has not been shown as a witness in the list of witnesses Annexure P-6 wherein names of as many as 24 witnesses have been mentioned. Thus when Smt. Roshni Devi has not been shown as a witness pertaining to the alleged incident in her house in such a situation the complaint Annexure-5 on the face of it is not maintainable and liable to be quashed. This itself proves the fact that the complaint filed by respondent No. 2 is false and the same has been filed simply to harass the petitioner(s) and bank officers not to perform their duty under the provisions of the Securitization Act, 2002. Respondent No. 2 is neither the borrower nor any notice was issued or served upon him under the Securitization Act by the authorized officer of the Allahabad Bank and as such he had no cause of action to file the complaint Annexure P-5. The aggrieved persons as stated above have not filed any complaint either before the Local Police or before the learned trial court. As per the report of the Local Police the complaint filed by respondent No. 2 for registration of a case against the officers of the Bank including the petitioner(s) was not true and as such no action was taken in this regard. Thus on the point of maintainability of the complaint itself the complaint Annexure P-5 is liable to be quashed. Hence, the present complaint is an abuse of process of the Court to achieve the illegal design of father of complainant (Respondent).

(14) Another limb of the argument of the learned counsel for the petitioner(s) was that a notice was got issued to the petitioner(s) by Shri A.P. Manchanda, counsel for the respondent claiming damages to the tune of Rs. 50 lacs for the incident which had occurred on 27th April, 2003. A reply to the said notice was given through Shri Ram Chander, Advocate on 25th May, 2003 on behalf of the Bank.

Thus, according to the learned counsel, the petitioners were put on constant harassment by the father of the complainant in one way or the other, so as to dissuade them not to proceed with the recovery proceedings taken under the 2002 Act.

(15) Controverting the arguments, Shri A. P. Manchanda, learned counsel for the respondents submitted that the petitioner(s) has not placed on the record the unserved notice which was refused by Harbilas so as to show that they were well within their right to serve the notice by way of affixation after 60 days of the previous notice under Section 13(2) of the Act, 2002. Learned counsel submitted that the petitioners have not acted *bona fide* and have acted with *mala fide* intention to defame the respondents. Therefore, it cannot be said that the petitioners have acted in discharge of their official duties. The conduct and the manner in which the petitioner tried to affix notice at House No. 35, Sector 16, Panchkula belonging to Harbilas, it was not essential for the petitioners to have carried with them bank officials alongwith the Police and Press Reporters. Thus, from these circumstances, it can be inferred that the petitioners had acted to malign the reputation of Harbilas in the vicinity. Learned counsel submitted that a Civil Suit has already been filed which was decreed and execution proceedings were pending before the Civil Court at Karnal. Therefore, there was no occasion for the petitioners to have resorted to the provisions of Section 13(2) of the Act, 2002. At the most it can be a case of cheating or breach of trust or forgery committed by Harbilas, partner of the firm. The Hon'ble Apex Court in **Mushtaq Ahmad versus Mohd. Habibur Rehman Faizi and others** (4) has observed as under :—

“Inspite of the fact that the complaint and the documents annexed thereto clearly made out a *prima facie* case, for cheating, breach of trust and forgery, the High Court proceeded to consider the version of the respondents given out in their petition filed under Section 482 Cr.P.C. *vis-a-vis* that of the appellant and entered into debatable area of deciding which of the version was true,— a course wholly impermissible in view of the above quoted observations in the case of Bhajan Lal (1992 AIR SCW 237) (*supra*)”.

(16) The learned counsel for the respondents further submitted that the provisions of Section 197 of the Code of Criminal Procedure i.e. the sanction to prosecute the petitioner from the competent authority are not the pre-requisite.

(4) AIR 1996 S.C. 2982

(17) In such a situation it is a debatable question which needs to be decided by the Court as to which version is true and resorting to the provisions of Section 482 of the Code of Criminal Procedure is wholly impermissible. As such, the order for quashing of the complaint was set aside. Reference was made to **State of U.P. versus O. P. Sharma (5)**. Both the authorities cited by the counsel are not attracted to the facts of the present case.

(18) Having heard the learned counsel for the parties, I am of the view that the arguments advanced by the learned counsel for the petitioners must prevail. It is not disputed that the Bank has initiated proceedings of recovery against the respondents father Harbilas and others in the Civil Court at Chandigarh and a decree dated 23rd December, 1988 to this effect was obtained for a sum of Rs. 2,01,234.14 paise. After the passing of the decree, no amount was paid by the father of respondent No. 2 and the amount swelled into Rs. 7,06,275. The plea of the counsel that Section 36 of the Act which provides limitation is not attracted to the facts of the present case, because of the continuous proceedings pending against the defaulters. It is a case in which the officials of the Bank being Public Servant were following the procedure laid down in 2002 Act and they were taking all steps which were warranted under the law in discharge of their official duties. It is also not disputed that at the time when the affixation of the notice on the outer gate of the house bearing No. 35, Sector 16, Panchkula, was going on, these proceedings were being carried in the presence of two constables of the police who on return to the police station had reported that no untoward incident had taken place. The report of the Senior Superintendent of Police, Panchkula (Annexure P-14)— corroborates this fact. It is also the admitted case of the parties that at the relevant time Smt. Roshni Devi was present in the house but she had neither filed any complaint in the competent court of jurisdiction about the alleged act of the petitioner nor she lodged any first information report with the police concerned. The present complaint was filed by respondent no. 2 in the court of Judicial Magistrate Ist Class, Panchkula. It is also not disputed that the defaulting party exhibited a threat to the petitioners to involve them in some false criminal cases, and in order to achieve this object, the present complaint Annexure P-5 was filed against the present petitioners with a view to harass them so that they may not execute the recovery proceedings against the defaulters. The agony did not end here but was a constant affair on the part of the defaulter. So a notice was

served through a counsel Shri A. P. Manchanda, Advocate to sue the petitioners for damages to the tune of Rs. 50 Lacs for their action on 27th April, 2003. It is a case where the petitioners are not only protected under Section 197 of the Code of Criminal Procedure but under Section 32 of 2002 Act., which are reproduced as under :—

Criminal Procedure Code. Section 197—Meaning of word “Official duty”.—

“Sanction for prosecution of public servant is required for any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty— official duty implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature— Section 197 Cr.P.C. will apply to those acts which are discharged in course of duty”.

Securitization Act, 2002-Section 32— Protection of action taken in good faith—

“No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act”.

(19) Admittedly, respondent No. 2 had no cause of action to sue the petitioners as he was not available in the house at the relevant time. Therefore, the present complaint is an act of revenge on the part of Harbilas and others defaulters to get the present complaint filed through his son by concocting a false version in the complaint, which has never seen the light of the day. Therefore, the present complaint in an act of an abuse of the process of the Court which cannot be allowed to proceed.

(20) For the aforesaid reasons, the complaint (Annexure P-5) as well as the summoning order (Annexure P-7) passed by the learned Judicial Magistrate Ist Class, Panchkula, in both the petitions referred to above, are quashed.

R.N.R.