

Judgement Reserved: 03.08.2023

Judgement Delivered: 08.08.2023

Court No. - 69

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., Syed Imran Ibrahim

Hon'ble Samit Gopal, J.

1. Heard Sri Rakesh Dwivedi, learned Senior Advocate assisted by Sri Raghav Dwivedi, learned counsel for the petitioners, Sri Siddharth Dave, learned Senior Advocate assisted by Sri Syed Imran Ibrahim, learned counsel for the respondent no. 3 / first informant and Sri P.K. Giri, learned Additional Advocate General alongwith Sri Ajay Singh, learned Additional Government Advocate for the State of U.P. / respondent no. 1 and the S.H.O. concerned / respondent no. 2 and perused the records.

2. The present petition under Article 226 of the Constitution of India has been filed with the following prayers :-

"I. 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 this petition) vide Crime No. 611 of 2023, U/s 420 and 120-B IPC and Section 82 of Registration Act, 1908, Police Station- Kavi Nagar- Ghaziabad.

II. Issue an appropriate writ, order or direction in the nature of MANDAMUS directing the Respondent no.2 not to arrest and/or take any coercive steps against the petitioners or any of its officers, officials, representatives, employees, managers, etc. in pursuance of the first information report dated 22.07.2023 (Annexure No.1 to this petition) vide Crime No. 611 of 2023, U/s 420 and 120-B IPC and Section 82 of Registration Act, 1908, Police Station- Kavi Nagar- Ghaziabad.

III. Issue an appropriate writ, order or direction in the nature of MANDAMUS directing to stay all investigations or any consequential actions by any authority/agency pursuant to registration of FIR No. 611 of 2023 dated 22.07.2023 registered at PS Kavi Nagar and the allegations contained therein;

IV. Issue any other or further Writ, Order or Direction which this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case.

V. To award the cost of Writ Petition."

3. The matter was heard by a Division Bench of this Court. After hearing the matter the Bench was divided in its view. One of the Hon'ble Judges passed the following order on 27.07.2023:-

"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."

4. The other Hon'ble Judge passed a separate order of the same date. The same is extracted herein below:-

"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."

5. Since there was a difference of opinion between the members of the Bench, the matter was directed to be placed for nomination before

Hon'ble the Chief Justice under Chapter VIII Rule 3 of the Allahabad High Court Rules, 1952 vide order dated 27.07.2023 of the Bench. The said order is extracted herein below:-

"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."

6. The matter was thus placed before Hon'ble the Chief Justice who vide order dated 31.07.2023 nominated this Court for opinion under Chapter VIII Rule 3 of the Rules of Court.

7. The matter is thus before this Court and has been heard.

8. The reading of the orders of the Hon'ble members of the Bench goes to show that one Hon'ble member while addressing the fact that interim protection has been granted by the Apex Court which was extended by a Division Bench of this Court in Criminal Misc. Writ Petition No. 10893 of 2023 (Neeraj Tyagi and another vs. State of U.P. and 3 others) vide order dated 13.07.2023 provided that the petitioners shall have an interim protection as granted in the said writ petition till the next date of listing and the matter was directed to be posted as fresh on 11.08.2023.

9. The other Hon'ble member observed that in so far as the interim protection is concerned, offence under the alleged sections is punishable up to 7 years and in each case arrest of the accused is not essential by the police in view of the special provision of Section 41-A Cr.P.C. and thus observed that he is not inclined to issue interim protection that too without giving time to A.G.A. to seek instructions. The next reasoning given was that the normal practice of the Bench is that without instructions to A.G.A., the Bench is not inclined to hear the matter and since A.G.A. seeks time to have instructions from the police station concerned, the proper way is to give time to A.G.A. to seek instructions and later on pass effective orders causing damage to other side. It was thus concluded that in his view, no prima facie case for issuing interim protection, at this stage, is made out and it is not proper to issue any interim protection in favour of petitioners without having response from informant as well State. It was thus observed that it would be appropriate to have response from the other side before issuing any direction. The matter was thus posted as fresh on 11.08.2023.

10. The facts in brief are that a first information report was lodged as Case Crime No. 0611 of 2023, under Sections 420, 120-B I.P.C. and

Section 82 of the Registration Act, 1908, Police Station- Kavi Nagar, District- Ghaziabad by Mohit Singh the opposite party no.3 against the petitioner no.1- Smt. Reena Bagga, Sumit Kumar Narwar, Rajiv Goyal, Parvinder Singh and Amit Nain on the basis of an application addressed to the Chief Minister, Government of Uttar Pradesh, Lucknow alleging therein that he is the authorised representative of M/s. Shipra Hotel. On Plot No. 9, Ahinsakhand Indirapuram, District Ghaziabad, Shipra Mall of Shipra Hotel company is situated which has been sold in an illegal manner in conspiracy, forgery, cheating and against the provisions of law by Smt. Reena Bagga the authorised representative of India Bulls Housing Finance Ltd. to Himri Estate Pvt. Ltd., New Delhi by executing a sale-deed in favour of Rajiv Goyal the authorised representative of Himri Estate Pvt. Ltd. on 12.05.2023 for Rs. 551 crore whereas the approximate value of Shipra Mall is more than 2000 crore but by intentionally showing its lesser value, the Government of U.P. has been put to a loss of revenue amounting to crores of rupees. Sumit Kumar Narwar the shareholder of the India Bulls Housing Finance Ltd. and Himri Estate Pvt. Ltd. by threatening has got an agreement cancelled which was between Shipra Mall and Shipra Estate Ltd. and other companies. In the matter an S.A. has been has been filed before the D.R.T., Lucknow. Sumit Kumar Narwar and Gagan Banga have taken possession in conspiracy and fraudulently of not only Shipra Mall but also land situated near it. The said land was never pledged with India Bulls Housing Finance Ltd. Trident Reality is the main company of Himri Estate Pvt. Ltd. of which Parvinder Singh is the CEO who is also involved in the said offence and the said persons had an eye on Shipra Mall and Shipra Estate Ltd. due to its good location. They have tried to misappropriate the property and are also trying to take in possession illegally the other properties of Shipra company. Sumit Kumar Narwar and his other abovementioned associates are *bhumafias* of New Delhi and NCR and they have occupied many properties worth hundreds of crores illegally whereas previously they had no source of finance. In the gang of Sumit Kumar Narwar a person named Amit Nain is also working effectively. A high level agency be entrusted to investigate the matter impartially relating to Sumit Kumar Narwar and his companies as he previously was an ordinary citizen and was an employee but since some time by adopting shortcut methods he has become a rich persons which also needs to be investigated. He had given an application at Police Station Kavi Nagar but no action has been taken and as such is moving the present application. He prays that the abovementioned

accused persons who are working as *bhumafia*, legal action be taken against them and his land which has been illegally taken be returned to him.

11. The crux of the first information report is that the matter relates to property, it being pledged in a loan and then being sold after being undervalued. The petitioner no. 1 Reena Bagga is an employee of the petitioner no. 2 India Bulls Housing Finance Ltd. She was nominated as an authorised signatory for signing sale certificate of the property in question. The proceedings relate to financial transactions in the nature of loan, its non-payment and auction of property.

12. Although there is a difference of opinion between the members of the Division Bench and the matter has been referred under Chapter VIII Rule 3 of the Rules of the Court but in the referring order the point of difference is not noted.

13. This Court to whom the matter has been nominated for opinion after difference in the Division Bench, after perusing the two orders of dated 27.07.2023 passed by the Hon'ble members of the Bench independently comes to a conclusion that the difference therein is on the point as to whether the Court without granting time to the learned A.G.A. and learned counsel for the first informant for seeking instructions could have proceeded to hear the matter and passed an interim order.

14. Learned counsel for the petitioners argued that the dispute is purely a civil dispute. It is argued that no offence whatsoever has been made out. It is argued that the matter is squarely covered by the order of the Apex Court in the case of ***Gagan Banga vs. Samit Mandal & another: Contempt Petition (Civil) No. 774 of 2023 in Criminal Appeal No. 463 of 2022*** decided on 04.07.2023 whereby FIRs identical in nature were the subject matter and the Apex Court passed an order granting protection against the financial institution, its officers, representatives and managers till final disposal of petitions by the High Court as the Court was of the opinion that the petitioners should approach the respective jurisdictional High Courts to challenge the FIRs and the ECIRs. The said order has been placed before the Court which is annexed as Annexure-21 to the writ petition. The same reads as under:-

"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."

15. It is argued that subsequently a Division Bench of this Court in Criminal Misc. Writ Petition No. 10893 of 2023 (Neeraj Tyagi and another vs. State of U.P. and 3 others) has stayed the further proceedings including summoning of officers and consequence ECIR and has directed that no coercive action shall be taken against them vide order its dated 13.07.2023. The said order has been placed before the Court which is annexed as Annexure-22 to the writ petition. It is argued that the criminal proceedings as initiated are totally illegal and as of now the petitioners deserve to be granted an interim protection. Learned counsel for the petitioners has relied upon the following judgements of the Apex Court:

1. K. Virupaksha and another Vs. State of Karnataka and another, (2020) 4 SCC 440,
2. Krishna Lal Chawla and others Vs. State of Uttar Pradesh, (2021) 5 SCC 435.

16. Learned counsel for the respondent no. 3 / informant vehemently opposed the petition and arguments of learned counsel for the petitioners and argued that one Hon'ble Judge has rightly refused to grant interim protection to the petitioners at this stage. It is argued that the reason for disagreement as noted in the order refusing grant of protection are cogent and well substantiated reasons. It is argued that paragraph 10 of the said order specifically states that at this stage no case for interim protection is made out without having response from the informant as well as the State. It is argued that even it was mentioned that since offences are punishable up to 7 years, the arrest of the accused is not essential by the police and as such the petitioners are sufficiently protected because of Section 41-A Cr.P.C. While addressing the matter on merits it was argued that the issue relates not only to Shipra Mall but also to the land beyond it which has been taken in possession by the accused persons. It is argued that as such offence is made out. Learned counsel has relied upon the an order of the a Division of this Court in the case of Manoj Kumar Barnwal and others Vs. State of U.P. and others, 2021 SCC OnLine All 280 and argued that while considering a petition for quashing and relying upon the judgement of the Apex Court in the case of Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, Criminal Appeal No. 330 of 2021 decided on 13 April, 2021 refused to interfere in the matter.

17. Learned Additional Advocate General for the State of U.P. submits that since the offences are punishable up to 7 years, the petitioners shall not be arrested. He has placed before the Court the some judgements of

the Apex Court to submit that in view of the said judgements the petitioners will not be arrested and if needed the proceedings will be taken up as per the directions given in the said judgments. The same are:-

1. Arnesh Kumar Vs. State of Bihar ; (2014) 8 SCC 273,
2. Satender Kumar Antil Vs. Central Bureau of Investigation ; 2022 LiveLaw (SC) 577,
3. Pratibha Manchanda & anr. Vs. State of Haryana ; Criminal Appeal No. 1793 of 2023 decided on 7.7.2023,
4. Md. Asfak Alam Vs. The State of Jharkhand & anr. ; Criminal Appeal No. 2207 of 2023 decided on 31.7.2023.

It is argued that as such there was no necessity for passing of any interim order and looking to the nature of case, the State could have been granted time to file their response.

18. After having heard learned counsels for the parties, perusing the records and further perusing the order of the Apex Court in the case of ***Gagan Banga vs. Samit Mandal & another: Contempt Petition (Civil) No. 774 of 2023 in Criminal Appeal No. 463 of 2022*** and also the order passed by a Division Bench of this Court in Criminal Misc. Writ Petition No. 10893 of 2023 (Neeraj Tyagi and another vs. State of U.P. and 3 others) and also looking to the nature of the incident being related to financial institutions of money lenders who were pursuing recovery proceedings of their enforceable debts and the proceedings thereof satisfy the same, it is a fit case for grant of interim protection to the petitioners. The argument of learned Additional Advocate General that the petitioners will not arrested and the proceedings, if any, will be taken up as per the directions of the Apex Court in the judgments relied by him is concerned, the interim order as granted is not limited to merely protecting the arrest of the petitioners but is on other counts too. Since this Court has come to a conclusion that it is a fit case for grant of interim protection, the same is granted in terms of paragraph 18 & 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). The said order is extracted herein below:-

"1. Heard Sri Rakesh Dwivedi, learned Senior Counsel assisted by a team of Advocates namely, Sri Sankalp Narain, Sri Ashish Batra, Sri Ankit Banati, Sri Raghav Dwivedi and Sri Eklavya Dwivedi, for the Writ Petitioners, learned Standing Counsel for State-Respondent Nos.1 & 2, Sri Aditya Bhushan Singhal, learned Counsel for Respondent No.3 and Sri Sikandar Bharat

Kochar, learned counsel appearing for Respondent No.4, Directorate of Enforcement.

2. The writ petition has been filed seeking issuance of an appropriate writ, order or direction, declaring Section 420 of I.P.C. as manifestly arbitrary and ultra vires to the Constitution of India on the vice of Articles 14 & 21 as also for issuance of a writ of certiorari quashing, qua the writ petitioners, their officers, representatives and managers, the impugned F.I.R. No.0197 of 2023 dated 15.04.2023, under Sections 420, 467, 468, 471 and 120-B I.P.C., Police Station Beta-2, Greater Noida, Gautam Buddh Nagar, registered by Respondent No.3 with all the consequential proceedings arising therefrom together with the consequent proceedings initiated by Respondent No.4 in E.C.I.R. bearing No.ECIR/HIU-1/06/2023.

3. The petitioners, by way of interim relief, have prayed for stay of the summoning of the petitioners, its Officers, Representatives and Managers by the Officers of Respondent Nos.2 & 4 as also the proceedings qua them arising from and consequent to the institution of the impugned F.I.R. No.197 of 2023 dated 15.04.2023 and ECIR/HIU-1/06/2023 registered by Respondent No.2 and 4 respectively.

4. Sri Rakesh Dwivedi, learned Senior Counsel appearing for the petitioners has addressed this Court on the question of Section 420 I.P.C. being manifestly, arbitrary and ultra vires of the Constitution of India on the vice of Articles 14 and 21 of the Constitution by submitting that there are mainly two provisions in the I.P.C. providing for punishment for cheating concerning delivery of property i.e. Sections 417 and 420 I.P.C. It is contended that though there is no material difference between the offence of cheating concerning the delivery of property punishable under Section 417 I.P.C. and that punishable under Section 420 I.P.C., there is lack of clarity and stark distinction in the two punitive provisions for procedural safeguards for investigating as well as in punishment prescribed for cheating under the two provisions inasmuch as Section 420 I.P.C. provides for higher punishment and being against personal liberty, without any intelligible differentia. He, however, presses the application for interim relief (stay application) at this stage.

5. We proceed to consider the application for interim relief.

6. The facts necessary for consideration of the application for interim relief (stay), briefly stated, are that Petitioner No.2, Indiabulls Housing Finance Ltd. (IHFL) being a non banking financial institution incorporated under the provisions of the Companies Act, 1956 between 2017-2020 sanctioned 16 loan facilities to the tune of Rs.2801.00 Crores to "Shipra Group/Borrowers" comprising of Shipra Hotels Ltd., Shipra Estate Ltd. and Shipra Leasing Pvt. Ltd. for the purposes of construction and/or development of housing/residential projects. Against the said sanction, a sum of approximately 1995.37 Crores was disbursed. The financial assistance was secured by executing 22 pledge agreements whereby shares of various companies were pledged in favour of Petitioner No.2.

7. Meanwhile, one M/s Kadam Developers Pvt. Ltd. which had a sub-lease of a parcel of land ad-measuring 73 acres allotted by the YEIDA/Respondent No.3 was granted permission to mortgage the land under its sub-lease with Petitioner No.2, Indiabulls Housing Finance Ltd., vide permission dated 11.07.2019. A pledge agreement was also entered by the Shipra Groups and M/s Kadam Developers Pvt. Ltd. with Petitioner No.2, Indiabulls Housing Finance Ltd., regarding pledging of 100% equity shares (demated) of M/s Kadam Developers to secure the loan. The Shipra Group committed default and Petitioner No.2, in terms of the stipulation contained in the loan agreement, issued notices on 20.10.2020 to Shipra Group requiring them to

provide alternate security within 15 days and on the failure of the Shipra Group to respond, issued 14 loan recall notices on 05.11.2020, 14.12.2020 and 15.12.2020 whereby approximately Rs.1763.00 Crores was sought to be recovered. Ultimately, Petitioner No.2, Indiabulls Housing Finance Ltd., under the share sale and purchase agreement dated 01.07.2021 sold the pledged equity shares to one M/s Finalstep Developers Pvt. Ltd. (earlier known as Creative Souls Technology India Pvt. Ltd.) with M3M India Pvt. Ltd., as confirming party for a consideration of R.900.00 Crores. The fact of the sale was informed to YEIDA/ Respondent No.3 by M/s. Kadam Developers within 45 days of the sale. Besides the sale of the shares of M/s Kadam Developers, the Petitioner No.2 also sold a property mortgaged by Shipra Group namely "Shipra Mall" after favourable orders were passed in favour of Petitioner No.2 by Debt Recovery Tribunal, Lucknow, this Court as also the Delhi High Court. It is also contended that between 2021 to 2023, various civil proceedings were initiated by the Shipra Group but it failed to get any protection from any Court.

8. In the aforesaid backdrop, the impugned F.I.R. dated 15.04.2023 has been lodged at the instance of Respondent No.3, YEIDA, alleging that the transfer of share holding of M/s Kadam Developers Pvt. Ltd. was in violation of the law and has caused financial loss of Rs.200 Crores to the first informant YEIDA. The F.I.R. mentions that action is desired so as to protect the interest of YEIDA in compliance of its CEO's approval dated 11.04.2023. The F.I.R. has been registered under Sections 420, 467, 468, 471 and 120-B IPC at Police Station Beta-2, Greater Noida, U.P. against Petitioner No.2. The Directorate of Enforcement has registered an E.C.I.R. being ECIR/HIU-I/06/2023 treating the F.I.R as a scheduled offence.

9. Sri Rakesh Dwivedi, learned Senior Counsel for the petitioners has made the following submissions:-

i) the registration of the impugned F.I.R. is an abuse of the process of law. Ingredients of none of the penal provisions as alleged are made out against the petitioners.

ii) the allegations in the impugned F.I.R. do not constitute any offence cognizable so far as the petitioners or their Mangers, Officers or Representatives are concerned. The cognizable offences have been invoked to subject the petitioners financial institution to multiple criminal proceedings to bring them to their knees. The consequential proceeding vide E.C.I.R. are unwarranted.

iii) the dispute is at most a civil dispute and resort to criminal proceedings is tainted with mala fides. In the absence of any criminality in the action taken by the petitioners, the continuation of criminal proceedings would be a travesty of justice and abuse of the process of law.

iv) the first charge of YEIDA is still perversed. The sub-lease holder of the subject property is still Kadam Developers and all obligations and concessions under the sub-lease are very much in force. M/s Kadam Developers duly informed YEIDA on 29.07.2021 regarding sale of shares with no objections forthcoming from YEIDA against the sale. There has been no violation of the mortgage permission. The notice dated 11.4.2023 has been withdrawn by YEIDA and no demand has been raised on any party.

v) F.I.R. No. 427 of 2023 dated 9.4.2023 registered at Police Station Indirapuram, which has a reference in the impugned F.I.R. No.197 dated 15.04.2023 registered at Police Station Beta-2, Greater Noida, U.P. and E.C.I.R bearing No. ECIR/HIU-I/06/2023 in Delhi was the subject matter of Contempt Petition (Civil) No.774 of 2023 arising out of Criminal Appeal No.463 of 2023 (Gagan Banga versus Samit Mandal and another) along with

Writ Petition (Crl.) No.166 of 2023 and SLP (Crl.) Nos.4639-4641/2023 before the Apex Court. The Apex Court disposed off the petitions by making observations as regards the impugned F.I.R. and E.C.I.R. that no coercive steps would be taken against the petitioner financial institution and its Officers, Representatives and Managers till final disposal of the writ petition before the High Court and it would be open for the petitioners to seek stay of the proceedings which would be considered by the High Court on its own merits.

10. In the light of the above, it is submitted that the interim relief prayed for be granted. Reliance has been placed upon the decision of the Apex Court in the case of Vijay Choudhary versus Union of India reported in 2022 SCC Online 929.

11. The application for interim relief has been opposed by the counsel for Respondent No.4 on the ground that E.C.I.R. bearing No. ECIR/HIU-I/06/2023 has been registered at Delhi and since the Apex Court while disposing off the contempt proceedings has permitted the petitioners therein to approach the respective High Courts to challenge the F.I.R.'s and the E.C.I.R, it would be appropriate for the present petitioners to invoke the jurisdiction of the Delhi High Court and this Court may not have the jurisdiction to entertain the plea of the petitioners. Learned counsel for Respondent No.3 has reiterated the F.I.R. version.

12. We have heard learned counsel for the parties and have perused the record.

13. We find that the objection taken by Respondent No.4 regarding jurisdiction to entertain the writ petition is ill founded inasmuch as the registration of the E.C.I.R. is consequent to the registration of the F.I.R. dated 15.04.2023 at Greater Noida, U.P. which is very much within the territorial jurisdiction of this Court. Based on the ratio laid down by the Apex Court in Vijay Madanlal Choudhary (supra), we are of the view that the objection of Respondent No.4 to the territorial jurisdiction of this Court does not merit consideration and is, accordingly, overruled.

14. Now, coming to the merits of the case, prima facie, we find that ex-facie the dispute is of civil in nature and has been given a colour of criminal nature. We also find that Respondent No. 3, YEIDA has not made any attempt to institute civil proceedings against Petitioner No.2, except by lodging the present F.I.R. This action appears to be mala fide and unsustainable.

15. The Apex Court in Indian Oil Corporation Ltd. versus NEPC (India) Ltd., reported in 2006 (6) SCC 736 observed as under:-

"13.Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged"

16. The Apex Court further noticing a growing trend in business circles to convert purely civil dispute into criminal cases while disposing of the Contempt Petition (Civil) No. 774 of 2023 (supra) observed:-

"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."

17. We further find that the Apex Court had vide its order dated 28.4.2023 passed in Writ Petition (Crl.) No. 166 of 2023 stayed the criminal proceedings in the three F.I.Rs. including the F.I.R. No. 427 of 2023 dated 9.4.2023 registered at Police Station Indirapuram which F.I.R. has reference in the impugned F.I.R. and at the same time has directed that no coercive steps would be taken against the petitioner financial institution and its Officers, Representatives and Manager till final disposal of the writ petition. The protection granted by the Apex Court is operative in favour of the petitioners herein. The order dated 28.4.2023 reads as under:

"Issue notice returnable on 16.05.2023.

Dasti service, in addition, is permitted.

There shall be stay of all proceedings in the impugned three FIRs filed in three different States."

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."

19. The present case is a fit case for grant of interim protection in terms of the order passed by another Division Bench of this Court.

20. List this petition before the Division Bench on the date fixed therein for appropriate orders.

Order Date :- 08.08.2023

AS Rathore

(Samit Gopal, J.)