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Decided on : 01.01.2020

Duration : 00 Y. 06 Ms. 5 Ds.

IN THE COURT OF 4TH ADDITIONAL CHIEF JUDICIAL MAGISTRATE, SURAT

CRIMINAL INQUIRY NO. 179 OF 2019

COMPLAINANT:

DHANLAXMI BANK LTD.
Representative its Branch Manager,
Mr. R. Ramachandran,
R/o at - Dhanlaxmi Buildings, Naickanal, Thrissur, Kerala.

V E R S U S

ACCUSED :

1. **M/S JASONA FASHION LLP,**
   Address at - R/o at Plot No. 2, Basement, Yogeshwar Apartment, Near Kotak House, Ghod Dod Road, Surat, represented by its Managing Partner, Mr. Rajesh Mangilal Jain.

2. **RAJESH MANGILAL JAIN, Partner of Accused No.1,** Address at - (a) R/o at Plot No. 2, Basement, Yogeshwar Apartment, Near Kotak House, Ghod Dod Road, Surat. (b) Residence - D/11, Golden Avenue Apartment, City Light Surat City, Gujarat.
3. **KOKILA RAJESH JAIN, Partner of Accused No.1,** Address at - (a) R/o at Plot No. 2, Basement, Yogeshwar Apartment, Near Kotak House, Ghod Dod Road, Surat. (b) Residence - D/11, Golden Avenue Apartment, City Light Surat City, Gujarat.

APPEARANCES:
Learned Advocate, **MR. R. D. DALAL** for the complainanat.

SUBJECT :- Complaint under Section 156 (3) for the offence of Sections 403, 415, 420 r/w 120-B of IPC.

1. The complainant has filed this complaint under Section 190 of Cr.P.C. before this Court. This Court has passed the order to make inquiry under Section 202 before this Court and order to make complainant present for the verification.

2. Brief facts of the complaint is such that, accused Mr. Jasosa Fashion LLP, is the partnership firm and carrying business of textile manufacturing, complainant bank has sanctioned the loan of Rs. 5.95 Crores to the accused for the purpose of working capital required. Later on, the credit limit was revised and reduced to Rs. 4.40 Crores. The partners of

M/s Jasosa Fashion entered into the agreement and executed loan documents in favour of the bank. The accused has presented collateral security of seven immovable properties and agreed to maintains sufficient margin and stock as stipulated by the bank. After availing the credit facility, the accused had violated the sanctioned term and conditions and failed to repay the dues, so the bank issued a demand notice under the SARFAESI Act, 2002 and demanded the dues. During the recovery majors, bank came to know that accused had not maintained sufficient stock and disposed of the hypotheticated goods. Accused has filed fake police complaint at Durgapur, Andal Police Station regarding theft of vehicle and goods. Accused has also claimed insurance cover with that fake complaint. It has also come to the notice to the bank that, accused had shut down the business and managing to selll the goods through fake firms. It has also come to the notice of bank after due inquiry that, accused No.2, Rajesh Mangilal Jain, filed an insurance claim with Bharti Axa Insurance stating that, the goods and vehicle have been stolen. Later on, the claim was withdrawn by the accused. Accused has also created lease over three immovable properties out of which one property was already on the lease prior to the mortgage which was suppressed to the bank while creating mortgage for the another property, lease deed has been executed on the date of mortgage and for the third property, lease deed was executed subsequent to sanctioning of loan, so accused has intentionally created encumbrance over the property, which was mortgage to the bank. The act of accused amongst to offence punishable under Sections 403, 417, 419, 420, 421, 422, 424, 511 r/w Sections 34 and 120-B of IPC for the fraudulent act. It is also stated in the complaint that complainant approached the police with the complaint, but police refused to pay cognizance, hence, present complaint has been filed before this Court and the complainant prayed for the order under Section 156 (3) of Cr.P.C.

3. Complainant has filed many documents regarding the loan agreement, the complaint filed by the accused at Andal Police Station and the 'samajh rashid' given by the Mahidharpura Police. Verfication of the complainant has been taken before this Court in the verification on oath, complainant stated that, accused has applied for the loan which was sanctioned to him. Accused has stated that, they are selling the goods in Calcutta, the goods were inspeceted by the Bank Officer before the dispatch of the goods. Later on, accused has stated in the bank that, the lorry carrying the goods, the stolen and accused has filed the complaint regarding that, accused has also produced the complaint filed by him, but after the inquiry, it come to the notice of the bank that, after inspection of the Bank officer, accused has dispatch polithing bank instead of the goods inspected by the Bank Officer and make a false insurance claim of the stolen goods. Accused has already sold out the goods to the another party and showing like the goods stolen on the way to approach, accused has also created encumbrance over the mortgage property and by that way make a breach of condition of the agreement of the loan, accused didn't have repaid the laon amount. Accused was knowing that, they have made encumbrance over the mortgage property, so he approached the bank and stated that, huge loss was occured in the business, the stock was stolen, so the bank can recover the loan amount by selling the mortgage property, which are already in the possession of lessee.

4. Upon perusal of the document produced by the complainant, the loan agreement the loan related to the mortgage property and the said lease deed, it appears that, it is rightly stated by the complainant that, one lease deed was executed before the loan agreement, second one lease deed executed on the day of agreement and the third lease deed was executed after sanctioning of loan.

5. Upon perusal of the loan agreement and document related to the mortgage property, it is nowhere stated that, the mortgate property is already given on the lease, so it can be *prima facie* believed that, the accused entered into the agreement with wrong submission with the bank. It is stated on the oath that, the accused has not reapid the loan amount and created encumbrance over the mortgage property, so, it can *prima facie* believed that, accused has dishonestly make cheating with the bank by making false representation as per Section 415 of IPC.

6. It is also stated in the complaint and the verification before the Court that, accused transported the polithing bags instead of goods (hypotheticated stocks) inspected by the bank and filed a fake complaint that the goods inspected by the bank which was the hypotheticated stock was stolen during the transportation and sold out the goods to another party by the way of fake complaint, accused claimed the insurance with Bharti Axa. As per the complaint and verification of the complainant, it appears that, the offence was committed to the insurance company by the false claim of insurance and for that offence the insurance company has to file the complaint, the accused has already filed the complaint for the stolen goods at the Andal Police Station, which is yet to be inquired, hence, this Court cannot take the cognizance for that offence. Complainant has also filed the recovery claim under the SARFAESI Act, this complaint is regarding to the criminal offence and the proceedings under the SARFAESI Act are one type of the civil proceedings for the recovery. Hence, both can be proceeded simultaneously. Hence, this Court is of the view that, prima facie only the offence under Section 420 has been made out, hence, the process can be issued or that offence only and hence passing the following final order.

//O R D E R

1. Inquiry is partly allowed.

2. It is hereby ordered to register the complaint as criminal case and issue the summons to the accused

Nos. 1 to 3 for the offence under Section 420 r/w 120-B of IPC on the returnable date.

Pronounced & signed in the open Court on 1st day of January, 2020**.**

Date: 01/01/2020

(Ms. A. B. Bhatt)
4th Addl. Chief Judicial Magistrate, Surat
GJ00820.