IN THE COURT OF THE IV ADDL. C.M.M AT BANGALORE.

DATED THIS THE 8TH DAY OF JULY 2017

PRESENT

Smt. Roopa R. Kulkarni,
B.Com., L.L.B., (Spl)
IV A.C.M.M. Bangalore

CC 21344/2012

Complainant : KSIIDC

V/s.

Accused : M/s. Balaji Dyeing and Printing Works
And others

ORDER ON EBC

The complainant has filed this private complaint against the accused for the offences punishable u/s.405, 406, 420 of IPC.

2. After filing the complaint the sworn statement of the complainant was recorded and after hearing the counsel for the complainant this court has taken cognizance for the offences punishable u/s.406, 420 of IPC against the accused persons and summons were issued to accused No.1 to 6. After service of summons accused No.1 to 6 appeared before this court and were enlarged on bail and later on the case was posted for recording evidence before framing charging.

3. On perusal of the evidence adduced by the complainant side, the complainant who is examined as PW1 has stated in his

evidence that he is working as Manager in Karnataka State Industrial Investment and Development Corporation Ltd., and he has been autrhorised to represent the KSIIDC case and he got marked the resolution dated 28.11.1997 as per Ex.P.1. Further he has deposed that, the complainant corporation is an institution established by the State Government with object of financing for medium and large scale industries. Accused No.1 to 6 are partners of the firm by name M/s.Balaji Dying and Printing Works. Accused No.3 is the Managing partner and accused No.4 to 6 are the other partners of the firm and accused approached the KSIIDC for equipment finance to purchase plant and machinery to enhance the processing capacity and also to create additional facility and they sought for a loan of Rs.100 Lakhs. The Corporation has sanctioned loan on 27.3.1998 and loan agreement was executed and hypothecation deed and personal guarantee were also executed on 28.3.1998. It is also submitted that, the accused again approached the Corporation for further loan of Rs.100 Lakhs and the said loan was also sanctioned on 7.12.1998 and the accused have executed the loan agreement, hypothecation deed and personal guarantee on 28.12.1998. It is also submitted that, the accused again approached the corporation for further loan of Rs.80 Lakhs and the said loan was sanctioned on 26.10.1999 and the accused have executed the loan agreement, hypothecation and personal guarantee on 30.10.1999. But the accused failed to repay the loan amount. So, they issued notice u/s.29 of SFC Act and thereafter they took possession of the said plant and machinery. Accused again approached the corporation and requested for safe custody and to their possession of plant and machinery and they promised to repay the loan amount regularly. The corporation again took agreements from them on 7.6.2001 and handed over the possession of the industry and after some days when their officials visited the industry for recovery they found that all the machineries were removed, so they lodged complaint. He got marked the documents as per Ex.P.1 to Ex.P.10. The complainant in his evidence has stated that, they have sanctioned first loan of Rs.100 Lakhs, second loan of Rs.100 Lakhs in the year 1998 and 3rd loan of Rs.80 Lakhs in the year 1999 and at the time of sanction of loan certain documents were taken as security and hypothecation deed and also guarantee deed were executed at the time of sanctioning. The loan. Further it is stated that, in May 2000 when he visited for inspection and recovery he found that the firm was not working and it was locked and through the window they could see that machineries were available. On enquiry with the neighbours that the operation have been stopped 3-4 months above and inspite of repeated attempt to contact the firm the efforts were went in vain. On 9.2.2001 the primary assets at Aneal Taluk, collateral security were taken away and after the taken over of the firm the Managing Partner along with one of the partner approached the Corporation with the proposal to restart the unit so as to clear the due amount. On repeated enquiry they were informed that the machineries would have been taken for repair due to breakdown. Thereafter the machineries were not shown at any point of time.

4. In his cross-examination by the defence counsel has admitted that the complaint has been filed by one V.Rajendra who was the

then Manager of the company and has stated that, as the said Rajendra he being the AGM of the complainant bank is deposing before the court. Further he has stated that, on the basis of the documents he is giving evidence and he know the accused. Further he has deposed that, they have filed the complaint under the impression that the machineries were sold out by the accused. Further Ex.D.1 and Ex.D.2 were confronted to him and has admitted that Ex.P.8 is the agreement and as per the said agreement if there is a machinery in the unit of accused, security guard were to be appointed and has also admitted that, as per Ex.P.8 if the security guard were appointed, they were to be remain there until the machineries were taken back or until the payment has been paid and has stated that, he do not remember as to when the machineries were taken back by the company. He has admitted that, Ex.P.5 to Ex.P.7 were not signed on behalf of KSIIDC. Further he has also admitted that, even Ex.P.8 is also not signed on behalf of KSIIDC and has stated that, he do not know as to no agreement has been taken place as per Ex.P.8 as no signatory signed on behalf of KSIIDC and has stated that they came to know that the machineries were missing in the year 2011 during October to December 2011 and has denied that they have not filed complaint through their advocate and he do not remember as to in which station the complaint was filed. He has denied that the security guards who were appointed by KSIIDC were responsible for missing of the machineries. He has stated that, he do not know as to the accused have taken the machineries for repair work.

5. After recording the evidence of PW1, the case was posted for hearing before charge.

6. Heard both the sides.

7. The points that would arise for my consideration are:

1) Whether the complainant has made out grounds to frame charge against the accused for the offences punishable u/s.406, 420 of IPC ?

2) What order ?

8. My finding on the above points are:

Point No.1 : In the affirmative.

Point No.2 : As per the final order for the following:

REASONS

9. Point No.1 : The counsel for complainant has submitted that, the documents on record clearly discloses that, the accused have availed a loan of Rs.100 Lakhs in the year 1998 and again in the year 1999 the accused have availed a loan of Rs.80 Lakhs and at the time of availing the loan they have hypothecated the machineries of their industry and have executed hypothecation deeds and other loan documents. It is also submitted that, the accused have failed to make payment of the availed loan and as such they have initiated action against the accused under SFC Act and have took the machineries and again the Managing Partner along with one of the partner approached the corporation with the proposal to restart the unit so as to clear the due amount. The complainant accepted the request from the accused and handed over the assets to the firm through safe custody agreement dated 7.6.2001 which is marked at Ex.P.8. But later on the complainant

has requested the accused to clear of the dues but the accused have not responded and when the complainant official have approached the industry of the accused they found that the machineries were not found in the premises. So, the complainant has filed the complaint. The counsel has submitted that, the materials on record clearly discloses that the accused have sold out the machineries which were hypothecated to the bank without clearing the dues which amounts to criminal breach of trust and cheating. So, there is prima facie material to proceed against the accused for the offences alleged in the complaint.

10. On the other hand, the learned counsel for the accused has submitted that, on perusal of the cross-examination of PW1 he has stated that under the doubt that the accused might have sold out the machineries they have filed complaint against the accused. So, the complainant is not certain as to the accused have sold out the machineries. Further the counsel has also submitted that, the Ex.P8 has not been signed on behalf of KSIIDC and PW1 pleaded ignorance as to execution of agreement as per Ex.P.8. Further it is also submitted that, the letter marked at Ex.D.1 has been issued by the accused to KSIIDC on 22.2.2003 and has also submitted that, Ex.D.1 and Ex.D.2 letter discloses that, the accused have given a letter to the KSIIDC by stating that their machineries installed in their factory unit at No.330, Marsur, Anekal Taluk which have been hypothecated to the complainant and given back to them for safe custody has been taken away from Mr.Ramamurthy, Landlord of Jayjyothi Laminates forcibly by him and this was inspite of their security guards present at the vicinity.

The same has been happened in their absence. So, suitable action has to be taken and recover the same. So, the said letter clearly discloses that, there is no fault on part of the accused and accused have written a letter to the complainant to take action and to install the machineries and as such there is no prima facie material to proceed against the accused.

11. On perusal of the contentions raised by the parties, it is an admitted fact that the accused have availed a loan from the complainant company and have not repaid the loan. It is also admitted that, as the accused failed to repay the loan amount the complainant have initiated proceedings against the accused under SFC Act and later on as per the request of the accused again the complainant have handed over the machineries to the accused. As per Ex.P.8 i.e. the agreement executed on 7.6.2001 discloses that, "the Firm and its Directors hereby confirm and assure that the assets situated at No.14/7, and Sy. No.330/B, 324, 331, 331/B, 331/1 and 334/1, Marsur village, Anekal Taluk listed in the schedule taken over by the Corporation will be held by them in their safe custody and it will be their responsibility for the safety of the said assets from the date of this agreement under supervision and security of the Corporation. And the Firm and its partners undertake that they will not remove the assets as set out in the schedule without written permission of the Corporation for any reason whatsoever. Further they undertake that they are personally responsible for safety of the asset. If for one reason or the other the assets are removed without the written permission of the Corporation, the Corporation is at liberty to proceed against

him as provided under the law. In the event of non compliance of the terms and conditions, the Corp reserves its right to proceed to sell the assets so taken over by it under Sec.29 of the SFC Act.

12. No doubt on perusal of cross-examination of PW1 he has stated that, on the basis of the documents he is deposing before the court and has stated that under the impression that the accused have sold out the machineries they have filed the complaint. But, on perusal of the Ex.P.8 agreement which recites that, the Firm and its partners hereby undertake that they will not remove the assets as set out in the schedule without written permission of the Corporation for any reason whatsoever. Further they undertake that they are personally responsible for safety of the asset and if for one reason or the other the assets are removed without the written permission of the Corporation, the Corporation is at liberty to proceed against him as provided under the law. Though PW1 pleaded ignorance as to execution of Ex.P.8 by the accused, the said document contains the signature of Managing Director of M/s.Balaji Dyeing & Printing Works who has signed the said agreement. No doubt the accused have submitted the letter to the Managing Director of KSIIDC as per Ex.D.1, the said letter discloses that the machineries which were installed in the factory of the accused which have been hypothecated to the complainant firm have been taken away by Mr.Ramamurthy, Landlord of Jayjyothi Laminates, forcefully by him. The said letter was issued on 22.02.2003. The accused have not placed any materials to show that they have taken action against the said Ramamurthy for the acts committed by him. In order to arrive at a conclusion regarding

the document at Ex.D.1 and Ex.D.2 and in order to decide the allegations made against the accused persons, full-fledged trial is necessary. Considering the recitals of Ex.P.8 and looking to the materials on record, there are sufficient grounds to proceed against the accused persons.

13. As per the provisions of Sec.245 of Cr.P.C. the accused shall be discharged I) If, upon taking all the evidence referred to in Section 244, the Magistrate considers for reasons, to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. (ii) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

14. At the time of framing the charge the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused. So, in the present case looking to the materials placed before the curt the complainant has made out a grounds to proceed against the accused. So, there are sufficient ground to frame the charge against the accused. Accordingly I answered above point in the affirmative.

15. Point No.2 : In view of the above discussion, I proceed to pass the following :

ORDER

The complainant has made out a ground to frame charge against the accused for the offences punishable u/s.406, 420 of IPC.

For framing of charge.

(Dictated to the stenographer, transcribed and computerised by her, corrected by me and then pronounced in open court on this the 8th day of July 2017)

(Roopa R. Kulkarni)
IV Addl.CMM, Bengaluru.

08.07.2017
Complainant
Accused
For orders

ORDER

(Pronounced in open court vide separate order)

The complainant has made out a ground to frame charge against the accused for the offences punishable u/s.406, 420 of IPC.

For framing of charge.

IV Addl.CMM