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Cr1.A.No. 906 OF 1997
ITEM NO. 103 COURT NO.7 SECTION II

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRL.APPEAL No.906/1997

ANIL K. SURANA & ANR. Appellant(s)

Versus

STATE BANK OF HYDERABAD Respondent(s)

(with appln. for intervention)

Date:07/10/2003. This petition was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE H.K. SEMA

For the Appellant(s)
Mr.Mahendra Anand,Sr.,Adv.,
Mr.S.P. Jha,Adv.,
Mr.Bipin Kumar,Ad.,
Mr.Mukesh K. Giri,Adv. For the Respondent (s)
Mr.A. Ranganadhan,Adv.,
Mr.A.V. Rangam,Adv.,
Mr.Buddy A. Ranganadhan,Adv.

Mr.Atish Dipankar,Adv.for
Mr.Pramod Dayal,Adv.

UPON hearing counsel, the Court made the following

O R D E R

The appeal is disposed of in terms of the signed order. Intervention application is dismissed
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(Vijay Kumar Sharma)(Jasbir Singh)
AR cum PS to Hon.Judge Court Master

Two Signed orders are placed on the file.

IN THE SUPREME COURT OF INDIA
CRL. APPELLATE JURISDICTION

CRL.APPEAL NO.906/1997

ANIL K. SURANA & ANR. ..Appellants

Versus

STATE BANK OF HYDERABAD ..Respondent

O R D E R

This appeal is against the order dated 21.7.1997 by which the appellants have been held guilty of contempt and sentenced to two years imprisonment and fine equal to the amount of loan re

maining unpaid i.e. Rs. 28,38,367.48. In default in payment of fine a further imprisonment of two years has been imposed.

Briefly stated the facts are as follows:-

The appellant No.1 had got sanctioned a loan in his favour from the respondent-bank. Appellant No.2 stood surety for the loan. The 1st appellant borrowed amounts in pursuance of the loan facility. The 1st appellant committed defaults in re-payment. Therefore, the respondent-bank seized the premises of the 1st appellant on 4.12.1995. A public notice for sale of the asset was issued on 9.12.1995. The 1st appellant filed a writ petition challenging the action of seizure and sale. That writ petition was dismissed on 20.12.1995. The L.P.A. against that order was also dismissed on 22.1.1996. But while dismissing the L.P.A. the following directions inter alia came to be issued:-

"As we have indicated earlier, we would not have interfered in the instant proceeding but for the information that the concerned branch manager of the bank has allegedly allowed his wife to have business with the clients of the bank and as alleged, prevailed upon the appellant herein to part with a sum of money with his wife not from the account in the bank but from some other source. We have, however, taken notice of the interest of the bank and it seems inappropriate to permit the appellant to continue its business with the bank in question. We have accordingly sought a statement at the Bar on behalf of the appellant that it shall liquidate all the debt of the bank in instalments within a specified period of time. Learned counsel for the appellants has stated that appellant shall clear the debt within a period of one and half years in four equal instalments beginning from the month of April, 1996.

We have good reasons to accept the above offer and accordingly order that the appellant shall pay the first instalment in April, 1996, the second instalment within five months of the payment of the first instalment, the third within five months of the payment of the second instalment and fourth within five months of the payment of the third instalment and clear accordingly all the dues of the bank. The appellant shall have no further transaction with the bank in the Current Account concerned, which again shall be closed finally on the payment of the last instalment."

The 1st appellant filed a special leave petition against this order which came to be dismissed on 8.5.1996.

The respondent then filed a contempt petition alleging breach of the above directions. The High Court, in the impugned judgment, has taken note of the fact that, having got the instalments from Court the 1st appellant in connivance with 2nd appellant and other relatives has disposed of almost all the available assets. The High Court has then proceeded to hold as follows:-

"The above discloses not only an act of wilful disobedience of the undertaking but also serious offences of criminal breach of trust and cheating the bank of public money and, circumstances as above, do indicate involvement of the then Branch Manager of the bank. It is a fit case, in our opinion, thus to hold the contemners guilty for wilful disobedience of the undertaking afore-mentioned and thus liable for punishment of Contempt of Court. We also find sufficient materials in the above report of the Deputy Commissioner of Police, Detective Department-II, Hyderabad City for lodgment of a criminal case with the C.I.D. against the above named two contemners and others who are involved in the act of cheating and criminal breach of trust and other offences."

The High Court then sentenced both the appellants as stated above. The High Court also directed the Inspector General of Police, C.I.D. to register a case on the basis of the report of the Deputy Commissioner of Police dated 19.7.1997.

We are not inclined to go into the question as to whether or not the High Court could have imposed a sentence higher than that which has been provided under the Contempt of Courts Act.

We find that no undertaking was given by the appellant either on that date or on a subsequent date. The directions to pay by instalments can at best be treated as a decree. We hold that by consent of parties an executable decree was passed in favour of the respondent-bank. The remedy of enforcing the decree can only be by way of execution proceedings. We thus clarify that it will be open to the respondent to take out execution proceedings.

In our view, the contempt proceedings were not the correct remedy. We, therefore, set aside the impugned order to the extent that it punishes the appellants for contempt and sentences them as stated above.

However, the facts set out in the impugned order do prima facie indicate that the appellants have misused the facility of the instalment granted by the court. Whether they committed acts of cheating and criminal breach of trust are matters which must be decided in criminal proceedings. The High Court has directed the Inspector General of Police to file a case. We see no reasons to interfere with those directions. Therefore, to that extent, the order of the High Court will stand confirmed. The case registered by the Inspector General of Police shall now proceed. We clarify that trial Judge shall not be influenced in any manner by any of the observations made by the High Court in the impugned judgment or by this Court i

n this Order. The appeal stands disposed of accordingly.

.....J
(S.N. Variava)

.....J
(H.K. Sema)
New Delhi,
October 7, 2003

IN THE SUPREME COURT OF INDIA
CRL. APPELLATE JURISDICTION

CRL.M.P.NO.5009/1998

IN

CRL.APPEAL NO.906/1997

ANIL K. SURANA & ANR. ..Appellants

Versus

STATE BANK OF HYDERABAD ..Respondent

MRS.SARDAR BAI..Applicant

O R D E R

We do not see how, in these proceedings, the proposed intervenor is necessary. We, therefore, dismiss this application.

.....J
(S.N. Variava)

.....J
(H.K. Sema)
New Delhi,
October 7, 2003