2026:DHC:1065

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 15.12.2025
Judgment delivered on:09.02.2026

\+ **CRL.M.C. 266/2009 & CRL.M.A. 22687/2022**

INDIAN BANK .....Petitioner

versus

MOHAN MURTI SHANDILYA .....Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Ayush Choudhary, Adv. (through VC)

For the Respondent : Ms. Ananya Bhattacharya, Ms. Prerna Jain and Ms. Rubeka Daniel, Advs.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the criminal complaint under Section 340 of the Code of Criminal Procedure, 1973 ('**CrPC**') read with Sections 405/409/219/420/467/471/477-A/34/120B of the Indian Penal Code, 1860 ('IPC') read with Section 29 of the Securitisation and Reconstruction of Financial Assets and Enforcement

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Signing Date:09.02.2026
21:55:01

of Security Interest Act, 2002 ('**SARFAESI Act**') filed by the respondent and pending before the learned Magistrate, Tis Hazari Courts, Delhi in CC No. 820/2006.

2. The brief facts of the case are as follows:

i. It is alleged that the petitioner bank and certain employees conspired to cheat the respondent by dishonestly misappropriating movable and immovable properties of the complainant and thus hatched a conspiracy to falsely implicate the respondent and three companies of the respondent, namely, M/s Gambro Nexim (India) Medical Ltd., Nexim Export Pvt. Ltd. and Rexima Export Pvt. Ltd., before the learned Debt Recovery Tribunal-II, New Delhi.

ii. It is alleged that the petitioner bank, in the year 1996, instituted three Original Applications before the learned Debt Recovery Tribunal-II, New Delhi against the Companies of the respondent and its Directors seeking recovery of alleged outstanding dues. In those proceedings, the Bank alleged that property bearing No. F-23, Green Park Main, New Delhi (hereinafter referred to as "the Subject Property") stood mortgaged with the Bank.

iii. It is alleged that subsequently, in the year 2006, the petitioner bank, vide notice dated 04.04.2006, purported to invoke the provisions of Section 13(2) of the SARFAESI Act, thereby

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Signing Date:09.02.2026
21:55:01

initiating measures for enforcement of its alleged security interest in respect of the subject property.

iv. It is alleged that thereafter, in 2007, the petitioner bank proceeded to file an application under Section 14 of the SARFAESI Act before the learned Magistrate, wherein it claimed the status of a secured creditor and sought appointment of a court receiver for taking possession of the subject property.

v. It is alleged that the petitioner bank fraudulently obtained an order from the learned Magistrate to have police protection while taking possession of the subject property by invoking Section 13(4) of the SARFAESI Act, knowing fully well that the respondent never created equitable mortgage over the said property for the alleged debt which was the subject matter of the proceedings before the learned Debt Recovery Tribunal- II, New Delhi in O.A. 895/96; 870/96 and 871/96.

vi. It is alleged that in order to support their case, the petitioner bank also forged the valuable security of the complainant, namely the alleged equitable mortgage of the immovable property at F-23, Green Park, New Delhi by fabricating the alleged document of creating "Extension of Equitable Mortgage" and alleged "Acknowledgement of Debt" true copies of which were filed by the accused persons before the learned Debt Recovery Tribunal-II, New Delhi in O.A. 895/96; 870/96 and 871/96.

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Signing Date:09.02.2026
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vii. It is alleged that the Notice dated 04.04.2006 and the follow up Notices sent by the petitioner bank to the respondent were contrary to the provisions of SARFAESI Act and in violation of settled law, that no bank can initiate proceedings simultaneously under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and SARFAESI Act in respect of the same matter pending adjudication under one of these two acts.

viii. The Respondent filed a complaint under Section 340 Cr.PC. before the learned Magistrate. In continuation of the same proceedings, the Respondent also invoked Section 91 Cr.PC. by filing an application seeking production of the relevant mortgage documents.

ix. The learned Magistrate *vide* order dated 29.08.2008 directed the petitioner bank to produce the original/certified copy of documents, which are the creation of the alleged mortgage.

x. This Court *vide* order dated 30.01.2009 granted stay of the proceedings under Section 340 of the CrPC against the petitioner bank.

xi. The respondent passed away during the pendency of the present matter and an application being, CRL. M.A. No. 22687/2022, for bringing on record the legal representatives of the deceased respondent has been filed.

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Signing Date:09.02.2026
21:55:01

2. The learned counsel for the petitioner submitted that the learned Magistrate committed a grave error of law while entertaining the complaint under Section 340 of the CrPC filed by the respondent in as much as the learned Magistrate in its order dated 19.04.2007 had stated that the objections shall not be entertained by the learned Magistrate and the same shall be filed before the learned Debt Recovery Tribunal ('**DRT**').

3. He submitted that the learned Magistrate failed to consider that the learned DRT-II is seized of the matter and the issue of mortgage will also be decided by the learned DRT. He submitted that the learned Magistrate failed to take note that the respondent had already filed an appeal under Section 17 of the SARFAESI Act.

4. He submitted that if the respondent was aggrieved of any fabrication he could have filed the complaint before the learned DRT itself which is the competent court in terms of the provisions of Section 340 of the CrPC.

5. He submitted that the learned Magistrate failed to note that O.A for recovery was filed before the learned DRT-II in 1996 and the averment with respect to creation of mortgage was never termed to a fabrication by the respondent. He submitted that the petitioner bank's witness had proved the mortgage in his evidence in 2001 and the respondent had not raised any suggestions towards the fabrication of any document.

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Signing Date:09.02.2026
21:55:01

6. He submitted that the subject complaint is only an afterthought of the petitioner with a view to harass and intimidate the employees of the petitioner bank.

7. He submitted that the learned Magistrate committed a grave error in law while directing to produce the document of mortgage in as much as the learned DRT-II is seized of the matter and in terms of Section 18 of the Recovery of Debt Due to Bank and Financial Institution Act, 1993 the jurisdiction of any other court or authority has been ousted.

8. He submitted that during the pendency of the present proceedings, the learned DRT has already decided the matter in favour of the petitioner bank and the subject property stands sold by way of auction proceedings.

9. Per Contra, the learned counsel for the respondent/ Legal Representatives of the respondent vehemently opposed the present petition. She clarified that the respondent has not challenged the alleged forgery or fabrication of documents before the learned Magistrate and instead have invoked the jurisdiction of the Court under Section 340 of the CrPC, solely on the ground that the petitioner bank has deliberately made a false statement before the learned Magistrate by misrepresenting itself as a secured creditor.

10. She submitted that the petitioner bank made a solemn statement on oath before the learned Magistrate that it is a secured creditor of the

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Signing Date:09.02.2026
21:55:01

respondent in order to obtain the order dated 19.04.2007 under Section 14 of the SARFAESI Act. She submitted that the petitioner bank's claim as a secured creditor rests upon the existence of certain mortgage documents and if the bank had relied upon genuine documents in order to secure such order, there should be no reluctance to produce the same before the Court.

11. She submitted that the petitioner bank was fully aware that the issue of creation of equitable mortgage was sub judice before the learned DRT-II, New Delhi, however, it still falsely asserted itself to have secured creditor status in order to obtain orders under Section 14 of the SARFAESI Act.

12. She submitted that the petitioner bank, on one hand asserted before the learned Magistrate that it was a secured creditor; on the other hand, the Bank itself admitted that the very issue of creation of equitable mortgage was pending adjudication before the learned DRT-II, New Delhi. She submitted that if the validity of the alleged mortgage was sub judice, the petitioner bank could not, in law or fact, have claimed secured creditor status before the learned Magistrate.

13. She submitted that the present petition is wholly premature and unsustainable as the proceedings before the learned Magistrate are at a mere inquiry stage. She submitted that no coercive action has been initiated against the petitioner bank, nor has any adverse order been passed which could cause prejudice to the petitioner bank. She further

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Signing Date:09.02.2026
21:55:01

submitted that in the absence of any such action or order, the Bank cannot claim to be aggrieved. The petition is nothing more than an attempt to obstruct the inquiry and evade production of documents which go to the root of its claim as a secured creditor.

14. She submitted that the order of the learned DRT dated 28.03.2012, in favour of the petitioner bank has been challenged before the learned Debt Recovery Appellate Tribunal (DRAT) where the matter is pending adjudication.

ANALYSIS

15. It is relevant to note that the petitioner has invoked the inherent jurisdiction of this Court seeking quashing of the present FIR. While this Court needs to exercise restraint in stifling prosecution, however, the inherent jurisdiction can be exercised if it is found that the continuance of criminal proceedings would be a clear abuse of process of law. The Hon'ble Apex Court, in the case of ***State of Haryana v. Bhajan Lal*** **: 1992 Supp (1) SCC 335**, had illustrated certain categories of cases where the inherent jurisdiction can be exercised to prevent abuse of process of law and secure the ends of justice. The relevant portion of the judgment is reproduced hereunder:

> *"102...(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable*

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Signing Date:09.02.2026
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offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
(5) ***Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.***
(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
(7) ***Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.****"*

(emphasis supplied)

16. The Hon'ble Apex Court in the case of ***Indian Oil Corporation v. NEPC India Limited and Others*** **: (2006) 6 SCC 736** has discussed the scope of jurisdiction under Section 482 of the CrPC to quash criminal proceedings. The relevant portion of the same is reproduced hereunder:

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few— Madhavrao Jiwajirao Scindia v. SambhajiraoChandrojiraoAngre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar

Signature Not Verified
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Signing Date:09.02.2026
21:55:01

Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution……"

(emphasis supplied)

17. Before delving into the facts of the present case, it is imperative for this Court to discuss the law in relation to Section 340 of the CrPC. Section 340 of the CrPC provides for a preliminary inquiry, if the Court deems it necessary, before lodging of a complaint when an application

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Signing Date:09.02.2026
21:55:01

is made to it constituting allegations of the offences mentioned in Section 195(1)(b) of the CrPC, which provides for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. The said provision reads as under:

> *"340. Procedure in cases mentioned in section 195.—(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence 152 in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—*
> *(a) record a finding to that effect;*
> *(b) make a complaint thereof in writing;*
> *(c) send it to a Magistrate of the first class having jurisdiction;*
> *(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and*
> *(e) bind over any person to appear and give evidence before such Magistrate.*
> *(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.*
> *(3) A complaint made under this section shall be signed— (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint; (b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.*
> *(4) In this section, "Court" has the same meaning as in section 195."*

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Signing Date:09.02.2026
21:55:01

18. The Hon'ble Apex Court in the case of ***Chajoo Ram v. Radhey Shyam and another*** **: 1971 (1) SCC 774** had held that prosecution for perjury should be sanctioned only when the perjury appears to be deliberate and conscious and conviction is likely. It was further held that it is to be seen if a prima facie case of deliberate falsehood is made out in the facts of the case. The relevant portion of the said judgment is reproduced hereunder:

> *"7**. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely.** No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. **Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial.There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge.** In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint. The approach of the High Court seems some- what mechanical and superficial: it does not reflect the requisite judicial deliberation: it seems to have ignored the fact that the appellant was a Panch and authorised to act as such and his explanation was not implausible. The High Court further appears to have failed to give requisite weight to the order of the District Magistrate which was confirmed by the Sessions Judge, in which it was considered inexpedient to initiate prosecution on the charge of alleged false affidavit that the appellant had not acted as Sarpanch during the period of the stay order. The subject-matter of the charge before the District Magistrate was substantially the same as in the present case. **Lastly, there is also the question of long lapse of time of more than ten years since the filing of the affidavit which is the subject-matter***

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Signing Date:09.02.2026
21:55:01

> ***of the charge. This factor is also not wholly irrelevant for considering the question of expediency of initiating prosecution for the alleged perjury. In view of the nature of the alleged perjury in this case this long delay also militates against expediency of prosecution.*** *And then by reason of the pendency of these proceedings since 1962 and earlier similar proceedings before the District Magistrate also the appellant must have suffered both mentally and financially. In view of all these circumstances we are constrained to allow the appeal and set aside the order directing complaint to be filed."*
>
> (emphasis supplied)

19. In the case of ***Iqbal Singh Marwah v. Meenakshi Marwah* : (2005) 4 SCC 370**, it was observed that the Court is not bound to make a complaint in every case and the discretion is to be exercised only when it is expedient in the interests of justice to do so. It was held that the expediency has to be ascertained on the basis of the impact which is caused upon administration of justice. The relevant portion of the judgment is as under:

> ***"23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case.*** *Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b).* ***This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice.It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may***

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Signing Date:09.02.2026
21:55:01

> ***deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal.*** *In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded."*
>
> *(emphasis supplied)*

20. At the very outset, it is pertinent to point out that this Court would not ordinarily entertain quashing of a complaint under Section 340 of the CrPC at such a nascent stage, where no coercive action has been taken so far and the enquiry is still pending and that the learned Magistrate shall ordinarily decide whether prosecution for perjury should be sanctioned. The learned Magistrate *vide* order dated 29.09.2008 merely directed the petitioner bank to produce the original/certified copy of the documents evidencing creation of mortgage.

21. However, considering the fact that the present proceedings have been pending since 2009 and the complaint under Section 340 of the CrPC against the petitioner bank has not proceeded further due to a stay being granted in the proceedings by this Court *vide* order dated 31.01.2009, this Court considers it apposite to decide the present matter instead of directing the proceedings before the learned Magistrate to resume after such a considerable amount of time.

Signature Not Verified
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Signing Date:09.02.2026
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22. In the present case it is alleged that the petitioner bank deliberately made a false statement before the learned Magistrate by misrepresenting itself as a secured creditor in order to obtain orders under Section 14 of the SARFAESI Act when no equitable mortgage existed in favour of the petitioner bank pertaining to the subject property.

23. The petitioner bank filed three Original Applications before the Debt Recovery Tribunal against three group of companies, namely, M/s Nexim Export Pvt. Ltd. ; M/s Gambro Nexim (India) Medical Ltd. ; M/s Rexima Exports Pvt. and its directors/ guarantors, including the respondent, for recovery of various amounts due to the bank from the said companies.

24. Thereafter, the petitioner bank filed an application under Section 14(2) of the SARFAESI Act before the learned Magistrate for appointment of a court receiver to take possession of the subject property and the learned Magistrate *vide* order dated 19.04.2007 appointed a court receiver to take possession of the said property.

25. Section 14 of the SARFAESI Act provides that any secured creditor who requires to take possession of any secured asset under the provisions of the SARFAESI Act, may file an application, accompanied by an affidavit, before the learned Magistrate within whose jurisdiction any such secured asset is situated. The learned Magistrate upon receiving such an application shall take possession of the said asset and

Signature Not Verified
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Signing Date:09.02.2026
21:55:01

forward the same to the secured creditor. The learned Magistrate, upon receipt of the affidavit from the Authorised Officer of the secured creditor, as the case may be, shall after satisfying the contents of the affidavit, pass suitable orders for the purpose of taking possession of the secured assets.

26. Thus, for the purposes of claiming possession of the subject property, the petitioner bank ought to be a 'secured creditor' of the respondent. Section 2(1)(zd) of the SARFAESI Act defines "secured creditor" as follows:

> *[(zd) "secured creditor" means—*
> ***(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (1);***
> *(ii) debenture trustee appointed by any bank or financial institution; or*
> *(iii) an asset reconstruction company whether acting as such or managing a trust setup by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or*
> *(iv) debenture trustee registered with 35[the Board and appointed] for secured debt securities; or*
> *(v) any other trustee holding securities on behalf of a bank or financial institution,*
> *in whose favour security interest is created by any borrower for due repayment of any financial assistance.]*
>
> (emphasis supplied)

27. The petitioner bank in order to prove itself as a secured creditor of the respondent with respect to the subject property, produced two letters dated 17.08.1992 and 10.06.1995 before this Court showing the

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Signing Date:09.02.2026
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existence of equitable mortgage, with respect to the subject property in favour of the petitioner bank.

28. The letter titled "Extension of Equitable Mortgage" dated 17.08.1992 addressed to the petitioner bank and signed by the respondent reads as under:

> *"Dear Sir,*
>
> ***I hereby confirm acknowledge and confirm having deposited with you at New Delhi on 09.05.1987 the title deeds of my/our property situated at Plot NO. 23, Block F, Green Park, New Delhi as security for the advance already made on ____ and to be granted or advanced to M/s Siddarth Travels (P) Ltd. and further confirm having agreed with you at the tie of grant of further facility to your continuing to hold the title deeds of the above property also as additional security for further advances made or to be made or facilities granted or to be granted by the Bank to (1) M/s Nexim Export Pvt. Ltd. (2) M/s Gambro Nexim (India) Medical Ltd. (3) M/s Rexima Exports Pvt. Ltd.*** *upto a maximum of Rs. _____ by way of advance Bill (1) Nexim Exports P. Ltd. Rs. 48886687.03 + 14421370. (2) M/s Gambro Nexim (India) Madical P. Ltd. Rs.70905026.45 + 1094975 (3) M/s Rexima Exports P. Ltd. Rs. 52078622.45 + 11421370 together with interest, costs and other charges payable by them to the Bank."*
>
> (emphasis supplied)

29. Further, the letter dated 10.06.1995 addressed to the petitioner bank and signed by the respondent reads as under:

> *"Dear Sir,*
>
> *As per our discussions held with your Mr. Ramaswamy and yourself we request you to kindly give us your Consent No objection to the transfer of al the liabilities of M/s Gambro Nexim (India) Medical Ltd. towards our Bank amounting to Rs. 14,37,23,733=45 and M/s Nexim Exports Pvt Ltd. towards your Bank amounting to Rs.*

Signature Not Verified
Signed By:DEEPANSHU
Signing Date:09.02.2026
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10,37,34,749=03, respectively as on 31.12.1994 as per your overseas Branch Letters No. NIL dated 31.12.1994 addressed to the said companies, and the lithotripters, hypothecated to your Bank as per agreements of Hypothecation dated 17.08.1990, to our concern M/s Rexima Export Pvt. Ltd.

We hereby give our consent to let your bank continue its charge on the property situated at F 23 green park New Delhi standing in the name of Mr. Mohan Murti Shandilya. Personal guarantees of directors would also continue to be in force till the outstanding amount is paid.

True copies of relevant resolutions passed in the Board Meetings of our company are enclosed for your ready reference.

As explained to you, the idea behind this move is to make our concerns M/s Gambro Nexim (India) Medical Ltd. and M/s Nexim Exports Pvt. Ltd, which already have good export records through your bank, profit making companies once again so that we can tap the market for raising the required funds, which will be used to repay the outstanding amount to your Bank.

We thank you for kind understanding and cooperation."

(emphasis supplied)

30. A perusal of the letter dated 17.08.1992 shows that the respondent has confirmed and acknowledged that the title deeds of the subject property have been deposited with the petitioner bank, by the respondent for his company M/s Siddharth Travels (P) Ltd. The respondent in the said letter further confirms that he has agreed that the petitioner bank shall continue to hold the subject property as additional security for further advances to the respondent's companies, namely, M/s Nexim Export Pvt. Ltd. ; M/s Gambro Nexim (India) Medical Ltd. ; M/s Rexima Exports Pvt. It is pertinent to note that the aforesaid three

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Signing Date:09.02.2026
21:55:01

companies are the same against which the petitioner bank has filed O.As before the learned DRT in the present matter.

31. The letter dated 10.06.1995 shows that the respondent had further given his consent to the petitioner bank to continue its charge on the subject property pertaining to the debts of the aforesaid three companies. Thus, the allegations against the petitioner bank of falsely portraying itself as a secured creditor without the existence of any equitable mortgage holds no merit.

32. As far as the allegations made by the respondent against the petitioner bank regarding forgery of the aforesaid documents, creating an equitable mortgage against the subject property are concerned, it is pertinent to note that the respondent never made any allegations of forgery of the said documents before the learned DRT. The petitioner bank had filed an O.A. for recovery against the respondent and his companies in the year of 1996 and both letters were filed by the petitioner bank before the learned DRT in order to establish its claims. The respondent never made any allegations regarding fabrication of the said documents before the learned DRT.

33. Additionally, the petitioner bank's witness, namely Shri V. Raghavan, had proved the mortgage in favour of the bank pertaining to the subject property by relying on the said letter of extension dated 17.08.1992 and the respondent had made no suggestions of any forgery or fabrication of the said document against the petitioner bank.

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Signing Date:09.02.2026
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34. The allegations regarding forgery of the documents filed by the petitioner before the learned DRT were only made after an application under Section 14 of the SARFAESI Act filed by the petitioner bank before the learned Magistrate was allowed.

35. It is relevant to note that it has been submitted that the O.A for recovery filed by the petitioner bank against the respondent before the learned DRT has been decided in favour of the petitioner bank and the subject property has been auctioned off. Although, the legal representatives of the deceased respondent have filed an appeal before the learned Debt Recovery Appellate Tribunal which is still pending.

36. In such circumstances, the allegations of the respondent against the petitioner bank of criminal breach of trust, forgery of the mortgage documents and cheating, appear to be an afterthought of the respondent with no merit. The present complaint against the petitioner bank *prima facie* appears to have been made solely as a counter blast to the DRT proceedings against the respondent and his companies. The allegations of the petitioner bank regarding forging mortgage documents to cheat the respondent out of his moveable and immovable properties in the circumstances of the present case appear inherently improbable.

37. It is alleged that the Notice dated 04.04.2006 and the follow up Notices sent by the petitioner bank to the respondent were in violation of settled law, that no bank can initiate proceedings simultaneously under the Recovery of Debts Due to Banks and Financial Institutions

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Signing Date:09.02.2026
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Act, 1993 Act and SARFAESI Act in respect of the same matter pending adjudication under one of these two acts. The aforesaid allegation is misfounded as the Hon'ble Apex Court in the case of ***Transcore vs. Union of India & Anr. (2008)*** **: 1 SCC 125** held that Recovery of Debts Due to Banks and Financial Institutions Act, 1993 Act and SARFAESI Act are complementary to each other and it is not a case of election of remedy. Thus, no offence under Section 29 of the SARFAESI Act is made out against the petitioner bank in the present case.

38. In view of the above, the complaint made by the respondent under Section 340 of the CrPC read with Sections 405/409/219/420/467/471/477-A/34/120B of the IPC read with Section 29 of the SARFAESI prima facie appears to be an afterthought especially considering that no such allegations were made by the respondent at an earlier stage before the learned DRT. Thus, the conviction of the petitioner bank does not seem reasonably probable or likely under Section 340 of the CrPC.

39. Even otherwise, as noted above, it is well settled that the Court is not bound to make a complaint in every case and prosecution for perjury should be sanctioned only when it is expedient in the interests of justice. In the facts of the present case, this Court is of the opinion that it is not expedient in the interests of justice to prosecute the petitioner for perjury, especially considering the fact that the appeal of the legal heirs

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of the respondent is pending before the learned Debt Recovery Appellate Tribunal.

40. Although, ordinarily, this Court would not have interfered before the Trial Court has expressed its opinion on this aspect. However, as noted above, the proceedings before this Court have been pending since the year 2009 and in the peculiar facts of the present case, continuation of the present proceedings against the petitioner bank would amount to an abuse of the process of Court.

41. Considering the above, Complaint under Section 340 of the CrPC read with Sections 405/409/219/420/467/471/477-A/34/120B of the IPC read with Section 29 of the SARFAESI filed by the respondent in CC No. 820/2006, pending in the court of the learned Magistrate, and all consequential proceedings arising therefrom are quashed.

42. The present petition is allowed in the aforesaid terms. Pending applications stand disposed of.

AMIT MAHAJAN, J

FEBRUARY 09, 2026
'KDK'

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