

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2007

CORAM

THE HONOURABLE MR. JUSTICE K.N. BASHA

CrI.O.P.No.29409 of 2006

Mrs.S.Indira

... Petitioner

Vs

The Superintendent, (Anti-Corruption Wing),
Central Bureau of Investigation (CBI),
Sasthri Bhavan,
Haddows Road,
Chennai 600 006.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the respondent to register the complaint given by the petitioner dated 09.06.2006 and proceed according to law.

* * *

For Petitioner : Mr.R.Subramanian
Mr.D.Nagesh Babu

For Respondent : Mr.N.Chandrasekaran
Spl. P.P. for CBI. cases

O R D E R

Learned counsel for the petitioner submits that the petitioner has come forward with this petition seeking the relief of direction to the respondent police to register the F.I.R. on the basis of the complaint given by the petitioner dated 06.09.2006 and to proceed in accordance with law.

2. Learned counsel for the petitioner submits that the petitioner is the absolute owner of the property bearing New No.1, Old No.7, Seven Hills, 5th Main Road, Kasturbai Nagar, Adyar, Chennai-600 020. It is also submitted by the learned counsel for the petitioner that the petitioner is in possession of the original title deeds and that the petitioner is also having a lawful possession of the property and enjoying the same right from the date of her purchase. The learned counsel for the petitioner

further submits that the petitioner was shocked and surprised that a notice dated 07.03.2006 was affixed on her property and the same appears to have been affixed by one Mr.Satya Prakash, Recovery Officer, Debts Recovery Tribunal-1, New Delhi, with reference to R.C.No.210/2002 between M/s.IREDA (Indian Renewable Energy Development Agency, New Delhi) and on M/s.Maha Krishna Financial Services Ltd.,(MKFSL), Chennai. The learned counsel for the petitioner further submits that on perusal of the aforesaid notice reveals that the petitioner's property was ordered to be sold and Rs.55,00,000/- has been fixed as the upset price. It is submitted by the learned counsel for the petitioner that the petitioner is neither a borrower nor she is in anyway connected with the alleged transaction and the petitioner is not even a party to the proceedings initiated before the Debts Recovery Tribunal, New Delhi. It is further submitted by the learned counsel for the petitioner that to bring the petitioner's property for sale, by public auction, was due to the official misuse of powers and wrong information provided by the Managing Director, EREDA and Assistant General Manager (Law).

3. The learned counsel for the petitioner further submits that the petitioner came to know about the affixing of the said notice dated 07.03.2006, through a well wisher, on 14.05.2006, and thereafter, the petitioner issued legal notice dated 16.05.2006 to Mr.Satya Prakash, Recovery Officer, Debts Recovery Tribunal-1, New Delhi, calling upon him to restrain himself from involving in respect of the property, as the petitioner is totally unconnected with the alleged transaction. It is also submitted by the learned counsel for the petitioner that till date there is no reply from the Debts recovery Officer Mr.Satya Prakash, in respect of the legal notice issued by the petitioner, dated 16.05.2006. It is further submitted by the learned counsel for the petitioner that on 12.06.2006 one of the petitioner's neighbours informed the petitioner over phone that certain people are trying to enter into the petitioner's premises, forcibly, by breaking the locks and thereafter, the petitioner rushed to the spot and at that time a copy of the confirmation of sale order dated 02.06.2006 was given to the counsel for the petitioner stating that the property was already sold, by public auction to one Mr.Kathirkam, Coimbatore.

4. The learned counsel for the petitioner further submits that in view of the above said sequence of events the petitioner was constrained to give a complaint to the respondent police viz., C.B.I., on 06.09.2006 making allegations of illegal land grabbing, Criminal trespass, criminal conspiracy, misuse of public office in their Official capacity and corruption. It is also brought to the notice of this court by the learned counsel for the petitioner that the said complaint dated 06.09.2006 was given by the petitioner against three persons namely 1) The Managing Director, 2) Assistant General Manager(law) IREDA and 3)Mr.Satya Prakash, Recovery

Officer, Recovery Debts Tribunal. The learned counsel for the petitioner further submits that till date in spite of this specific complaint given by the petitioner as early as on 06.09.2006, the respondent police, CBI., has not chosen to take any action as they have not even registered the FIR, in spite of the allegations contained in the complaint constituting cognizable offences. The learned counsel for the petitioner further brought to the notice of this court that the petitioner was also constrained to file a Writ Petition in W.P.No.18301/2006 and the same was dismissed by this Court on 02.03.2007 observing that the petitioner had already approached the Debts Recovery Tribunal, New Delhi, seeking to set aside the sale of the aforesaid property owned and possessed by the petitioner. It was further observed that effective remedy is available under law, and as such, Writ Petition cannot be maintained and ultimately dismissed the Writ Petition, with a direction to the Debts Recovery Tribunal No-1, New Delhi, to take up the application filed by the petitioner herein seeking to set aside the sale effected in favour of the fifth respondent and dispose of the same in accordance with law as expeditiously as possible.

5. The learned counsel for the petitioner further brought to the notice of this court that in the above said complaint given by the petitioner dated 06.09.2006, the petitioner has mentioned about the filing of the above said Writ Petition before this court. Therefore, it is submitted by the learned counsel for the petitioner that the petitioner was constrained to file this petition for direction to direct the respondent police to take action on the basis of the complaint given by the petitioner dated 06.09.2006 in accordance with law.

6. Mr.N.Chandrasekaran, learned Special Public Prosecutor for C.B.I. Cases, vehemently contended that this petition is not at all maintainable as the petitioner seeking the relief of direction to the respondent police to take action against the Debts recovery Officer, Debts Recovery Tribunal, New Delhi. The learned Special Public Prosecutor further submitted that the allegation contained in the complaint not at all constitutes a cognizable offence, but on the other hand the matter is only civil in nature. The learned Special Public Prosecutor further submitted that the Recovery Officer, Debts Recovery Tribunal, only carried out the quasi judicial order passed by the Debts Recovery Tribunal, New Delhi. It is also pointed out by the learned Special Public Prosecutor that the petitioner has not levelled any allegations implicating M/s.Maha Krishna Financial Services Ltd, Chennai, as the said finance company is also one of the party to the Debts Recovery proceedings, and the petitioner has also not approached the local State police for taking action against the said company. The learned Special Public Prosecutor further submitted that in view of the above said facts and circumstances of the case, the respondent

viz., the C.B.I. Police has not registered the case till date.

7. I have carefully considered the rival contentions put forward by either side and also perused the petition, counter and other materials available on record.

8. It is a very unfortunate case wherein, the petitioner has come forward with this petition alleging that she is the absolute owner of the property concerned in this matter and also claimed that she has right over the property through title deeds and further claimed that she was in continuous possession and enjoyment of the property. It is also curious to note from the materials available on record that the petitioner is neither the borrower nor a party to the proceedings initiated before the Debts Recovery Tribunal, New Delhi. The undisputed facts remains that on the basis of the order of the Debts Recovery Tribunal, New Delhi, a notice was affixed on 07.03.2006 in the doors of the property of the petitioner and immediately after coming to know about the same, the petitioner has taken action through her counsel by sending a legal notice dated 16.05.2006 to the concern authorities including the Debts Recovery Officer Mr.Satya Prakash. It is also brought to the notice of this Court, till date the petitioner has not received any reply from the said officer viz., Mr.Satya Prakash. It is also seen that the petitioner also preferred a Writ Petition in W.P.No.18031/2006 and the same was dismissed by this Court on 02.03.2007 by making the following observations:-

"It is brought to the notice of this Court that the petitioner had already approached the Debt Recovery Tribunal-I, New Delhi, seeking to set aside the sale of the aforesaid property allegedly owned and possessed by the petitioner herein. As the petitioner has already approached the Debt Recovery Tribunal concerned seeking effective remedy available under law, this court is not inclined to entertain the Writ petition filed by the petitioner herein.

The Writ petition stands dismissed with a direction to the Debt Recovery Tribunal-I, New Delhi, to take up the application filed by the petitioner herein seeking to set aside the sale effected in favour of the fifth respondent and dispose of the same in accordance with law as expeditiously as possible. No costs. M.P.Nos 1 and 2 of 2006 are also dismissed."

On a perusal of the complaint given by the petitioner dated 06.09.2006 to the respondent viz., C.B.I., Chennai, against three persons namely 1) The Managing Director, 2) Assistant General Manager (law), IREDA and 3) Mr.Satya Prakash, Recovery Officer, Recovery Debts Tribunal, New Delhi, this court is of the

considered view that the subject matter of the property is situated at Chennai, and that the allegations contained in the complaint constitute cognizable offences as there are allegations of conspiracy, illegal land grabbing, criminal trespass and corruption. It is also further relevant to note that the petitioner, even before the confirmation of sale, brought to the notice of the concerned Debts Recovery Officer viz., Mr.Satya Prakash that she is the absolute owner of the property and she has nothing to do with the alleged transaction and she was not a party to the proceedings. It is also relevant to note that the petitioner has sent a legal notice through her counsel dated 16.05.2006 to the Debts Recovery Officer viz., Mr.Satya Prakash and till date the Debts Recovery Officer has not chosen to give any reply.

9. Though learned Special Public prosecutor pointed out that the petitioner has not chosen to give any complaint against M/s.Maha Krishna Financial Services Limited, Chennai, to the local State police at Chennai on the ground that the said M/s.Maha Krishna Financial Services Limited, Chennai is said to have used the property documents of the petitioner for availing loan and also filed the said document before the Debts Recovery Tribunal, New Delhi, such failure of the petitioner is not fatal to her case. This Court is of the considered view that the petitioner is entitled to file a complaint against any person on the basis of the materials available on record. It is also relevant to note that the police officials mandatorily required to register the F.I.R., if the allegations contained in the complaint constitute cognizable offences and thereafter to proceed with the investigation to find out the culprits involved in this matter. Therefore, merely because the petitioner has not chosen to give the complaint against M/s.Maha Krishna Financial Services Limited Chennai, the claim of the petitioner cannot be rejected at the threshold.

10. It is also relevant to note, at this juncture that already the petitioner has resorted to file an appropriate application before the Debts Recovery Tribunal, impleading M/s.Maha Krishna Financial Services Limited, and other relevant parties to the proceedings to set aside the sale of the property allegedly owned and possessed by the petitioner.

11. The contention of the learned Special Public Prosecutor is to the effect that the Debts Recovery Officer having acted on the basis of the quasi Judicial order passed by the Debts Recovery Tribunal and as such he is not liable for any offence is unacceptable. It is needless to state that the Debts Recovery Officer is an independent Officer and it is his duty to bring it to the notice of the Debts Recovery Tribunal if any information received by him in respect of the property brought on auction sale. In this matter, in spite of receiving the legal notice dated

16.05.2006, the Debts Recovery Officer, instead of bringing the same to the notice of the Debts Recovery Tribunal, proceeded to continue the sale proceedings and ultimately the sale was also confirmed on 02.06.2006. Therefore, the sequence of events and the conduct of the Debts Recovery Officer makes it crystal clear that the grievance of the petitioner is reasonable and she is entitled for the remedy sought for by her in this petition.

12. The learned Special Public Prosecutor placed reliance on the decision of the Hon'ble Supreme Court of India in a case in AIR 2002 S.C.2225 (The Secretary, Minor irrigation Rural Engineering Services V. Shangoo Ram Arya and another) and the Honourable Supreme Court has held in that case as follows :

"The Court should not be guided by mere allegations alone and the petitioner should be able to make out a prima facie case in favour of the allegations before the High Court directs investigation by C.B.I."

This Court is of the considered view that the principle laid down by the Hon'ble Supreme Court in the decision cited supra is not applicable to facts of the instant case. In the above said case, the Hon'ble Supreme Court has held, as stated above, only in respect of a matter involving the question of transferring the investigation to C.B.I. from the state police, but as far as the instant case is concerned, the petitioner seeks the remedy of directing the respondent viz., C.B.I. to register the First Information Report on the basis of her complaint.

13. It is pertinent to note that the Hon'ble Supreme Court has held in 2006(2) Supreme Court 243 (Ramesh Kumari Vs. State(N.C.T. of Delhi) that,

"the police Officer mandatorily registers a case on a complaint or a cognizable offence by the citizen under Section 154 of the Code are no more res integra. The point of law has been set at rest by this Court in the case of state of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 355. This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 & 32 of the judgment as under:

"31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliant with the mandate of Section 151(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise

and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission under Section 156 of the Code to investigate, subject to the proviso to Section 157. In case, an officer in charge of a police station refuse to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section(3) of Section 154 of the Code."

"32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 4(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in section 154(1) unlike in Section 4(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present section 154 with those of the earlier Codes will indicate that the legislature had purposely though it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112

of the Code of 1872 (Act of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 189(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence."

Finally, this court in para 33 said:

"33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 151 (1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

14. In the very same decision the Hon'ble Apex Court also categorically held that,

"Genuineness or otherwise of the information can only be considered after register the case. Genuineness or credibility of the information is not a condition precedent for registration of a case."

15. Therefore, on the basis of the well settled principles of law laid down by the Hon'ble Apex Court and also for the reasons stated above, this Court is constrained to direct the respondent Police viz, The Superintendent, (Anti-Corruption Wing), Central Bureau of investigation-CBI, Chennai-600 006, to register the FIR on the basis of the complaint given by the petitioner dated

06.09.2006 and investigate into the matter in accordance with law and file a final report within a period of six months from the date of receipt of a copy of this order. The criminal original petition is ordered accordingly.
rrg/gg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

- 1.The Superintendent, (Anti-Corruption Wing),
Central Bureau of Investigation (CBI),
Sasthri Bhavan,
Haddows Road,
Chennai 600 006.
- 2.The Special Public Prosecutor for C.B.I. Cases,
Chennai.

+ one cc to Mr. R. Subramanian, Advocate sr no. 19191

GM(CO)
NM(30.03.07)

Crl.O.P.No.29409 of 2006

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