IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 15.12.2017	Date of Pronouncing Judgment 22.12.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.11060 of 2015

Asset Reconstruction Company India Limited,
Represented by its Assistant Vice President,
Mr.Hrishikesh Panse,
The Ruby, 10th Floor,
No.29, Senapathi Bapat Marg,
Dadar (W), Mumbai - 400 028. ...Petitioner

versus

1.State Represented by the
Inspector of Police,
S-1, Police Station,
St.Thomas Mount,
Chennai - 600 016.

2.Central Bureau of Investigation (CBI),
BSFC, (Banking, Securities & Fraud Cell),
EVK, Sampath Building, College Road,
Chennai 600 006.

3.Indian Bank,
Asset Recovery Management Branch - I,
Wellingdon Estate,
55, Ethiraj Salai,
Chennai - 600 008.

4.S.P.Velayuthm

5.The Inspector of Police,
Central Crime Branch,
Chennai Sub Urban Police,
St.Thomas Mount,
Chennai 600 016. ...Respondents

(R4 impleaded as per the order of this Court made in MP.No.1 of 2015 in Crl.OP.No.11060 of 2015 dated 08.08.2017)

(R5 impleaded as per the order of this Court made in MP.No.2 of 2015 in Crl.OP.No.11060 of 2015 dated 08.08.2017)

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, 1973 pleased to the direction to the second respondent to investigate the complaint of the mortgagee, the petitioner herein, which is a financial institution, complaint dated 21.04.2015 for various cognizable offences fully described in the complaint within such period as this Hon'ble Court may specify.

For Petitioner	:	Mr.B.Kumar, Senior Counsel for Mr.V.V.Sivakumar
For R1 and R5	:	Mr.P.Govindarajan, Additional Public Prosecutor
For R2	:	Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases
For R3	:	Mr.Sunder Mohan
For R4	:	Mr.N.R.Elango, Senior Counsel for Mr.M.Jeeva

O R D E R

The Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, seeking direction of this Court to direct the second respondent herein to receive the petitioner's complaint dated 21.04.2015 and investigate the same within such period as the Court may specify.

2. The contention of the petitioner herein is that Asset Reconstruction Company India Limited (ARCIL) is a company incorporated under the Companies Act, 1956 and is registered as a securitization company and reconstruction company in terms of Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). It is a recognized as a 'financial institution' within the meaning of Section 2 (h) (ia) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. M/s.Indian Bank Limited, Chennai in and around 1995 - 1996 extended financial facilities to M/s.Abhinav Exim (Madras) Private Limited, M/s.Indeco Builders Private Limited, M/s.Sanjeevi Packaging Private Limited, M/s.Jaimatha Farm Dealers Private Limited, M/s.Well Stores Madras Private Limited and M/s.Ramaraj Trading Private Limited (jointly referred to as “borrowers”) to a tune of Rs.30,00,00,000/- to secure the repayment properties were mortgaged that Indian Bank. Later, when the borrower defaulted in payment action under the SARFAESI Act was initiated, the

possession of the property was taken over by the Bank and later assigned the secured Financial Asset along with interest to the petitioner herein, namely ARCIL.

3. While so, when the petitioner took physical possession of the properties and placed sale notice under Rules 6(2) and Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 to the borrowers intimating that the said mortgaged properties were being brought for sale, the borrowers lodged criminal complaints on 18.02.2009 questioning the action of the petitioner fencing the land made to avoid illegal land grabbing. While, fact being so S.P.Velayudham, Son of Sabapathi, who is impleaded as fourth respondent in this petition fabricated two power of attorneys dated 23.08.2006 and 07.06.2007 in his favour and by virtue of the said fabricated said power of attorney, he had sold a large extent of the land including the mortgaged properties which are subject matter of secured financial assets assigned to the petitioner herein. The said sale is sham and nominal, since the purchasor is none other than the own son of S.P.Velayudham.

4. The sale consideration of the property is shown as Rs.5,00,00,000/-, whereas the guideline value itself is more than Rs.15,00,00,000/- sale deed was registered for a Paltry sale consideration of Rs.5,00,00,000/-, not stopping with that, the said purchasor Amar, son of S.P.Velayudham had inturn settled these properties to S.P.Velayudham on 13.10.2008. So alleging that the power of attorney documents in respect of the properties executed in favour of S.P.Velayudham is a fabricated document and the consequential sale by S.P.Velayudham in favour of his son Amar and subsequent settlement by Amar in favour of S.P.Velayudham are all sham and nominal, ex facie void, non-est in law and do not confer any right, title or interest upon him. But, all created for the purpose of defeating the interest of the petitioner, who is the secured creditor.

5. Therefore, case of offences under Section 420, 441, 465, 466, 467, 468, 471, 474 read with 120(B) of IPC is made out and since, the matter involves Bank fraud exceeding 25 crores of rupees, as per the Central Vigilance Commission manual, the matter has to be investigated by the CBI, the second respondent herein. Hence, the present petition.

6. After notice, the second respondent has filed counter wherein it is contended that though the petitioner's company has been sponsored by prominent banks, it is not part of these Nationalised Banks as none fo the Nationalised banks holds 51% paid up share capital in the petitioner company to give the petitioner a status of Government Company and further warranting the intervention of CBI. The Hon'ble High Court of Karnataka at Bangalore in its Judgment dated 23.02.2012 while disposing

Crl.RP.No.1136 of 2004 c/w. Crl.RP.No.207 of 2005 had clearly opined that even Canfin Homes a subsidiary of Canara Bank, a Nationalised Bank, is not a Government Company, also submitted that the Central Crime Branch, CCB Anti Land Grabbing Cell, Vepery, Chennai as already registered a case in Crime No.41 of 2009 against S.P.Velayudham for similar offences and this Court vide its order dated 15.12.2015 had directed the Inspector of Police, CCB to Expedite the investigation and also to examine the present petitioner and to collect relevant materials from him. There is no interest for the CBI to take up the investigation.

7. Where as the learned counsel appearing for the private respondent submitted that, with the very same set of allegation one D.Gobichandran filed a complaint and taken up for investigation by CCB in Crime No.41 of 2009 and it was quashed by the Hon'ble High Court in Crl.O.P.No.10825 of 2010 by Justice M.V.Muralidaran,J., on 05.07.2017. In the said petition, the present petitioner ARCIL got itself impleaded as seventh respondent and made it submissions and after taking note of the submissions made by the petitioner herein, the Court has observed as under.

> "20. The learned senior counsel appearing for the 7th respondent would submit that a separate complaint on the same issue has been preferred before the CBI by the 7th respondent and an application in Crl.O.P.No.11060 of 2015 has been preferred before this Court seeking to register the said complaint, which is still pending. However, no material has been placed before me to even suggest commission of any offence by the petitioners in order to justify continuance of criminal investigation as against them and continuation of the impugned criminal proceedings cannot be justified solely on the ground that a fresh complaint has also been preferred."

and submitted that, the matter has already been taken note by the other bench of this Court and the petitioner herein being a party to the proceedings, if at all the petitioner is aggrieved by the order passed by the said Court, it has to prefer appeal against that order before the Higher Forum but cannot agitate this petition on the ground that there is difference in the gist of allegations made by them and in the complaint preferred by D.Gobichandran, which has been quashed by this Court in Crl.O.P.No.10825 of 2010.

8. Further, the learned counsel for the fourth respondent also brought to the notice of this Court that the same

petitioner preferred a complaint before the Commissioner of Police on 19.09.2013 and filed a petition before this Court in Crl.O.P.No.26339 of 2014 with the same said of fact, but later withdraw the petition. Hence, it was "dismissed as withdrawn" on 15.10.2014. Placing a comparison chart of (i) Crime No.41 of 2009 on the file of CCB, Chennai preferred by D.Gobichandran, (ii) complaint dated 19.09.2013 preferred by the petitioner herein before Commissioner of Police, Chennai and the order passed in Crl.O.P.No.26339 of 2014 and (iii) the complaint dated 21.04.2015 preferred before the CBI by the petitioner herein which is the subject matter of this present petition, he submitted that, the dispute already been held as Civil in Nature, no further indulgence required in this petition.

9. The learned counsel for the fourth respondent also submitted that, the complaint given by D.Gobichandran is the subject matter of Crime No.41 of 2009 with the very same set of fact has been quash and in the said petition the present petitioner is also party-respondent, the earlier petition for direction to take up their complaint dated 19.09.2013 been withdrawn as not pressed by this petitioner. Therefore, they are not entitle to re-agitate the same dispute and seek CBI Investigation, for the very same set of fact, more so when CBI itself has filed counter saying that the subject matter is not within the jurisdiction.

10. Heard, the learned senior counsel for the petitioner herein and the Special Public Prosecutor, CBI and the Senior Counsel for the fourth respondent.

11. The perusal of the allegations made in the petition and the counter filed by CBI and perused the comparison chart filed by the fourth respondent which is extracted below.

Crime No.41 of 2009, CCB, Chennai	Crl.O.P.No.26339 of 2014	Crl.O.P.No.11060 of 2015
Mr.D.Gobichandran, authorized signatory of M/s.Info Vision (P) Ltd and 4 others companies (Adverse claimants of title / mortgagors)	ARCIL (Purported Mortgagee - Through the adverse claimants of title) Complaint dated 19.09.2013 was preferred before the Commissioner of Police, Chennai	ARCIL (Purported Mortgagee - Through the adverse claimants of title) Complaint dated 21.04.2015 was preferred before the CBI.
Gist of Allegations		

Crime No.41 of 2009, CCB, Chennai	Crl.O.P.No.26339 of 2014	Crl.O.P.No.11060 of 2015
One, Deenadayalu Reddiar and his son, Venkatakrishnan had issued power of attorney pertaining in favour of S.P.Velayudham, with respect to an extent of about 9.92 acres without having title over the same. Based on the power of attorney, S.P.Velayudham had executed a sale deed in favour of his son, Amar. Thereafter, Amar had conveyed the land in favour of his father, S.P.Velayudham, by way of a settlement deed. Revenue records were mutated by colluding with the officials. (FIR @ page 1 of the Additional Typed set dated 02.10.2015 filed by the impleading petitioner/F4)	S.P.Velayudham had obtained two deeds power of attorney from one, Deenadayalu Reddiar and his son, Venkatakrishnan, pertaining to the subject land, who did not have any title over the same. Based on the power of attorney, S.P.Velayudham had executed a sale deed in favour of his son, Amar for a meagre sale consideration. Thereafter, Amar had conveyed the land in favour of his father, S.P.Velayudham, by way of a settlement deed. Revenue records were mutated by colluding with the officials. (Petition @ page 141 of the Typed set dated 10.08.2015 filed by the impleading petitioner/R4)	S.P.Velayudham had obtained two deeds power of attorney from one, Deenadayalu Reddiar and his son, Venkatakrishnan, pertaining to the subject land, who did not have any title over the same. Based on the power of attorney, S.P.Velayudham had executed a sale deed in favour of his son, Amar for a meagre sale consideration. Thereafter, Amar had conveyed the land in favour of his father, S.P.Velayudham, by way of a settlement deed. Revenue records were mutated by colluding with the officials. (Earlier complaint dated 19.09.2013 and withdrawal of Crl.O.P.No.26339 of 2014 were suppressed)
Result		

Crime No.41 of 2009, CCB, Chennai	Crl.O.P.No.26339 of 2014	Crl.O.P.No.11060 of 2015
The complaint was found to be a pure civil dispute and FIR was quashed by this Hon'ble Court by wasy of order dated 05.07.2017 passed in Crl.O.P.No.10825 of 2010. (Page 1 of the Additional Typed set dated 08.08.2017 filed by R4)	The petition was dismissed as withdrawn by way of an order dated 15.10.2014. (Petition @ page 141 of the Typed set dated 10.08.2015 filed by the impleading petitioner/R4)	---

12. This Court has no hesitation to hold that this petition is to be dismissed as devoid of merits for the following reason.

When, this matter was filed in the year 2015, the fact of pendency of Crime No.41 of 2009 on the file of CCB has been brought to the notice of this Court and this Court has passed the following order during the Course of hearing.

> "This Criminal Original Petition has been filed under Section 482 of Code of Criminal Procedure, 1973 praying to direct the second respondent to register the complaint dated 21.04.2015.
>
> 2. During the course of hearing, the learned Additional Public Prosecutor has contended that the petitioner, as complainant, has given two identical complaints before the Commissioner of Police, Chennai on 19.09.2013 and 02.07.2014. Further, in the year 2009, one Gopichandran has given a complaint for identical offences and the same has been registered in Crime No.41 of 2009. In Crime No.41 of 2009, some witnesses have been examined and subsequently, a stay has been granted by the High Court and due to that, a dull has occurred in conducting further investigation. On the basis of the representation made by the learned Additional Public Prosecutor, this Court has perused the case registered in Crime No.41 of 2009, wherein it has been clearly stated that one Gopichandran, as complainant, has given the complaint in question against one Velayudham and others. Further, in Crime No.41 of 2009, some witnesses have been examined and some documents have been collected.

3. Considering the fact that for similar offences, already a complaint has been given and the same has been registered in Crime No.41 of 2009 and the same is in the midst of investigation, the following direction can be given to the Investigating Officer without disposing of Criminal Original Petition No.11060 of 2015:

> "The Inspector of Police, Central Crime Branch, Anti Land Grabbing Cell, Vepery is strictly directed to conduct expeditious investigation in Crime No.41 of 2009. During investigation, the Investigating Officer is also directed to examine the petitioner found in Criminal Original Petition No.11060 of 2015 and also collect relevant materials from it."

13. The learned Senior counsel appearing for the petitioner reading through the provisions of SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act, 1993 contented that the petitioner institution is a "financial Institution" and it is consortium of Nationalised Banks essentially created for off loading their deficit due to non performing assets. It is created for mitigating the difficulty in recovering dues from non performing assets. It literally enter the shoes of the lending Bank. Therefore, because it is described as Private Sector Company, CBI cannot claim that the alleged crime is not a fraud on Bank and will not fall within its jurisdiction.

14. The question whether CBI is by default competent to enquire the complaint or by direction of the Court to enquire the complaint will arise only if any Criminal Act is made out in the complaint.

15. As pointed out, for the very same set of facts, the complaint given by D.Gobichandran had been registered and investigated in Crime No.41 of 2009 and later quashed in Crl.O.P.No.10825 of 2010 dated 05.07.2017, after considering the plea of D.Gobichandran the defacto complainant, the S.P.Velayudham person against whom the accusation made, ARCIL (petitioner herein) and the investigation agency. The Court had arrived at a conclusion that the issue is Civil in nature and no culpability is made out in the act of fourth respondent herein.

16. Thereafter, as pointed, this Court has quashed the complaint in Crime No.41 of 2009 vide its order dated 05.07.2017 in Crl.O.P.No.10825 of 2010. Therefore, there is no point in agitating, the same set of facts as alleged in Crime No.41 of

2009 in different form and before different investigating agency.

17. In the opinion of this Court, at the most the petitioner has to challenge the order of the Single Judge pssed in Crl.O.P.No.10825 of 2010 dated 05.07.2017 before the Higher Forum and get redressal and cannot sustain this petition.

18. In the result, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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To

1.State Represented by the
Inspector of Police,
S-1, Police Station,
St.Thomas Mount,
Chennai - 600 016.

2.Central Bureau of Investigation (CBI),
BSFC, (Banking, Securities & Fraud Cell),
EVK, Sampath Building, College Road,
Chennai 600 006.

3.Indian Bank,
Asset Recovery Management Branch - I,
Wellingdon Estate,
55, Ethiraj Salai,
Chennai - 600 008.

4.The Inspector of Police,
Central Crime Branch,
Chennai Sub Urban Police,
St.Thomas Mount,
Chennai 600 016.

5.The Special Public Prosecutor for CBI Cases,
High Court, Madras.

6.The Additional Public Prosecutor,
High Court, Madras.

7.The Inspector of Police,
CCB, Anti Land Grabbing Cell,
Vepery. (Cr.No.41/09)

8.The Section Officer,
Crl.Section, (Records)
High Court, Madras.

+5cc's to Mr.M.Jeeva, Advocate SR.No.92238
+1cc to Mr.V.V.Sivakumar, Advocate SR.No.92108

Criminal Original Petition No: 11060 of 2015

AD(CO)
GN(09/01/2018)