BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2018

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

Crl.O.P.(MD) No.6503 of 2018

R.N.Jagadeesan ... Petitioner

-Vs-

1. The Superintendant of Police,
   Theni District, Theni.

2. The Deputy Superintendant of Police,
   Theni District,
   Theni.

3. The Inspector of Police,
   Palani Chetti Patti Police Station,
   Theni. ... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to direct the 2nd and the third respondents herein to register a case on the basis of the complaint given by the petitioner dated 15.03.2018.

For Petitioner : Mr.G.Mohankumar
For Respondents : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

O R D E R

This petition has been filed seeking direction to the second and the third respondents to register a case, on the basis of the complaint given by the petitioner, dated 15.03.2018.

2.According to the petitioner, he has preferred a complaint before the first respondent with several allegations against the proposed accused for the irregularities committed in selling the petitioner's property through auction cum sale conducted by the proposed accused Bank. Since no action has been taken, the petitioner has approached before this Court.

3.The learned Additional Public Prosecutor appearing for the respondents contended that the petitioner has given a complaint before the first respondent on 15.03.2018, in which, it has been stated that the petitioner company has borrowed loans from State

Bank of India, Karur Vaisya Bank and Axis bank to the tune of Rs.200 crores, in respect of which, the petitioner has mortgaged properties of the petitioner's company to the proposed Bank for availing the loan. Subsequently, the petitioner company sustained loss and not in a position to run the company. Hence, the petitioner has made a request before the State Bank of India to consider the payment of loan on One Time Settlement. Since the officials of the said bank have not considered the request made by the petitioner, the petitioner has closed the company. Subsequently, the State Bank of India has filed a claim petition in O.A.No.1071 of 2015 before the Debt Recovery Tribunal, Madurai and the petitioner company has also filed S.A.Nos.166 of 2016 and 325 of 2016 and the same are pending. In the meanwhile, a portion of the mortgaged property i.e., 'A' and 'B' schedule properties of the petitioner company were brought for auction on 23.02.2018, in which, one G.Baskaran was the auction purchaser and the officials of the State Bank of India and other officers have conspired together, undervalued the mortgage and sold to the auction purchaser only.

4.It is further submitted that during enquiry, it was found that the petitioner has not repaid a sum of Rs.294.39 crores to the bank. Therefore, the petitioner's 'A' and 'B' schedule properties were brought for auction by following due procedures under SARFAESI Act, in respect of which, notice was also published in the news papers and 'E' notice was also published on 27.07.2016, 05.07.2016, 11.08.2017, 13.11.2017, 10.01.2018 and 02.02.2018 and after issuance of notice to the petitioner, auction has been conduced, in which, one Boss Enterprises was the highest bidder. Further, it is submitted that since the second appeals filed by the petitioner are pending before the Debt Recovery Tribunal, the petitioner's complaint was closed on 22.03.2018.

5.As per the submission made by the learned Additional Public Prosecutor, the complaint made by the petitioner has been duly enquired into and subsequently closed on 22.03.2018. Further, the petitioner has filed second appeals before the Debt Recovery Tribunal challenging the irregularities committed by the proposed accused Bank in the auction and the same are pending. Therefore, no substance in the present criminal original petition and the same is liable to be rejected.

6.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

7.From the above facts and submission of the parties, the complaint preferred by the petitioner was closed against the proposed accused Bank. Therefore, this Court has consider the decision of Hon'ble Supreme Court in the case of ***Priyanka Srivastava and another Vs. State of Uttar Pradesh*** reported in ***(2015) 6 Supreme Court Cases 287*** and laid the dictum of the principles to register the complaint against the Bank Officials. In paragraphs - 27, 33 and 34, it is held as follows:

27. .... It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156 (3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

.....

33.At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as follows:

> *"**32.Protection of action taken in good faith.**- No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."*

In the present case, we are obliged to say that the learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) Cr.P.C. It is because Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needless to emphasise, the legislative mandate has to be kept in mind.

34.In view of the aforesaid analysis, we allow the appeal, set aside the order passed by the High Court and quash the registration of the FIR in case in Crime No.298 of 2011...."

8.In the light of the aforesaid decision rendered by the Hon'ble Apex Court, this Court is of the view that the relief sought in the petition cannot be granted, and that too, when second appeals filed by the petitioner are pending before the Debt Recovery Tribunal. Hence, this Criminal Original Petition is dismissed. However, if there is any finding by the Tribunal that certain irregularities have been committed in the auction, then, the petitioner can work out his remedy before the appropriate forum, if necessary.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendant of Police,
   Theni District, Theni.

2. The Deputy Superintendant of Police,
   Theni District, Theni.

3. The Inspector of Police,
   Palani Chetti Patti Police Station,
   Theni.

4. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

+ 1 CC TO Mr.G.MOHANKUMAR, ADVOCATE IN SR No. 63227

NS/MJ
TE/PN/SAR-2 : 11/07/2018 : 4P/6C

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