



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2018

C O R A M:

WEB COPY

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRL.O.P.(MD)No.16594 of 2017

Mrs.A.Jeyasta

.. Petitioner

Vs.

1. The Director General of Police,
Police Head Quarters,
Santhome High Road,
Mylapore,
Chennai - 600 004.
2. The Inspector General of Police,
Southern Region,
New Natham Road,
Madurai - 625 002.
3. The Superintendent of Police,
District Police Office Compound,
Korampallam,
Tuticorin District,
Tuticorin.
4. The Deputy Superintendent of Police,
District Crime Branch,
District Police Office Compound,
Korampallam,
Tuticorin.

.. Respondents

Petition is filed under Section 482 of the Criminal Procedure Code to direct the respondents to register a criminal case based on the complaint of the petitioner given to the respondents and other officials dated 07.11.2017 and investigate and file a final report within a stipulated time to be fixed by this Court.

For Petitioner	: Mr.S.C.Herold Singh
For Respondents	: Mr.K.K.Ramakrishnan
	Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking a direction to the respondents to register a criminal case based on the complaint of the petitioner, dated 07.11.2017 and investigate



and file a final report within a stipulated time to be fixed by this Court.

2. According to the petitioner, she has preferred a complaint before the respondents with several allegations against the proposed accused for the irregularities committed in selling the petitioner's property through e-auction sale conducted by the bank officials. Since no action has been taken, the petitioner has approached this Court.

3. The learned Additional Public Prosecutor has produced a copy of the closure report and submitted that the petitioner's complaint, dated 07.11.2017, was enquired by the Sub-Inspector of Police, District Crime Branch, Tuticorin. During enquiry, it came to know that the proposed accused/Bank has proceeded with the sale proceedings and subsequently, the mortgaged property was brought for sale and the third party has purchased the property. At this stage, the petitioner has preferred the present complaint before the respondents making allegations against the proposed accused that the property sold by the bank was undervalued and also made allegations against the bank officials. The petitioner has already approached the Debts Recovery Tribunal, Madurai, challenging the sale proceedings and obtained an order. Therefore, if the petitioner is aggrieved by the order passed by the Tribunal, she can file an appeal before the appropriate forum.

4. This Court had an occasion to deal with a similar case, viz., CrI.O.P.(MD)No.6503 of 2018 filed by one R.N.Jagadeesan, and dismissed the said Criminal Original Petition, vide order dated 23.04.2018, by following the decision of the Hon'ble Apex Court in the case of **Priyanka Srivastava and another Vs. State of Uttar Pradesh** reported in **2015 (6) SCC 287**, wherein at Paragraph Nos.27, 33 and 34, it has been 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.....''

5. 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 present Criminal Original Petition cannot be granted. Hence, this Criminal Original Petition is dismissed. However, the petitioner is at liberty to approach the appropriate forum, if she is aggrieved.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Director General of Police,
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District Crime Branch,
District Police Office Compound,
Korampallam,
Tuticorin.



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

+1 CC to Mr.S.SETHURAMAN, Advocate in SR.No. 68790

+1 CC to Mr.S.C.HEROLD SINGH, Advocate in SR.No. 68883

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RJ/SKN/RSK/SAR-4/18/07/2018 - 4P/8C

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