

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.13617 of 2014
and Crl.M.P.No.1 of 2014

S.Muralidharan ... Petitioner/1st Accused

Vs.

1.The State,
Rep. by the Inspector of Police,
S-2, Chitlapakkam Police Station,
Chennai - 600 064.
(Crime No.52 of 2014) ...1st Respondent/1st Respondent

2.P.Lakshmi2nd Respondent/Defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in FIR in Crime No.52 of 2014, pending investigation, on the file of the first respondent herein, and to Quash the same insofar as the petitioner is concerned by allowing the above Crl.O.P.

For Petitioner : Mr.P.Elayaraj Kumar
for M/s.Ramalingam and Associates

For RR1 : Mr.Mohamed Riyaz
Additional Public Prosecutor

For RR2 : Mr.A.Palaniappan

ORDER

This petition has been filed to call for the records in FIR in Crime No.52 of 2014, pending investigation, on the file of the first respondent herein, and to Quash the same insofar as the petitioner is concerned by allowing the above Crl.O.P.

2. The learned counsel for the petitioner would submit that it is alleged that the second petitioner after seeing advertisement in Dinamalar Daily Newspaper in respect of sale of

vacant plot bearing No.3, Sankar Nagar Extension, Bajanai Koil Street, Nemilichery Village, Tambaram Taluk, Kanchipuram District measuring an extent of 130 sq.ft advertised by M/s.LIC Housing Finance by way of public auction under the provisions of SARFAESI Act on "AS IS WHERE IS" basis, the second respondent approached the petitioner and participated in the auction and became the successful bidder for a sum of Rs.11,00,000/- and thereafter the property was conveyed in her favour by the authorised officer/A2. But later one, Mr.Muralikrishna claimed right over the same property showing relevant documents as such the second respondent asked for refund of the said amount. Since, the petitioner did not repay the amount, the present complaint has been lodged. The learned counsel further submit that only wrong identification of the property was made and as such the petitioner cannot be proceeded with by the respondent police. In this regard, the learned counsel has relied upon the Judgment in the case of Priyanka Srivastava and Ors Vs. State of U.P. And Ors in Crl.A.No.781 of 2012.

3. The learned counsel for the second respondent would submit that the petitioner had only shown the property to the second respondent and on their assurance only, the property was purchased as such he sought for dismissal of the petition.

4. The learned counsel for the petitioner has relied upon the judgment in the case of Priyanka Srivastava and Ors Vs. State of U.P. And Ors in Crl.A.No.781 of 2012, wherein it is held as follows:

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

32. 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 Court.

30. In the present case, we are obligated to say that learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR Under Section 156(3) Code of Criminal Procedure It is because the Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needless to emphasize, the legislative mandate, has to be kept in mind."

5. But, in the case on hand, it is seen that the petitioner had only shown the property to the second respondent and on his assurance only, the property was purchased. Therefore, the above judgement is not applicable to this case as such this Court is not inclined to allow the prayer sought for in this petition and this Criminal Original Petition is dismissed. Consequently connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

pds/lok

To

1.The Inspector of Police,
S-2, Chitlapakkam Police Station,
Chennai - 600 064.

2.The Public Prosecutor,
High Court of Madras.

+1 CC to Mr.A.Palaniappanm, advocate sr 16333.

+2 Ccs to M/s.Ramalingam Associates sr 16284.

Crl.O.P.No.13617 of 2014
and Crl.M.P.No.1 of 2014

VBA (CO)
SP (25/03/2019)

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