BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.7776 of 2022

and

Crl.M.P(MD) No.5299 of 2022

Mr. Venkata Subramaniam,
Erstwhile Manager of Syndicate Bank (presently Canara Bank),
Karur.
Wrongly Shown as: (In FIR)
Present Manager of Thillai Nagar Branch
Canara Bank
Trichy.
Presently working as:
Manager,
Canara Bank,
Periyakulam Branch ,
Theni District.
Residing at:
No.135, Palaniyammal illam,
Gopi Main road, Savandapur village,
Athani Post, Erode- 638502. ... Petitioner/3rd Accused

Vs

The State of Tamil Nadu
Represented by
The Inspector of Police,
Economic Offences Wing,
Karur Town and District
(Cr.No.1 of 2022). ...1st Respondent/Complainant

2. Ms. Jaikavitha, ...2nd Respondent/Informant

3. R. Ramanujam,
Inspector of Police,
Economic Offences Wing,
Karur Town and District ...3rdRespondent/3rd Party

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to Call for the records relating to the impugned criminal case in

Cr.No.01 of 2022 pending on the file of the first respondent police and quash the same.

For Petitioner : Mr.N.Dilip Kumar

For Respondents No.1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime 01 of 2022 on the file of the first respondent police.

2. The respondent police have registered a criminal case in **Crime No.1 of 2022** on **17.02.2022** against petitioner herein and several others on the basis of the complaint given by **JaiKavitha** for alleged offences under **Sections 120B, 420, 406, 408, 409, 466, 467, 468, 471, 477A of IPC.**

a.The case of the prosecution is that the occurrence said to have taken place from 07.08.2012.The FIR states that the complaint was forwarded from the office of Superintendent of Police, Economic Offences Wing Chennai vide proceedings dated 04.08.2021 and directed further from the Office of the Additional Director General of Police, Economic Offences Wing of Tamil Nadu vide proceedings dated 15.02.2022 and upon receiving information on 17.02.2022, FIR is registered on 17.02.2022.

b.The case of the complainant as stated in the FIR is that she was the wife of the 1st accused; both of them were partners of two partnership firms, viz., Morvi Exports and Ram Textiles; these firms had borrowed various loans from Syndicate Bank (now Canara Bank) and several properties were given as security towards credit facilities; she is a guarantor for these loans; the loan accounts fell in default; they were classified as NPAs on 07.04.2010; during the subsistence of the mortgage, the 1staccused executed a settlement deed in her favour on 03.05.2010 in respect of some of the mortgaged properties; action under SARFAESI Act was initiated by the Bank; few properties were sold and sale proceeds were paid into the loan account; SA96/12 was contested before DRT Chennai and ordered in her favour on 01.04.2014; the loan accounts were settled in full; Bank by falsely stating that there was a reversal entry of Rs.4 crores had actually sanctioned new loan to Morvi Exports and had retained the properties belonging to the complainant and had thus cheated her. Bank is refusing to hand over the original property documents to the informant. She had impleaded the Bank officials in the rank of Branch Managers, Chief Managers, Divisional Managers, Deputy General Managers, Regional Managers as accused.

c. Facts regarding MORVI EXPORTS

LOAN DETAILS	Sanction Amount	Rs.1600.00 Lakhs
	Contractual Liability	Rs.1687.80 Lakhs
	Date of NPA	07/04/2010
SARFAESI DETAILS	Date of Demand Notice	15/10/2010
	Acknowledgement of DN	15/10/2010 (Demand Notice physically acknowledged by borrowers)
	Date of Possession Notice	27/08/2011
	Paper publication date of Possession notice	01/09/2011
	Date of Sale Notices	01.11.2011, 07.01.2012, 16.02.2012, 11.10.2012, 27.06.2015, 16.02.2018, 17.03.2022
	Dates of E-Auctions so far	05.12.2011, 25.01.2012, 19.03.2012, 29.10.2012, 12.08.2015, 22.03.2018 and 25.04.2022.

- M/s Morvi Exports, a partnership firm having partners Smt. Jai Kavitha and her husband Sri. Manickavasagam were enjoying PCL facility of Rs.16.00 Crores sanctioned on 11.09.2008 by our Karur Branch (e-syndicate) for which Smt. Jai Kavitha and M/s Ram Textiles stood as guarantors. Since there were overdue, the account was classified as NPA on 07.04.2010, pursuant to which SARFAESI proceedings were initiated.
- Subsequently Sri.Manickavasagam requested for OTS stating that M/s Power Creating Zone Limited was ready to purchase the securitiesand OTS was offered for Rs. 12.50 Crores. However, since the party could not pay the full amount, OTS was withdrawn and sale notice was issued on 11.10.2012.
- Aggrieved by the same, ***SA No. 96/2012*** was filed before DRT, Chennai by M/s Power Creating Zone Ltd, the purchaser company wherein as an **interim measure the court (on 26.10.2012) directed the company to** pay Rs. 4.00 crores in 2 instalments on or before 28.12.2012, and also directed the bank to proceed further with the sale, if the order is not complied with. Further time was extended and altogether Rs. 4.00 Crores was paid by the company by 22.02.2013

which was credited in the loan account and the account was closed.

- Later Smt. Jai Kavitha got impleaded in **SA.96/2012** and alleged that she was the owner of the securities by virtue of settlement deed dated 03.05.2010 and that she was not bound by the sale agreement entered into between Manickavasagam and Power Creating Zone Ltd. After hearing the parties to the proceedings the SA was dismissed by DRT on 01.10.2014 and the bank was directed to return Rs. 4.00 Crores paid by the purchaser.
- Accordingly Rs. 4.00 Crores was refunded. Since there was no provision in the software to debit the amount which was already adjusted to the loan account, a new account number was assigned to the loan account of Morvi Exports.
- **Writ Petition No.35198/2012** was also filed by Jai Kavitha before the Hon'ble High Court of Madras to direct the Bank to conduct public auction with respect to ¼th of the property, for appropriating it towards the interest and to give the balance amount to her. She claimed that the property was already settled in her favour. It was also pleaded that she was deprived of her right to title of the property due to fraud played by the Bank. However, the petition ***got dismissed on 04.06.2013. It was specifically observed by the HC that the petitioner did not submit any document to establish that the settlement deed was brought to the notice of the Bank. The court said "if actually the settlement deed has been executed for the purpose for which the same has been executed, nothing prevented the petitioner from bringing the fact to the notice of the Bank'.***
- Bank issued sale notice again which was challenged by Jai Kavitha by filing ***SA No.182/2015***, ***which is still pending before Coimbatore DRT.***
- The following Ias' were also filed:
- 1. **IA 1292/2015**was filed by Jai kavitha with a prayer to appoint advocate commissioner assisted by engineer /surveyor for conducting local inspection of properties mortgaged in order to (i). identify and demarcate the existing sufficient road to access item No.1 property through item No. 2 (ii) To demarcate item No. 1 & 2 properties into various saleable units with provisions of proper road access reserved commonly to each of the properties thus demarcated with clear and boundary description with side measurements making the respective properties thus demarcated clearly identifiable without ambiguity. (iii) To give the present market valuation of each of the properties thus demarcated taking into consideration the existence of building and other related influencing factors.
- From the prayers, it is very clear that the liability was subsisting and that it was admitted by the petitioner. IA 1292/15 was dismissed by DRT on 29.07.2015. The order was set aside by the Hon'ble High Court in **WP.(MD).No.20842/2015** vide order dated 21.06.2017, observing that the survey would aid in the recovery process since substantial money is payable to the Bank by Jai Kavitha.

➢2. **IA No.430/2018** in **SA 182/2015** was filed by Jaikavitha with a prayer to amend main appeal alleging that quantum of loan is disputed and that fraud is committed by the Bank by giving new loan of 4 crores, without her knowledge, on the security of the properties gifted to her. It was also dismissed by DRT on 04.10.2019.

➢3. **IA 652/2018 in SA 182/2015** was filed by Jaikavitha with a prayer to extend stay with respect to the further proceedings pursuant to the sale notice dated 18.02.2018. Her request was declined by order dated 18.10.2019 with an observation that there are no valid reasons for either extending the stay or making it absolute.

➢**IA No. 608/2019** filed by Jaikavitha alleging fraudulent opening of new loan in 2014 again was also disposed on 18.10.2019 along with the aforesaid IA.652/2019 with an observation that the conduct of the petitioner in filing petition after petition reveal that her sole object is to stall the proceedings of the SA at any cost.

➢**CRP (MD) 1897/2019 and CMP (MD) 9702/2019** was filed by Jaikavitha against the order in IA.430/2018 in SA 182/2015. The petition was disposed of by our Hon'ble High Court vide order dated 01.11.2019 with a direction to send the SA 182/2015 from Madurai DRT to Coimbatore DRT to be tried along with **OA 1277/2016 (now TA 975/2019).** It was also ordered that the bank should not take any coercive action against the cpetitioner till the matter is heard by Coimbatore DRT. The Court has specified that the interim protection granted would be available to the petitioner only till the subsequent posting date from the date of order. Thus it is clear that the interim protection granted is not prevailing now.

➢***OS No. 91/2016 was filed by Jai Kavitha before the Hon'ble Principal Sub Court, Karur*** claiming the following reliefs:

a) *For a declaration that the loan of M/s Morvi Exports is already discharged and that she is not liable to pay the loan amount.*

b) *For permanent injunction restraining the bank from initiating any proceedings against her and the plaint schedule properties.*

c) *For mandatory injunction directing the bank to handover the original title deeds.*

The Suit is still pending for disposal.

➢**CC No.6/2019** filed by Jaikavitha alleging deficiency in service of the Bank was partly allowed on 23.03.2020 with the following directions:-

1.To issue discharge receipt,

2.To register it in Karur West SRO,

3.To hand over all the original documents mentioned in para 32 (c), (d) and (e) of the complaint to the complainant,

4.To pay Rs. 1.00 lakh as compensation for mental agony and suffering and

5.To pay Rs 3000 as costs. Time for payment is 2 months.

➢Appeal filed by Bank **FA.26/2020** is pending before State Commission. Stay is already granted on 20.08.2020.

6. The grievance of the informant as stated in her complaint is that

the first accused is her Ex-husband and along with the other accused who are the previous branch managers, Regional Manager, General Manager, NPA management and legal department of erstwhile Syndicate Bank and now Canara Bank had conspired and defrauded her of valuable immovable properties worth more than Rs.35 crores by fraudulently giving loan of Rs.4 Crores to M/s. Morvi Exports by mortgaging her properties and by furnishing false particulars and suppressing true details to Court.

f. It is her grievance that M/s. Morvi Exports& Ram textiles are partnership firms, of which she and her ex-husband were partners and these firms had borrowed various credit facilities from the erstwhile Syndicate Bank [now Canara Bank] by creating an equitable mortgage of 6 properties in 2005 in the form of packing credit loans; later in 2007 Ram textiles was advanced Rs.6 crores and Morvi Exports was sanctioned a loan of Rs.16 crores on 11.09.2008; she retired from the partnership on 01.04.2009; the business operations of both these firms were stopped in October 2009; of the total outstanding Rs.23.96 crores, a sum of Rs.10.78 crores was repaid by selling a few properties; the first accused executed a registered settlement deed on 03.05.2010 in her favour in respect of properties belonging to him; from that day she is the exclusive owner of those properties, but as a guarantor for the loans borrowed by the two firms mentioned supra, those properties continued to remain in mortgage with the bank; both the loan accounts were classified as non-performing assets on 07.04.2010 followed by the initiation of proceedings under the SARFAESI Act by issuance of a demand notice on 15.10.2010; she sold away mortgaged properties on 16.11.2010 and deposited the money into the loan account and the entire outstanding of Ram Textiles was settled on 15.04. 2011; the outstanding loan amount of Morvi Export was Rs.12.57 crores as mentioned in the notice dated 27.08.2011 issued under Section 13(4) of SARFAESI Act; one of the mortgaged properties was sold on 29.03.2012 and a sum of Rs.1.85 crores was paid into the loan account; since the 1st accused started to harass the complainant and her children to give back the properties gifted by him she started to live separately since April 2012 in her mother's house; she had sent several notices dated 07.08.2012, 02.11.2012 and 06.12.2012 to the Bank mentioning that the mortgaged properties available with the bank exclusively belong to her.

g.In these circumstances in 2012 the bank officers colluded with her ex-husband and M/s. Power Creating Zone Private Limited and had attempted to grab her individual properties; SA.96 of 2012 was filed by Power Creating Zone Private Limited before DRT by falsely contending that the properties mortgaged with the bank solely belong to the 1st accused and the 11th accused had entered into a sale agreement dated 18.04.2012; she got herself impleaded and DRT-2 passed an order dated 01.04.2014 declaring that properties in mortgage with the bank exclusively belong to her and the 1st accused is having no right over the property and hence the accused know well that these properties belong to the complainant exclusively; Power Creating Zone Private Limited is a shell company and has been struck off by the Indian Government and is not in existence on date and hence it is not arrayed as an accused; despite her repeated requests without giving the account statement of Morvi Exports for a long time, lastly bank gave the account statement which revealed that outstanding of Morvi Export as on 27.03.2012 was Rs.13,85,53,594.92 and the entire Principal was paid on 31.12.2012 and the balance outstanding towards interest alone was Rs.2,49,38,274.89; as on 31.03.2013 24 PCL were completely repaid and in the remaining four PCL loans also principal was repaid and Rs.49,38,274.89 was outstanding; she is making reference to the loan accounts and that she is suspecting that the 3rd accused may have committed fraud in this regard as there is no clear explanation in the account statement given by the bank.

h.She would contend that the loan outstanding in Morvi Exports was fully paid as on 31.03.2013 and it became a standard asset and there was no outstanding in reference to the NPA classification on 07.04.2010; the properties mortgaged thus stand released from Security and hence the bank is bound to handover the original documents as well as physical possession to her; but by falsely stating that an outstanding of Rs.1.45 crores remains as on 08.04.2013 in SA.96/12 - DRT2 and WP35198/12 - High Court accused retained it.

i.She would contend that the bank had advanced a new loan of Rs.4 crores to Morvi Exports on 26.11.2014 and declared the same as NPA on 15.12.2014;the accused gave false details that it is not a new loan but only a reversal entry; by falsely contending that the new loan advanced in a new account is only the old loan, they had retained the property documents given in mortgage for the old loan; since the complainant had not executed any mortgage in respect of her properties for the new loan in the new loan account number, it will not bind her properties and the bank is bound to give back the original documents; the bank has also instituted OA.1277/16 before DRT by falsely stating her as one of the partners with an intention to grab her properties and in this regard she had filed Consumer Complaint 6/2019 before the District Consumer Forum, Karur which was also ordered in her favour on 23.03.2020.

j.On the basis of these averments the present criminal complaint is lodged with the sole intention to harass, humiliate and victimize the Bank officials and threaten, coerce and intimidate the bank to stall the further SARFAESI action against the secured assets and get back the original documents without discharging the mortgage debt.

3. It is seen from the First Information Report that there are specific allegation as against the petitioner, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

4.It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019 - Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.,*** wherein it is held as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the

Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

5. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence this Criminal Original Petition stands dismissed. However, the respondent police is directed to complete the investigation and file final report before the concerned Magistrate, within a period of twelve weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
   Economic Offences Wing,
   Karur Town and District

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

+1 CC to M/s.N. DILIPKUMAR, Advocate (SR-21796[F] dated 27/04/2022)

Crl.O.P.(MD)No.7776 of 2022
and
Crl.M.P(MD) No.5299 of 2022
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MGJ(19.05.2022) 9P 4C