



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)Nos.8018 & 10378 of 2021

and

Cr.M.P. (MD)Nos.4133, 4134, 5317 & 5318 of 2021

Crl.O.P. (MD)No.8018 of 2021:

1.Sathyanarayanan
2.Shiva

... Petitioners/
Accused Nos.1 & 2

Vs.

1.The Inspector of Police,
City Crime Branch,
Contonment,
Trichy-620 001.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Trichy-620 020.

... Respondents 1 & 2/
Respondents

3.S.Jegadish

... 3rd Respondent/
Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the private complaint in Cr.M.P.No.91 of 2021 pending before the Judicial Magistrate No.1, Tiruchirapalli, under Sections 120(b), 406, 420, 294(b) and 506(i) IPC and quash the same.

For Petitioners : Mr.S.I.Muthaiah

For Respondents : Mr.E.Antony Sahaya Probahar
Additional Public Prosecutor for R.1 & R.2

Mr.B.Rajesh Saravanan for R.3



Crl.O.P.(MD)No.10378 of 2021:

1.Sudhagar Selvaraj
2.Muthukumar

... Petitioners/
Accused Nos.4 & 3

Vs.

1.The Inspector of Police,
City Crime Branch,
Contonment,
Trichy-620 001.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Trichy-620 020.

... Respondents 1 & 2/
Respondents

3.S.Jegadish

... 3rd Respondent/
Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the private complaint in Cr.M.P.No.91 of 2021 pending before the Judicial Magistrate No.1, Tiruchirapalli, under Sections 120(b), 406, 420, 294(b) and 506(i) IPC and quash the same.

For Petitioners : Mr.R.Anand
for Mr.K.C.Maniyarasu

For Respondents : Mr.E.Antony Sahaya Probahar
Additional Public Prosecutor for R.1 & R.2

Mr.B.Rajesh Saravanan for R.3

COMMON ORDER

In both these Criminal Original Petitions, the private complaint filed by the third respondent is sought to be quashed. The case as set out in the complaint, is that the complainant borrowed a sum of Rs,3,30,00,000/- (Rupees Three Crores and Thirty Lakhs only) from the Thillai Nagar Branch of Lakshmi Vilas Bank Limited and offered collateral security. He could repay only a sum of Rs.1,00,000,00/- (Rupees One Crore only) . He could not pay the balance amount of Rs.2,30,00,000/- (Rupees Two Crores and Thirty Lakhs only). Therefore, the creditor Bank initiated proceedings under the SARFAESI Act. The collateral security offered by the complainant was sold for a sum of Rs.1,89,00,000/- (Rupees One Crore and Eighty Nine Lakhs only) on 25.03.2019. The fourth accused



Thiru.Sudakar Selvaraj had purchased the property in the public auction held by the Creditor Bank. The specific allegation of the complainant is that there has been a collusion between the Bank officials on the one hand and the auction purchaser on the other. As a result, the property that should have fetched Rs.5 crores was sold for lesser amount. This was done by the Bank officials for illegal gratification. With these allegations, the third respondent has filed an impugned private complaint. In the private complaint, he has also impleaded the jurisdictional Police as respondents. Probably, the complainant expected that the jurisdictional Magistrate will issue direction under Section 156(3) Cr.P.C. Instead, cognizance of the complaint was taken and summons were issued to the fourth accused. A.1 and A.2 are the bank officials, while A.4 is the auction purchaser, A.3 is the brother-in-law of the auction purchaser.

2. The learned counsel appearing for the accused drew my attention to the decision of the Hon'ble Supreme Court reported in **AIR 2020 SCC 400 (K.Virupaksha vs The State of Karnataka)**. In the said case also, the borrower aggrieved by the sale of the secured interest under SARFAESI proceedings filed a criminal complaint. The Hon'ble Supreme Court noted that the validity of the SARFAESI proceedings will have to be tested only in the manner known to law. If the criminal complaint is allowed to be proceeded with the decision of the authorities under the Act as well as the High Court would be virtually reviewed by the Police or jurisdictional Criminal Court. The Hon'ble Supreme Court felt that such a situation would be neither desirable nor permissible and that the banking system cannot be allowed to be held to ransom by such intimidation. It was further observed that a case of such a nature, the extraordinary power is necessarily to be invoked and exercised.

3. Respectfully applying the aforesaid ratio, I hold that the impugned proceedings constitute a clear abuse of legal process and it stands quashed. These Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.Judicial Magistrate No.1,
Tiruchirapalli.

2.The Inspector of Police,
City Crime Branch,
Contonment,
Trichy-620 001.

3.The Commissioner of Police,
Office of the Commissioner of Police,
Trichy-620 020.

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

+5 CC to M/s.S.I.MUTHIAH, Advocate (SR-1794[F] dated 19/01/2022)

+5 CC to M/s.K.C.Maniyarasu, Advocate (SR-1793[F] dated 19/01/2022)

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