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Crl.O.P.No.18990 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM :

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

**Crl.O.P.No.18990 of 2022
and Crl.M.P.No.12578 of 2022**

1. M/s.Ranjith Electricals
Rep. by its Partner,
K.Ravi

2. K.Ravi .. Petitioners

Versus

1. Reliance Assets Reconstruction Co. Ltd.
No: 5, Reliance House,
Haddows Road, 4th Floor,
Nungambakkam, Chennai - 600 006.

2. T.R.Pandian
3. T.R.Mahadevan
3. T.R.Ellapan .. Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to Crl.M.P.No.5693 of 2020 on the file of the learned C.M.M, Egmore, Chennai and to set aside the order of dismissal passed in Crl.M.P.No.3096 of 2022 in Crl.M.P.No.5693 of 2020, dated 15.06.2022 and quash the order passed in Crl.M.P.No.5693



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of 2022, dated 22.12.2021 as non-maintainable, unenforceable, non-est and abuse of process of law.

For Petitioners : Mr.V.Saravana Rengan

For Respondents : Mr.M.S.Krishnan, Senior Counsel
for M/s.Abitha Banu,
for R1

ORDER

This Criminal Original Petition has been filed challenging the order passed by the learned Chief Metropolitan Magistrate, Egmore in Crl.M.P.No.3096 of 2022 refusing to stay the order passed in Crl.M.P.No.5693 of 2020 under Section 14 of the SARFAESI Act, 2002 (hereinafter referred to as 'SARFAESI Act').

2. The case of the petitioners is that the respondents 2 to 4 had availed loan from the first respondent and they failed to repay back the same. The second petitioner stood as a guarantor to the said loan. The loan was categorised as NPA and the proceedings were initiated under the SARFAESI Act.

3. The first respondent filed an application in Crl.M.P.No.5693 of 2020 under Section 14 of the SARFAESI Act to take possession of the



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secured assets before the learned Chief Metropolitan Magistrate, Egmore, Chennai. This application came to be allowed by an order, dated 22.12.2021.

4. The second petitioner filed a memo before the learned Chief Metropolitan Magistrate, Egmore, which was taken on file in Crl.M.P.No.3096 of 2022 to keep the order passed under Section 14 of the SARFAESI Act in abeyance. The said memo came to be dismissed by the Court below by an order, dated 15.06.2022.

5. Aggrieved by the same, the present petition has been filed before this Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.,').

6. The learned Counsel for the petitioner submitted that the National Company Law Tribunal, Mumbai (hereinafter referred to as 'NCLT') has already passed an order under the Insolvency and Bankruptcy Code, 2016, dated 06.12.2021 and the entire management of Reliance Capital Limited is now vested with an administrator. It was further contended that the order



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that was passed by the NCLT will also bind the business clusters and one such cluster is the Reliance Assets Reconstruction Company Limited which is the first respondent in this petition. In view of the same, the learned Counsel submitted that the application filed by the first respondent before the learned Chief Metropolitan Magistrate at Egmore is unsustainable and if at all any such petition is filed, it can be done only by the administrator with whom the entire administration of Reliance Capital Limited and its clusters stands vested.

7. Per *contra*, the learned Senior Counsel appearing on behalf of the first respondent questioned the very maintainability of this petition on the ground that there is an effective alternative remedy available to the petitioners under Section 17 of the SARFAESI Act. It was further contended that the first respondent is a subsidiary company of Reliance Capital Limited and that it is a separate entity in the eye of law and the concept of business cluster, at the best can only extend up to the share that is held by the Reliance Capital Limited in the first respondent Company and no further. The learned Senior Counsel further submitted that the order that was passed by the learned Chief Metropolitan Magistrate, Egmore under



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Section 14 of the SARFAESI Act has become final and the said order has not been put to challenge. What has been put to challenge in this Criminal Original Petition is the subsequent order passed by the learned Chief Metropolitan Magistrate dismissing the memo filed by the petitioners seeking to keep the order passed under Section 14 of the SARFAESI Act in abeyance. The learned Senior Counsel further contended that even as per the scheme that is provided under the Insolvency and Bankruptcy Code, 2016, a subsidiary Company is always treated to have an independent identity and just because the Reliance Capital Limited is now vested with the administrator, that does not mean that all the subsidiary Companies will also come within the administrative control of the administrator. The learned Senior Counsel also placed reliance upon certain judgments of the Hon'ble Apex Court to contend that the present petition filed before this Court is not maintainable.

8. This Court has carefully considered the submissions made on either side and materials available on record.



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9. The present petition has been filed under Section 482 of Cr.P.C. This petition has been filed against the order passed by the learned Chief Metropolitan Magistrate, Egmore dismissing the memo / application that was filed by the second petitioner to keep the order passed under Section 14 of the SARFAESI Act in abeyance. Admittedly, the order that was passed under Section 14 of the SARFAESI Act has not been put to challenge and that order passed in Crl.M.P.No.5693 of 2020, dated 22.12.2021 has become final.

10. The first issue to be considered by this Court is regarding the maintainability of this petition filed under Section 482 of Cr.P.C. The power under Section 482 of Cr.P.C., is a recognition of the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the code. The subsequent clauses namely to prevent abuse of process of any Court or to secure the ends of justice, must be necessarily read *ejusdem generis* to the main requirement which is to give effect to any order passed under the Code of Criminal Procedure. Hence the matter that is placed before the Court under Section 482 of Cr.P.C., must be relatable to the Code of Criminal Procedure and the consequences falling out of it.



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11. In the case in hand, the subject matter of the challenge before this Court is not even the order passed by the learned Chief Metropolitan Magistrate, Egmore under Section 14 of the SARFAESI Act. It is only the subsequent order passed by the Court below refusing to keep the order passed under Section 14 of the Act in abeyance, that has been put to challenge in this Criminal Original Petition. Even assuming that the order passed under Section 14 of the SARFAESI Act is put to challenge, the same will not be maintainable under Section 482 of Cr.P.C. The order passed under the SARFAESI Act will not fall within the requirement of Section 482 of Cr.P.C., and hence a petition challenging the said order cannot be maintained.

12. There is yet another reason as to why this Court cannot entertain this Criminal Original petition and that is, the availability of the alternative remedy to the petitioners under Section 17 of the SARFAESI Act. The taking of possession of the property by filing an application under Section 14 of the SARFAESI Act is only a continuation of the proceedings under Section 13(4) of the SARFAESI Act. The very enactment provides for an



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alternative remedy under Section 17 of the SARFAESI Act for an aggrieved person. In view of the same, the aggrieved person cannot be permitted to file a petition under Section 482 of Cr.P.C., before this Court and certainly such a petition can never be entertained by this Court. Just because the order was passed by the learned Chief Metropolitan Magistrate, Egmore, that by itself will not subject such an order for challenge under Section 482 of Cr.P.C.

13. The learned Senior Counsel appearing on behalf of the petitioners brought to the notice of this Court the latest order passed by the Hon'ble Apex Court in Appeal (C) No(s).22093-22094 of 2022, dated 06.07.2023. That was a case where this Court had entertained a petition under Section 482 of Cr.P.C., wherein, an order passed under Section 14 of the SARFAESI Act was put to challenge. The Hon'ble Apex Court has categorically held that there is a remedy provided under SARFAESI Act and without availing that remedy, a petition under Section 482 of Cr.P.C., can never be maintained.



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14. The Hon'ble Apex Court in *United Bank of India Vs. Satyawati Tondon and Ors.*¹ and *Kanaiyalal Lalchand Sachdev and Ors. Vs. State of Maharashtra and Ors.*², has deprecated the practice of entertaining any petition before the High Court as against the proceedings initiated under SARFAESI Act in view of the alternative remedy that is available under the SARFAESI Act. This is yet another reason as to why the petitioner cannot sustain the present petition before this Court.

15. Since this Court has held that the very petition that has been filed under Section 482 of Cr.P.C., is not maintainable, it is not necessary for this Court to go into the other issues that have been raised on merits and regarding the administrative control of the administrator on the clusters belonging to the Reliance Capital Limited. It is not necessary to render any findings on these issues.

16. In the result, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

¹ (2010) 8 SCC 110

² (2011) 2 SCC 782



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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The Chief Metropolitan Magistrate,
Egmore, Chennai.



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N.ANAND VENKATESH, J.

grs

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