



Crl.O.P(MD) No.4318 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P(MD) No.4318 of 2019
and Crl.MP.(MD) No.2627 of 2019

Krishnanpillai

... Petitioner

vs.

1. The State rep by

The Inspector of Police,
The District Crime Branch (DCB),
Tirunelveli, Tirunelveli District.
(Crime No.18 of 2018)

... Respondent /Complainant

2. Gnanathiraviyam

.. Respondent / Defacto-Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the First Information Report in Crime No.18 of 2018 on the file of the Inspector of Police, the District Crime Branch (DCB), Tirunelveli, Tirunelveli District and subsequently quash the same as illegal, erroneous and devoid of merits in respect of the petitioner.

For Petitioner : Mrs.V.Anuradha for
M/s.S.Palani Velayutham
For R1 : Mr.M.Babu Muthu Meeran



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Additional Public Prosecutor
: Mr.K.Thilageswaran for
Mr.G.Balamanigandan

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ORDER

This Criminal Original Petition has been filed challenging the FIR registered in Crime No.18 of 2018 pending investigation before the first respondent.

2. The second respondent has given a complaint before the first respondent to the effect that the petitioner is the Managing Director of M/s.Cape Energy Private Limited, which company stood as a guarantor for the loan that was taken by a company, named M/s.Garuda Vaayu Sakthi Limited from the Bank of Maharashtra. The properties belonging to the company in which the petitioner is the Managing Director, were given as collateral security to the bank.

3. The further case of the second respondent is that the Principle borrower committed default in the repayment of the loan and hence was treated as an “NPA” and proceedings were initiated under the SARFAESI Act. The security that was given by the petitioner, was brought for auction sale and the second respondent participated in the said auction and he was declared as the highest



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bidder. After payment of the entire bid amount of Rs.7,46,00,000/-, the sale certificate was issued in favour of the second respondent on 28.12.2017 and ultimately, the sale deed was registered in favour of the second respondent on 18.01.2018.

4. The grievance of the second respondent is that the petitioner had fabricated a document on 03.01.2017 and sold away the pathway right and subsequently created lease deeds and thereby prevented the second respondent from getting possession and enjoyment of the property. Based on the complaint given by the second respondent, the first respondent registered an FIR as against five accused persons for the offences under sections 120-B, 406, 465, 468, 471 and 420 IPC. The petitioner is arrayed as A1.

5. Heard, the learned counsel appearing for the petitioner and learned counsel appearing for the respondents.

6. When the matter came up hearing on 22.03.2019, this Court passed the following order:-

"1. The petitioner herein is arrayed as A1 in Crime No.18 of 2018 and faces investigation for the offence under Sections 120(B), 406, 465, 468, 471 and 420 IPC.



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2. *The learned counsel for the petitioner submitted that the petitioner was a former Director of certain M/s Cape energy Private Limited, that the company stood as a guarantor for securing loans advanced by the Bank of Maharastra to the third party, that as the debt was not paid by the principal debtor, the Bank brought the property to auction under the provisions of SARFAESI Act, that the defacto complainant had purchased the property in the said auction. According to the defacto complainant, he was also given a sale certificate dated 18.01.2018.*

3. *The allegation in the present complaint is that even knowing fully well the proceedings, before the auction the petitioner in his capacity as Director of the company had created a sale deed 03.01.2017 as regards the portion of the property covered in the sale deed dated 18.01.2018.*

4. *The learned counsel for the petitioner submitted that the petitioner does not have any locus standi to question any transaction that had taken place few months prior to the actual auction sale and this apart even on the merit of the allegation made in the FIR, the petitioner had not executed any sale deed but created a lease document in favour of a stranger, and now that the said document was registered and in view of the developments even the lessee does not want to take the property and with the knowledge of the petitioner, the lessee has addressed the sub Registrar even to cancel the lease deed.*

5. *Prima facie nothing is likely to survive in this case. Notice to the second respondent returnable by 23.04.2019. Private notice is also permitted. There shall be an order of interim stay."*

7. The above order succinctly captures the issue that is involved in this case. If the execution of lease deed by the petitioner is the only allegation that has been put against the petitioner, it is not known as to how the offence alleged against the petitioner is made out.



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8. The second respondent ought to have worked out his remedy before the competent Court if he had any difficulty in enjoying the property that was purchased by him in the auction sale and the criminal complaint that has been lodged by the second respondent will not yield any result, since the issue involves predominantly a civil dispute, which cannot be resolved by the Police. In fact, the continuation of the criminal proceedings by the first respondent will only result in abuse of process of law, which requires the interference of the Court in exercise of jurisdiction under section 482 of Cr.P.C. The second respondent has to necessarily work out his remedy only before the competent Court and seek for the necessary relief.

9. In the result, FIR in Crime No.18 of 2018 on the file of the first respondent is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is also closed.

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Index: Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
mpa



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To

1. The Inspector of Police,
The District Crime Branch (DCB),
Tirunelveli, Tirunelveli District.
2. The Public Prosecutor
High Court of Madras.



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N. ANAND VENKATESH, J.

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