



Crl.O.P.(MD).No.16617 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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R.Saravanan

... Petitioner

Vs.

1.The Commissioner of Police,
Madurai City, Madurai.

2.The Inspector of Police,
City Crime Branch,
Madurai City, Madurai.

3.Benitkaran

... Respondents

PRAYER : Criminal Original Petition has been filed under Section 482 of Cr.P.C.,to call for the records and set aside the order dated 21.04.2021 in Crl.M.P.No.1165 of 2021 passed by the learned Judicial Magistrate No-I, Madurai and consequently direct the learned Judicial Magistrate No-I, Madurai and further direct the second respondent to register the First Information Report based on the petitioner's complaint dated 09.01.2020.



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For Petitioner : Mr.S.Venkatasubramaniyan
For Respondents : Mr.M.Muthumanikkam
Government Advocate (Crl.Side)
for R1 & R2

ORDER

This Criminal Original Petition has been filed as against the order dated 21.04.2021 in Crl.M.P.No.1165 of 2021 passed by the learned Judicial Magistrate No-I, Madurai.

2.The petitioner herein is the Chief Manager of the TamilnaduMerchantile Bank, Simmakal Branch, Madurai. The third respondent entered hypothecation with the petitioner's bank and obtained loan, by making hypothecation deed dated 12.12.2016. In the hypothecation deed there is a clause II, which is as follows:

2.The Borrower shall not without the pervious consent in writing of the Bank be at liberty to sell or part with the hypothecated goods or any of them. If upon such consent the hypothecated goods or any of them are sold or parted with the Borrower, full value thereof shall be paid into the said accounts or goods of nature or description similar



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to that of the schedule mentioned goods or any of approved by the Bank and of atleast equal value shall be substituted for the goods sold or parted with. The Borrower hereby undertakes to maintain sufficient margin stipulated in favour of the Bank between the balance due in the account and the market value of the hypothecated goods, either by cash payment or by substitution or addition of other goods as and in the manner aforesaid. The borrower further undertakes to make and furnish to the Bank statements and reports of the stock and market value of the hypothecated goods, whenever required to do so by the Bank.

3. The third respondent without making payment and also without any authority, had stolen the machineries and hence, the petitioner made a complaint to the jurisdictional police namely the second respondent. They did not take any action and hence, he made further complaint to the first respondent. In spite of that there no action was taken and hence, he filed a petition in Cr.M.P.No.1165 of 2021 under Section 156(3) of Cr.P.C., before the learned Judicial Magistrate No-I, Madurai. After considering all the



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evidence and materials, the learned Judicial Magistrate, dismissed the petition stating that this is a commercial transaction and hence there is no element of criminality. Therefore, the petitioner filed this Criminal Original Petition challenging the same.

4. The learned counsel for the petitioner submitted that the third respondent, obtained loan, after executing hypothecation agreement deed dated 12.12.2016. As per the agreement, he is bound to keep the properties without causing any damage or mischief to the property, which belonged to the Bank, by way of hypthecation. In the said circumstances, without any knowledge of the banking authorities, he is said to have stolen the goods and hence he committed the offence punishable under Section 406, 420, 294(b) and 506(ii) of IPC.

5. This Court has considered submission of the learned counsel appearing for the petitioner as well as the leanred Government Advocate(Crl.Side) and perused the materials available on record.



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6. When the complaint makes out a cognizable offence, it is the duty of the jurisdictional police officer namely the second respondent to register the case and investigate the matter. He did not act as per Section 154 of Cr.P.C. Therefore, the petitioner sent a representation to the first respondent as per the procedure. The first respondent also did not taken any action. Hence, he filed the petition before the learned Judicial Magistrate. The Learned Judicial Magistrate No.1, Madurai, also dismissed the same by passing the impugned order holding that no offence is made out.

7. On perusal of the following material portion of the complaint this Court feels that there are material averments to constitute the offence under Sections 379, 378, 406, 420 of IPC.

In the year 2019 the said Borrower defaulted in payment and the said loan became NPA on 30.04.2019. Subsequently our officers made efforts to collect the said loan and the said person promised to settle by December 2019. On 15.11.2019 I went to the said persons five outlets/address and found that the said Generators were missing and disposed from the five outlets of the said J & J Traders. I ask the said Benitkaran about the disposal of the Generators, he was giving vague answers and asked me to come on 2nd Week of



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January. On 09.01.2020 at about 11.30 A.M., as per the request of the said Benitkaran I went to the site with my officers. He threatened me with dire consequences and gave life threats and shouted me to get out of the place.

The machineries were entrusted with the custody of the 3rd respondent. As per the terms of the Hypothecation, he must use the machineries properly. That being the situation, some of the machineries were found missing and some of the machineries were sold away. Therefore, this Court *prima facie* is satisfied that allegation made in the complaint clearly constitute the offence under Section 406, 379 and 420 I.P.C.Hence, the order passed by the learned Judicial Magistrate No-I, Madurai in Crl.M.P.No.1165 of 2021 dated 21.04.2021 is set aside. The second respondent is directed to register the case, on the complaint made on 09.01.2020 and proceed with the investigation in accordance with law.

8. In view of the above, this Criminal Original Petition stands allowed.

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NCC :Yes/No
Index :Yes/No
Internet :Yes/No
sbm



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To
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- 1.The learned Judicial Magistrate No-I,
Madurai.
- 2.The Commissioner of Police,
Madurai City, Madurai.
- 3.The Inspector of Police,
City Crime Branch,
Madurai City, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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