



W.P(MD)No.21244 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

W.P(MD)No.21244 of 2022

K.M.C.Stephenson

... Petitioner

Vs.

- 1.The Superintendent of Police South Zone,
CBI Anti-Corruption Branch,
Shastri Bhawan, Haddows Road,
Chennai – 600 006.
- 2.The Additional Superintendent of Police,
Special Investigation Cell,
i/c Headquarters,
Vigilance and Anti-Corruption,
Chennai – 600 016.
- 3.The Superintendent of Police,
Nagercoil,
Kanyakumari District.
- 4.The General Manager,
State Bank of India (SBI),
No.16, Circle Top House, Aparna Complex,
7th Floor, College Road,
Chennai – 600 006.
- 5.The Branch Manager,
State Bank of Travancore (SBT),
State Bank of India (SBI),
Muttakkad Branch,
Kanyakumari District.



W.P(MD)No.21244 of 2022

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6.The Sub Registrar,
O/o the Sub Registrar,
Thuckalay – 629 175,
Kanyakumari District.

7.Y.Rethina Balan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the first respondent to complete the investigation on the fraudulent alienation of the petitioner's property in R.S.No.398/12B in an extent of 16.5 cents at Kumarapuram Village (Kothanalloor) within Kalkulam Taluk as contained in the complaint dated 01.01.2019 within the time stipulated by this Court.

For Petitioner : Mr.S.Louis

For R1 : Mr.M.Karunanithi,
Special Public Prosecutor

For R2, R3 & R6 : Mr.T.Senthil Kumar
Additional Public Prosecutor

For R4 & R5 : Mr.C.Karthik

ORDER

This Writ Petition has been filed to direct the first respondent to complete the investigation on the fraudulent alienation of the petitioner's property in R.S.No.398/12B to an extent of 16.5 cents at Kumarapuram



W.P(MD)No.21244 of 2022

Village (Kothanalloor) within Kalkulam Taluk as contained in the complaint dated 01.01.2019 within the time stipulated by this Court.

2. The petitioner obtained loan from the State Bank of Travancore. He defaulted in paying the loan properly. So, the Bank Authorities initiated the proceedings against the petitioner under SARFAESI Act, 2002 and brought the mortgaged property to the public auction. In the public auction, the seventh respondent has participated and he was also declared as a successful bidder. After depositing the sale consideration, the sale certificate was issued in favour of him and on that basis, he got registration. At that stage, the petitioner lodged a complaint before the first respondent seeking direction to the second respondent to take necessary action against the Bank Officials and the Auction Purchasers. The second respondent namely, the Vigilance and Anti-Corruption Department, Tamil Nadu, has not taken any action on the complaint lodged by the petitioner and hence, he filed this Writ Petition seeking writ of mandamus to issue a direction to the official respondents to take necessary action against the Bank Officials and the Auction Purchaser.



W.P(MD)No.21244 of 2022

3.The learned counsel for the petitioner submitted that the auction purchaser and the bank officials colluded together and sold the property worth about Rs.1,50,00,000/- to the lessor value of Rs.23,01,010/- and hence, they committed the criminal offence.

4.The learned counsel for the respondents 4 and 5 submitted that since the petitioner committed default in making the payment of loan, his account has been declared as 'Non Performing Asset' and suitable SARFAESI proceedings has been initiated and the mortgaged property was legally brought to the public auction. Further, the petitioner has filed a proper petition before the Debt Recovery Tribunal and the same was also dismissed. In the said situation, the petitioner ought to have filed petition to set aside the sale in the manner known to law. Without taking steps to set aside the sale as per law, filing this petition to initiate criminal proceedings is amount to the clear abuse of process of law and hence, he seeks for dismissal of this petition.

5.The learned Additional Public Prosecutor appearing for the respondents 2, 3 & 6 on instructions, reiterated the above submission made by the learned counsel for the respondents 4 and 5 and also



W.P(MD)No.21244 of 2022

submitted that the respondent police conducted enquiry on the allegation made by the petitioner and found that the bank officials have acted as per law. If any grievance, the petitioner has to approach the proper forum to set aside the said alleged sale. Hence, prayed for dismissal of this petition.

6.This Court considering the rival submission of the parties and perused the records.

7.The grievance of the petitioner is that his mortgaged property was sold for lessor value and hence, huge loss has been occurred to him. It is settled principle that the bank officials entitled to bring the mortgaged property for auction as per the SARFAESI Act. The bank officials correctly brought the mortgaged property for auction. The private respondent rightly participated in the auction and obtained sale certificate after paying entire sale amount.

8. It is relevant to note that the Hon'ble Supreme Court judgment in **Priyanka Srivastava Vs. State of U.P** reported in **2015 6 SCC 287** specifically held that the bank officials discharged their duty as per law



and hence, unnecessary prosecution should not be initiated against them.

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“19. We have narrated the facts in detail as the present case, as we find, exemplifies in enormous magnitude to take recourse to Section 156(3) CrPC, as if, it is a routine procedure. That apart, the proceedings initiated and the action taken by the authorities under the SARFAESI Act are assailable under the said Act before the higher forum and if, a borrower is allowed to take recourse to criminal law in the manner it has been taken, it needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. It is clearly noticeable that the statutory remedies have cleverly been bypassed and prosecution route has been undertaken for instilling fear amongst the individual authorities compelling them to concede to the request for one-time settlement which the financial institution possibly might not have acceded.

27..... when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) CrPC and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.



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W.P(MD)No.21244 of 2022

28.*When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum.*

33. *At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as follows:*

“32. Protection of action taken in good faith.—*No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act.”*

In the present case, we are obligated to say that the learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) CrPC. It is because Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needless to emphasise, the legislative mandate has to be kept in mind.”

9. Therefore, the petitioner has to file proper petition to set aside the sale. Without doing that, filing of this petition is amount to clear abuse of process of law.



W.P(MD)No.21244 of 2022

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10. In view of the above, this Court finds no merit in this petition.

Accordingly, this Writ Petition is dismissed. No costs.

18.08.2023

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
dss

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Kanyakumari District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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W.P(MD)No.21244 of 2022

K.K. RAMAKRISHNAN. J.,

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