



WEB COPY



CrI.O.P.No.22227 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

CrI.O.P.No.22227 of 2024

Nallathambi

... Petitioner

Vs.

1.M/s.Indian Bank
Rep.by its Authorized Officer,
Mr.Gopi Thirumuthulu (Chief Manager),
Thittagudi Branch,
Cuddalore-606 106.

2.Aashiq Ahamed

3.The Inspector of Police,
District Crime Branch,
Cuddalore District.

... Respondents

Prayer: Criminal Original Petition is filed under Section 528 BNSS, pleaded to direct the Chief Judicial Magistrate, Cuddalore District, Cuddalore to accept the petition filed by the petitioner under Section 340 r/w 195 Cr.P.C., in CrI.M.P.No.un-numbered of 2024, in CrI.M.P.No.10840 of 2022.

For Petitioner : Mr.M.Velmurugan

For R3 : Mr.S.Udayakumar
Government Advocate (CrI.Side)

ORDER



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The petitioner herein claiming the owner of the property and being aggrieved by the SARFAESI proceedings initiated by the bank in respect of the said property, has filed an application under Section 340 Cr.P.C., to initiate proceedings under Section 195 Cr.P.C., for offence under Section 195 Cr.P.C., as against the borrower, the auction purchaser and the bank. The Court below has rightly returned the papers saying how such application is maintainable, since the petitioner herein had not participated in the SARFAESI proceedings neither filed a petition to intervene and place before the DRT proceedings, get the order to set aside the execution, preferring application under Section 340 Cr.P.C., not maintainable, hence returned.

2. The learned counsel appearing for the petitioner submits that the 1st respondent bank has committed contempt of lawful authority. The property been encumbers and executed when he was in abroad. Based on the general power of attorney executed by him in favour of his father on 29.04.2013, his father has availed agriculture loan for Rs.3,00,000/- depositing the title deed and executing the memorandum of title deed. Though the major portion of loan amount paid by the petitioner for the loan availed by his father who died on 11.09.2020, without impleading



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him as legal heir of Shanmugam, bank has proceeded by initiating action under SAFAESI Act and obtained order in the name of the deceased father. Therefore, the bank has committed contempt of lawful authority.

3. The learned counsel appearing for the petitioner submits that the petitioner has taken steps to implead himself in the DRT proceedings and the matter is pending.

4. If it is so, it is for the DRT to decide about the fact regarding death of the borrower and the execution of the decree after the demise of the borrower. Filing application under Section 340 Cr.P.C., is pre mature and not maintainable. Hence the action of the Court below returning the application is upheld. In view of the above, this Criminal Original Petition stands dismissed.

11.09.2024

Index : Yes/No

Neutral Citation : Yes/No

rpl

Dr.G.JAYACHANDRAN,J.

rpl



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To

WEB COPY

1.The Chief Judicial Magistrate, Cuddalore District, Cuddalore.

2.The Inspector of Police,
District Crime Branch,
Cuddalore District.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

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