



CRL OP(MD) No.8178 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 22.02.2024

CORAM

The Hon`ble Mr.Justice M. DHANDAPANI

**CRL OP(MD) No.8178 of 2022 and
CrI.M.P.(MD) No.5524 of 2022**

1. Anbuselvan

2. Ravi

... Petitioners

Vs

1. The Superintendent of Police,
Office of the Superintendent of Police,
Dindigul District.

2. The Inspector of Police,
Batlagundu Police Station,
Dindigul District.

3. M. Arulnayagam

... Respondents

PRAYER :- Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records pertaining to the impugned notice dated 09.11.2021 issued by the 2nd respondent and quash the same.

For Petitioners : M/s.A. Joseph Jerry

For Respondents : M/s. S. Manikandan for R1 & R2
Government Advocate (Crl.side)
Mr.S.Sarvagan Prabhu for R3



CRL OP(MD) No.8178 of 2022

WEB COPY

ORDER

This Criminal Original Petition has been filed to quash the notice issued by the 2nd respondent dated 09.11.2021.

2.The case of the petitioners is that the petitioners are the Managing Director and Director respectively of a Hotel, which was established in the year 1994 and the same was registered under the Companies Act. The said hotel was constructed by availing loan from the Tamil Nadu Industrial Investment Corporation (TIIC) and from City Union Bank. For the default committed by the petitioners, due to loss in their business, proceedings were initiated by TIIC and the bank under SARFAESI Act and hence, these petitioners have requested for one time settlement and accordingly settled some part of the dues. However, since they could not meet out the entire loan proceeds, the third respondent has agreed to take over the hotel for valid consideration and agreed to pay the dues to TIIC and Bank and a Memorandum of Understanding was also effected between the petitioners and the third respondent. However, he has failed to repay back the dues and hence, the petitioners have themselves informed TIIC and the bank that they will pay the dues,

2/8



CRL OP(MD) No.8178 of 2022

however, auction notice was issued and pursuant to the stay granted by this Court in the writ petition filed by the petitioners, the auction was stayed. While so, the hotel business had come to a standstill and the third respondent, claiming himself to be the owner of the hotel, has made a complaints on 24.09.2021 and 28.09.2021 before the 2nd respondent stating that the petitioners have damaged the things that are kept inside the hotel and the petitioners have threatened and abused him.

2.1. The petitioners have also given a counter complaint against the third respondent. While so, on the petition filed by the third respondent before this Court for a direction to give police protection, this Court disposed of the petition with a direction to consider the representation of the third respondent. Pursuant to the said direction, the respondent police issued summons to the petitioners. Accordingly, the petitioners appeared for the same with necessary documents. However, the 2nd respondent neither received nor perused the documents. Subsequently, the impugned notice came to be issued as if based on the available documents submitted by the third respondent, it is culled out that the third respondent is in possession and enjoyment of the property



CRL OP(MD) No.8178 of 2022

in question and summons were issued to the petitioners as if the petitioners have not at all cooperated for the enquiry nor submitted any documents, challenging the same, the petitioners are before this Court.

3. The learned counsel for the petitioners would submit that with regard to the non payment of dues to TIIC and City Union Bank, pursuant to the one time settlement offered by the authorities, the petitioners have themselves settled part of the loan amount and subsequently as per the Memorandum of Understanding, since the third respondent has gone back in his words in not settling the dues of the property to the TIIC and the Bank, the petitioners have approached the Bank and TIIC and gave assurance to settle the amount and accordingly, they have settled part of the amount. However, even after initiation of proceedings by the Debt Recovery Tribunal, the third respondent has approached this Court by filing a petition for police protection and without hearing the petitioners, an order came to be passed and based on the said directions, the issuance of summons to the petitioners is bad in law.



CRL OP(MD) No.8178 of 2022

4. The learned counsel would further submit that the petitioners have initiated proceedings under Section 212(1) of the Companies Act. While so, when the DRT proceedings and the complaint before the Companies Act were initiated, without hearing the petitioners and without perusing the documents, the issuance of summons to the petitioners is liable to be quashed and hence, prays for interference.

5. Per contra, the learned Government Advocate for the respondents 1 and 2 and the learned counsel for the third respondent would submit that based on the directions issued by this Court, in order to give police protection to the third respondent, the 2nd respondent had issued notice to the petitioner on 09.11.2021, which is not stated to be against law and issued with bereft of particulars. He would further submit that since there are prima facie case is made out against the petitioners on perusal of the material particulars, the said notice came to be issued and prays for dismissal.

6. This Court gave its anxious consideration to the rival submissions and perused the materials available on record.



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7. It is the specific case of the petitioners that the said hotel belongs to them, which was constructed by availing loan from TIIC and City Union Bank. Due to default, one time settlement was offered, which was also settled. However, since the third respondent has agreed to take over the property for a valuable consideration, a memorandum of understanding was entered into and since the third respondent has gone back in his words, the petitioners have repaid the loan amount. When the authorities have initiated proceedings and the petitioners have rightly gone before the tribunal, instead of awaiting the orders of the tribunal, initiating criminal proceedings by the third respondent is bad in law.

8. A perusal of the order passed by this Court for police protection, this Court has not at all gone into the merits of the case and no discussion whatsoever is made with regard to the title of the property, instead, this Court issued a direction to the respondents to consider the representation of the third respondent. However, instead of considering the representation in one way or the other, without hearing the petitioners, the respondent police have passed the impugned non speaking order,



CRL OP(MD) No.8178 of 2022

which is liable to be quashed.

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9. Accordingly, the criminal original petition is allowed and the notice dated 09.11.2021 issued by the second respondent is set aside. If at all the petitioners and the third respondent are aggrieved, they have to work out their remedy before the competent civil Court. Consequently connected Miscellaneous Petition is closed.

22.02.2024

NCC : Yes/No
Index : Yes/No
RR

TO

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CRL OP(MD) No.8178 of 2022

M.DHANDAPANI. J

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**ORDER
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