BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2024

CORAM:

THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

W.P.(MD)No.28386 of 2024

M. Kannan .. Petitioner

Vs

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

2. The Inspector of Police
   District Crime Branch
   Campus of District Superintendent of Police
   Theni, Theni District

3. The Sub Inspector of Police
   Thevaram Police Station
   Thevaram, Theni District

4. The Branch Manager
   Canara Bank, Thevaram
   Theni District .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 to 3 to register FIR against the 4th respondent for his illegal commitment of selling house even after settled the loan amount on the basis of the petitioner's representation dated 30.09.2024.

For Petitioner	: Mr.R.Rajaraman
For Respondents No.1 to 3	: Mr.A.Thiruvadikumar Additional Public Prosecutor
No.4	: Mr. V. Balasubramanian

ORDER

This Writ Petition has been filed to direct the respondents 1 to 3 to register FIR against the 4th respondent for his illegal commitment of selling house even after settled the loan amount on the basis of the petitioner's representation dated 30.09.2024.

2.The petitioner had sent a representation on 30.09.2024 making allegation against the Manager of Canara Bank who had suppressed the fact that the property was in auction under the SARFAESI Act and collected Rs. 1,55,000/- from the petitioner towards the loan account and hence, filed the present petition.

3. The contention of the petitioner is that on 29.03.2016, the petitioner and his uncle P.Palpandian had taken a housing loan for a sum

of Rs.12,50,000/- from Canara bank and he was paying the loan regularly. Since the uncle of the petitioner fell sick, he could not regularly pay the monthly EMI. Therefore, the property was brought in auction. The petitioner had approached the Manager of the Bank and sought time to repay the loan. The petitioner was advised to pay a sum of Rs.1,55,000/- towards the loan which the petitioner had paid. Later petitioner came to know that the property has been sold through bank auction.

4. The contention of the learned Additional Public Prosecutor is that on the representation dated 11.10.2024 and 13.10.2024, enquiry was to be conducted. When the notice was attempted to served on the petitioner, he was not available in the address and the wife of the petitioner refused to receive the notice. The uncle of the petitioner Palpandian had taken housing loan from the Canara Bank constructed house and later become defaulter. The bank had taken proceedings under SARFAESI Act and filed a petition in Cr.M.P. No.2473 of 2023 before the learned Chief Judicial Magistrate, Theni and one G. Paneer Selvam was appointed as Advocate Commissioner and on 16.03.2024. The

Advocate Commissioner along with police party had gone to the property. The wife of the petitioner namely Suriya and her two children were sitting in the property and made hue and cry and created a scene and showed their restriction claimed that if the Advocate Commissioner further intends to take possession, they would commit suicide. Further, they had also obstructed the public servant from discharging their duty. Hence, a case was registered in Crime No.53 of 2024 for the offences under Sections 353 and 506(ii) of IPC on 16.03.2024. Thereafter, the Advocate Commissioner sought for police protection to take possession of the property. Again resistance was shown. On 09.07.2024 Crime No. 125 of 2024 was registered for the offences under Sections 296(b), 132,351(3)of BNS. Later, the wife of the petitioner was arrested on 10.07.2024. The bank officials were enquired and they submitted details with regard to the steps taken to bring the property for auction. The petitioner became defaulter and the property was brought for auction and auction was also conducted. Hence, the petitioner was advised to approach Debts Recovery Tribunal if he is aggrieved on the steps taken by the bank officials. It is also informed that on 22.12.2023, the property was brought under E.auction and against which the petitioner has filed

W.P(MD) No.5716 of 2024 which was dismissed. Hence, only appropriate legal action has been taken in the manner known to law and hence, seeks for dismissal of the petition.

5. The learned counsel appearing for the fourth respondent submitted that the petitioner is a co-applicant along with his uncle Palpandian who had taken a housing loan and constructed house and later, became defaulter and later, proceedings under SARFAESI Act has been filed in Cr.M.P. NO.2473 of 2023 before the learned Chief Judicial Magistrate, Theni and the learned Chief Judicial Magistrate by an order dated 30.08.2023 and additional order was passed on 14.05.2024. The petitioner has to pay the amount as follows:

Installment	Date(On or before)	Amount
1st installment	12.02.2024	Rs.6,00,000/-
2nd installment	12.03.2024	Rs.6,00,000/-
3rd installment	12.04.2024	Rs.6,00,000/-
4th installment	13.05.2024	Rs.5,98,560/-+ subsequent interest and cost

6. Thereafter finding that the petitioner had not paid the amount, further action has been taken. The Advocate Commissioner along with police had gone there and resistance was shown by the petitioner and his family members and thereafter case was registered and finally, the petitioner had informed the bank officials and the Advocate Commissioner to take possession of the property and the petitioner is ready to hand over possession and time was fixed at 10.30 am., The Advocate Commissioner and the bank officials reached the place with delay and at that time, it was found that at 10.30 am., there was explosive substance blasted and the blast damaged the entire house and caused damage to the neighbours' house, but for the delay, the Advocate Commissioner and the bank officials would have been seriously injured and their life and limb would have got damaged. The petitioner thereafter absconded. Thereafter, the bank made a complaint to the respondent police, since Bank taken over possession of the property further action not persued. The total loan due was Rs.22,55,809.01. The property on auction had fetched Rs.25,70,000/- Deducting the expenses, balance amount of Rs,1,57,096/- each was credited to the account of palpandian

and petitioner respectively even as early as on 20.02.2021. Despite receipt of the amount, the petitioner making false claim that the bank had not given him any money and by force, the property was taken possession.

7. In view of the above, this Court finds that there is no justifiable reason given by the petitioner after receiving the balance amount on 20.02.2024 still agitating loding complaint against the bank officials and officers is not proper. In view of the same, this Court finds that the act of the petitioner is unjustifiable , finding no merits in the petition the same is hereby dismissmed.

8. Hence, the Writ Petition stands dismissed. No costs.

28.11.2024

Index: Yes/No
Internet : Yes/No
aav

To

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

2. The Inspector of Police
   District Crime Branch
   Campus of District Superintendent of Police
   Theni, Theni District

3. The Sub Inspector of Police
   Thevaram Police Station
   Thevaram, Theni District

4. The Additional Public Prosecutor
   Madurai Bench of Madras High Court
   Madurai.

M.NIRMAL KUMAR, J.

aav

W.P.(MD)No.28386 of 2024

28.11.2024