



Crl.O.P.(MD)No.6022 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2025

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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.6022 of 2024

and

Crl.M.P(MD)Nos.4515 and 4516 of 2024

1. M.Mathivanan
2. M.Kamalakannan

.. Petitioners

Vs.

1. The Inspector of Police
Austinpatti Police Station
Austinpattim Madurai District

2. M.Susilarani

.. Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records pertaining to the complaint filed by the respondent before the learned Judicial Magistrate, Thirumangalam in C.C.No.1130 of 2022 and quash the same as against these petitioners.

For Petitioner : Mr.R.Rajesh Saravanan

For Respondent : Mr.M.Sakthi Kumar
No.1 Government Advocate(Crl.Side)



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ORDER

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2. The case of the prosecution is that the defacto complainant who is the second respondent herein is the owner of the property in S.No.11/2 to an extent of 1 Acre 23 cents at Thanakankulam Village, Thirupparankundram Taluk, Madurai District. The husband of the defacto complainant also purchased property in the said survey number on 08.02.1990 and thereafter the said land was settled to the defacto complainant and she was in possession and enjoyment of the property. While so the defacto complainant borrowed a sum of Rs.1,00,000/- for her personal expenses from the Indian Bank and there was due in the EMI. While so, all the accused conspired together and forged documents as if the property was sold through public auction on 29.12.2006. Thereafter based on the complaint given by the second respondent the first respondent registered a case in Crime No.447 of 2015 for the offences under Sections 409 and 420 of IPC. Thereafter the first respondent completed investigation and filed final report. The trial Court has also

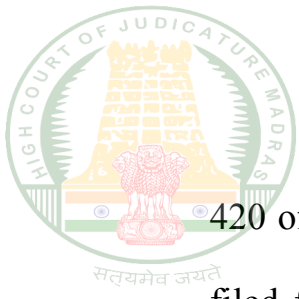


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taken cognizance in C.C.No.1130 of 2022 and the same is challenged through this petition.

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3. The learned counsel appearing for the petitioners would submit that the property in S.No. 11/2 to an extent of 1 Acre 23 cents in Thannakulam Village, Thirupparankundram Taluk, Madurai District belongs to the second respondent and her husband and they obtained loan by mortgaging the property to the Indian Bank, Kovilpatti Branch. Due to non payment of amount, the bank initiated SARFAESI proceedings and on 28.07.2004 the Indian Bank had taken possession and issued notice under Section 13(2) of SARFAESI Act on 18.02.2005. Possession of property taken over by the Indian Bank and the property was brought for auction by the Indian Bank on 19.10.2005. In that public auction the petitioner participated and become highest bidder for a sum of Rs.2,77,100/-. The Indian Bank, Kovilpatti Branch already executed registered sale certificate in favour of the petitioners on 29.12.2006. Thereafter the petitioners are in possession and enjoyment of the property. The petitioners also transferred patta in his name. While so, the second respondent lodged a false complaint and based on the same the first respondent registered a case in Crime No. 447 of 2015 for the offences under Sections 409 and



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420 of IPC. The first respondent without conducting proper investigation filed final report and the trial Court also without perusing the materials taken cognizance. The occurrence took place in the year 2006 but the First Information Report was registered in the year 2015. There are no materials to constitute the offence under Sections 409, 420 of IPC as against the petitioners, thereby the pending proceedings are liable to be quashed.

4. The learned Government Advocate(Crl.Side) appearing for the first respondent would submit that based on the complaint given by the second respondent, they registered a case in Crime No. 447 of 2015 for the offences under Sections 409 and 420 of IPC. Thereafter they conducted elaborate investigation and filed final report. The trial Court has also taken cognizance as there are some *prima facie* materials as against the petitioners to proceed with the case further and it is a matter for trial. As per the final report there are *prima facie* materials available to constitute the offence as against the petitioners, therefore the petition is liable to be dismissed.



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5. The learned counsel appearing for the second respondent would submit that originally the property belongs to the second respondent and they availed loan from the Indian Bank, Kovilpatti Branch by mortgaging the property to a tune of Rs.1,00,000/- Thereafter due to non payment the bank officials by conspiring with the petitioners sold the property for a mortgage amount of Rs. 2,77,100/- and no any notice served to the defacto complainant. SARFAESI proceedings cannot be initiated for a meagre amount of Rs.2 lakhs and the petitioners are working as an appraisers in the bank. Therefore by colluding with the bank officials the property was sold and no any SARFAESI proceedings initiated and without any proceedings under the SARFAESI Act and in order to grab the property they created the documents. Therefore she lodged a complaint before the first respondent and the first respondent also registered First Information Report and thereafter they conducted detailed investigation and as per the investigation there are prima facie materials available to proceed with the case as against the petitioners and therefore it is a matter for trial. At this stage the proceedings cannot be quashed and there are so many allegations and it needs elaborate trial, thereby the petition is liable to be dismissed.

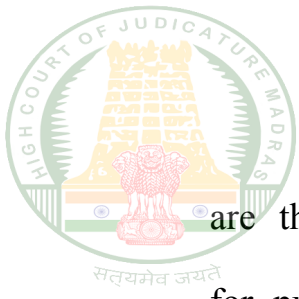


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6. Heard both sides and perused the materials available on record.

7. According to the petitioners they purchased the property through public auction under SARFAESI proceedings in the year 2006 but the complaint was lodged in the year 2015 after a long gap. The petitioners are only purchasers of the property under public auction. Therefore no offence is made out as against these petitioners. However the second respondent lodged a false complaint. According to the second respondent the petitioners colluding with the bank officials created forged sale deed and no proceedings were initiated under the SARFAESI Act. The petitioners are none other than the erstwhile appraisers in the bank where the properties were mortgaged. Therefore the first respondent conducted elaborate investigation and as per investigation there are *prima facie* materials available to proceed against them.

8. This Court also perused the entire records. On persual of the entire records the allegations are serious in nature and investigation agency also collected some materials against these petitioners and those allegations can be tested only during trial. Though the petitioners acquired the property through public auction the allegations against the petitioners



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are that they along with bank officials colluded and brought the property for public auction and executed sale deed, since the petitioners were working as appraisers in the bank, it needs elaborate trial and at this stage this Court need not conduct mini trial and it is for the trial Court to decide the same. In view of the same, the petition has no merits and deserves to be dismissed.

9. Accordingly the Criminal Original Petition stands dismissed.

However the petitioner is at liberty to raise all the grounds filed in this petition before the trial Court as defence. Consequently connected miscellaneous petitions stand closed.

24.03.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Inspector of Police
Austinpatti Police Station
Austinpattim Madurai District
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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