



REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S)..... OF 2025
(ARISING FROM SLP(CRL) NOS.5815-5816 OF 2023)

SIVAKUMAR

...APPELLANT(S)

VERSUS

**THE INSPECTOR OF
POLICE & ANR.**

...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.
2. The present appeals have been preferred by the accused-appellant against the common judgment and order dated 12.01.2023 passed by the High Court of Madras in CrI. O.P. (MD) 21417 of 2016 and CrI. O.P. (MD) No. 10979 of 2016, whereby the High Court dismissed the appellant's petition under Section 482 of the Code of Criminal Procedure, 1973¹ to quash the chargesheet and consequential proceedings arising out of CC. No. 308 of

¹ Cr.P.C.

2016 on the file of the Judicial Magistrate No. 1, Tirunelveli.

3. The case of the prosecution in the instant matter is that the first accused was working as a Branch Manager in HDFC Limited at Palayankottai Branch and the second accused, i.e. the appellant herein, was working as a Manager in the Head Office of HDFC Limited at Thiruvananthapuram when the alleged offence was committed. In 2004, one Mr. A. Kannan had borrowed loan from HDFC Limited by mortgaging his immovable property in Survey No. 145/1 (Plot No. 96) situated at Keela Natham Village, Palayankottai Taluk, Tirunelveli District and the superstructure built up therein.
4. Since the said borrower had defaulted in repaying the loan amount, HDFC Ltd. initiated proceedings under the provisions of SARFAESI Act and auction notice for the above-mentioned property was issued on 22.05.2012 by the Head Office in the vernacular newspaper. On the basis of the auction notice, the respondent no. 2, i.e. the de-facto complainant, had participated in the public auction and purchased the property for a sum of Rs. 7,25,000/- (Rupees seven lakhs twenty-five thousand only). The entire sale consideration was paid and the sale certificate was

handed over to the respondent no. 2 in the month of July, 2012.

5. However, it has been alleged that when the complainant approached the Sub-Registrar, Palayankottai to register the said sale certificate, respondent no. 2 came to know that the property in question was already acquired by the Tamil Nadu Housing Board. It is then in 2013 that the respondent no. 2 filed a consumer complaint before the District Consumer Redressal Forum *vide* Consumer O.P. No. 58/2013 against the Chairman, Managing Director and Senior Manager of HDFC Ltd.
6. Further, the complainant filed a complaint under Section 190 of Cr.P.C. before the Judicial Magistrate Court, Tirunelveli and the Court referred the matter to City Crime Branch Tirunelveli under Section 156(3) of Cr.P.C. Accordingly, FIR in Crime No. 21/2014 was registered on 15.07.2014 under Sections 197, 417, 418, 467, 468 and 420 of the IPC wherein the Branch Manager, Tirunelveli was arrayed as the first accused and the appellant herein was arrayed as the second accused. It was alleged in the FIR that the accused persons, by suppressing the acquisition of the property by the Tamil Nadu Housing Board, sold the property to the de-facto complainant in the public auction and, thereby, cheated her. After completion

of the investigation, chargesheet was filed against the accused persons and the Judicial Magistrate No. I, Tirunelveli has also taken cognizance of the final report in CC. No. 308 of 2016.

7. Aggrieved by the filing of chargesheet, the appellant preferred an application under Section 482 of Cr.P.C. seeking quashing of the criminal proceedings against him. The High Court, *vide* the impugned order, refused to provide the relief sought and held that a *prima facie* case is made out against the appellant and it is not a fit case for quashing of the final report at the threshold. It was also observed by the High Court that the appellant, with a dishonest intention, suppressed the very fact of the encumbrance by the Tamil Nadu Housing Board in the subject property and made false promise that the property was free from encumbrance and made the de-facto complainant to participate in the auction sale and induced her to purchase the property. Thus, the offence of cheating is *prima facie* made out against the appellant. Similar observations were also rendered regarding the offence of issuing a false certificate as well as forgery against the appellant and the first accused.
8. Aggrieved by the impugned order, the appellant is before us.

9. We have heard Ms. Sonia Mathur, learned Senior Counsel appearing for the appellant and Mr. V. Krishnamurthy, learned Additional Advocate General appearing for the respondent no. 1, and also perused the material on record. Despite service of notice, nobody has entered appearance on behalf of respondent no.2.
10. The chief contention of the appellant is that he was appointed as the Manager at the Head Office of HDFC Bank on 03.11.2014 whereas the auction process and issuance of the sale certificate took place in 2012. At the relevant time, he was only serving as an Assistant Manager and it was solely the Manager who was authorized to initiate proceedings under the SARFAESI Act. Rule 2(a) of the Security Interest (Enforcement) Rules, 2002 defined authorized officer as follows:

““authorized officer” means an officer not less than a chief manager of a public sector bank or equivalent, as specified by the Board of Directors of Board of Trustees of the secured creditor or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured creditor, as the case may be, to exercise the rights of a secured creditor under the [Act].”
11. It was submitted that the appellant had no role in the transaction that led to the criminal proceedings, and the initiation of an FIR against him amounts to an abuse of

the legal process, giving a civil dispute an unjustified criminal color.

12. Further, it was submitted by the appellant that the consumer complaint preferred by the respondent no. 2 has been dismissed by the District Consumer Disputes Redressal Commission *vide* order dated 14.07.2022 wherein it was observed that the possession receipt, which was signed by the complainant, clearly showed her awareness of the acquisition process before participating in the auction. Therefore, having failed in civil proceedings against the appellant, the present FIR is an attempt to further harass the appellant and pressurize him to return the sale consideration even though the complainant is currently enjoying the possession of the property in question.
13. Lastly, it was contended by the appellant that Section 32 of the SARFAESI Act provides immunity to secured creditors and their officers for actions taken in good faith under the Act. Further, this Court has categorically held in **K. Virupaksha v. State of Karnataka**² that once proceedings under the SARFAESI Act have been initiated and concluded, criminal proceedings on the same subject

² (2020) 4 SCC 440

matter cannot be entertained. As such, the initiation of criminal proceedings against the appellant is contrary to the principles laid down in the above case.

14. On the contrary, the respondent no. 1 has submitted that the complainant was completely unaware of the fact that the said property was already acquired by the Tamil Nadu Housing Board and only when she went to the Sub-Registrar to register the property, she was informed that it was already acquired by the Housing Board in 2003. Therefore, despite taking all reasonable care, it would have been impossible for the complainant to know about this acquisition which was not disclosed to the complainant, neither at the time of the auction nor at the time of payment of consideration.
15. It was further contended by the respondent that the appellant herein cannot take the plea that the said auction was done on the basis of the condition of “as is what is” and “as is where is” basis. Section 55 of the Transfer of Property Act, 1882 and the judgment in case of **Mrs. Leelamma Mathew v. M/s Indian Overseas Banks & Ors.**³ were relied on by the respondent in support of this contention.

³ Civil Appeal No. 7128 of 2012

16. Lastly, it was argued that the protection under Section 32 of the SRAFAESI Act does not apply as the appellant's actions were not done in good faith. The concealment of the property's acquisition status and misrepresentation to the auction purchaser indicate deliberate wrongdoing. Therefore, it was submitted that the High Court has rightly refused to quash the charge sheet as the allegations in the FIR and the evidence collected during the investigation establish the necessity of trial and statutory protection cannot be used as a shield for fraudulent conduct.
17. After due consideration of the rival submissions of both the parties, the appellant's argument as to him not being the authorized officer at the relevant time has caught our attention and calls for our deliberation.
18. It is evident that the sale certificate was issued by the appellant's predecessor and, at the relevant time, the appellant was not the authorized officer empowered to issue the certificate. In fact, right from the initiation of the auction process to the issuance of sale certificate, no direct involvement of the appellant can be seen as he was not the authorized officer during the said period and assumed the office of Manager only in November, 2014. Therefore, it becomes clear as day that the appellant had no role to play in the transaction leading to the FIR as he was not a

signatory to the sale certificate. Since the appellant was neither the authorized officer at the relevant time nor responsible for the auction process or issuance of the sale certificate, the allegations against him are baseless and do not attract criminal liability. The continuation of the instant criminal proceedings against the appellant shall lead to abuse of process of law, cause nothing but miscarriage of justice and inordinately harass the appellant who has been implicated without due cause.

19. Accordingly, in light of the above discussion, the appeals are allowed and the impugned order is set aside. The criminal proceedings against the appellant arising out of CC. No. 308 of 2016 on the file of the Judicial Magistrate No. 1, Tirunelveli are, hereby, quashed.

20. Interlocutory application(s), if any, shall stand disposed of.

..... **.J.**
[VIKRAM NATH]

..... **.J.**
[SANDEEP MEHTA]

NEW DELHI;
APRIL 23, 2025