

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 22ND DAY OF MAY 2023 / 1ST JYAISHTA, 1945

CRL.MC NO. 1301 OF 2023

(Crime No.919 of 2022 of Infopark Police Station, Ernakulam)

PETITIONERS/ACCUSED NOS.1 TO 6:

- 1 PNB HOUSING FINANCE LTD.
HAVING ITS REGISTERED OFFICE AT 9TH FLOOR,
ANTRIKSH BHAVAN, 22 KASTURBA GANDHI MARG,
NEAR CONNAUGHT PLACE, NEW DELHI-110001
REPRESENTED BY ITS CEO, GIRISH KOUSGI.
- 2 BRANCH MANAGER, (DURING DECEMBER 2015) PNB HOUSING
FINANCE LTD., 1ST FLOOR, R.P. ARCADE,
NEAR RAILWAY OVERBRIDGE, ADJACENT TO GOLD SOUK GRANDE
MALL, PONNURUNNI, VYTILLA,
KOCHI, PIN - 682019.
- 3 GIRISH KOUSGI, AGED 53 YEARS
CEO & MANAGING DIRECTOR, PNB HOUSING FINANCE LTD.
9TH FLOOR, ANTRIKSH BHAVAN, 22 KASTURBA GANDHI MARG,
NEAR CONNAUGHT PLACE, NEW DELHI, PIN - 110001.
- 4 THE AUTHORISED OFFICER
(WHO SIGNED THE NOTICE DATED 15-11-2022)
PNB HOUSING FINANCE LTD., 9TH FLOOR,
ANTRIKSH BHAVAN, 22 KASTURBA GANDHI MARG,
NEAR CONNAUGHT PLACE, NEW DELHI, PIN - 110001.
- 5 SANJAY JAIN, AGED 59 YEARS
COMPANY SECRETARY & HEAD COMPLIANCE
PNB HOUSING FINANCE LTD., 9TH FLOOR,
ANTRIKSH BHAVAN, 22 KASTURBA GANDHI MARG,
NEAR CONNAUGHT PLACE, NEW DELHI, PIN - 110001.
- 6 JATUL ANAND, AGED 46 YEARS
CASH CREDIT & COLLECTION OFFICER,
PNB HOUSING FINANCE LTD. 9TH FLOOR, ANTRIKSH BHAVAN,
22 KATURBA GANDHI MARG, NEAR CONNAUGHT PLACE,
NEW DELHI - 110001.

BY ADVS.MADHU RADHAKRISHNAN
NELSON JOSEPH
M.D.JOSEPH
DEEPAK ASHOK KUMAR

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

Crl.M.C.No.1301 of 2023

2

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
HIGH COURT P.O.,
ERNAKULAM, PIN - 682031.

 - 2 REBY THOMAS, AGED 46 YEARS
S/O.VARGHESE THOMAS THACHENPARAMBIL,
REBY VILLA, MUNDANCAVU, ALAPPUZHA - 689121
NOW RESIDING AT VENUS 12- B, TRINITY WORLD,
CHITTEETUKARA, ERNAKULAM, PIN - 682030.
- R2 BY ADV. SMT.AYSHA ABRAHAM
- R1 BY P.P.SMT.PUSHPALETHA M K

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
22.05.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"C.R."

ORDER

The prayer in this Crl.M.C. is as follows:-

"..... to allow the Criminal Miscellaneous Case, quash Annexure 1 complaint, Annexure 2 F.I.R and all further proceedings pursuant thereto in Crime No.0919/2022 of Infopark Police Station, Ernakulam District, against the petitioners/accused Nos.1 to 6, so as to secure the ends of justice."

2. The petitioners, who are the officials of Punjab National Bank Housing Finance Limited, are accused Nos.1 to 6 respectively in the aforementioned F.I.R. They along with the co-accused face allegations under Sections 406, 409, 420, 442 and 120-B read with Section 34 of the Indian Penal Code. The F.I.R was registered based on a complaint filed by respondent No.2.

3. Respondent No.2/the defacto complainant in the F.I.R. purchased an apartment in a project managed by Jain Housing and Constructions Ltd. called "Tuffnel Park". He purchased the apartment along with his wife after availing a housing loan of Rs.40 lakhs from petitioner No.1 and further paying a sum of Rs.11,13,820/- by himself. A sale deed was executed on 18.12.2015 in favour of the complainant by Jain Housing and

Construction Company. The complainant was allotted Flat No.4055 in the apartment complex. Based on the representation of the Builder that occupancy certificate was obtained from Thrikkakkara Municipality the complainant carried out interior works costing around Rs.10 lakhs. In May, 2019, the complainant came to know that the Supreme Court has ordered demolition of another project by name `Coral Cove`, a project of the same builder. He got information that the apartment was constructed illegally on a paddy land and the construction was made without getting mandatory consent from the Kerala Pollution Control Board and further that environmental clearance was also not obtained.

3.1. The complainant filed complaints with the Kerala Human Rights Commission. As the building was not numbered and there were issues related to supply of water and electricity the complainant approached the Anti Corruption Bureau of CBI and filed a written complaint against all Public Sector Banks that had approved the project and disbursed loan to the Builder. The complainant also approached the State Vigilance and Anti-corruption Bureau alleging collusion of the Builder with the officials of Municipality, Fire Department etc. After that, the complainant filed a complaint before the Judicial First Class Magistrate Court,

Kakkanad against the petitioners, the Builder and others involved. The learned Magistrate directed investigation of the offences alleged. The Infopark Police registered the above crime.

4. Heard the learned counsel appearing for the petitioners, the learned Public Prosecutor and the learned counsel appearing for respondent No.2.

5. The learned counsel for the petitioners submitted that the attempt of the defacto complainant is to get away from the liability to pay the loan due to the Punjab National Bank Housing Finance Ltd. The learned counsel for the petitioners contended that the defacto complainant is a defaulter and the complaint which formed the basis of the registration of the FIR was filed when the Bank proceeded under the provisions of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The learned counsel, relying on **Priyanka Srivastava and Ors. v. State of U.P. and Ors. (AIR 2015 SC 1758)**, submitted that the petitioners are entitled to immunity under Section 32 of the SARFAESI Act.

6. The learned counsel for respondent No.2/the defacto complainant contended that the impugned FIR reveals cognizable

offences against the petitioners and this Court is not expected to go into the merits of the allegations in the FIR. It is submitted that it would be premature to pronounce the conclusion based on the submissions of the petitioners. The learned counsel for the defacto complainant relied on **M/s.Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others (AIR 2021 SC 1918)** in support of his contentions.

7. The relevant pleadings in Annexure-A1 complaint filed by the defacto complainant before the jurisdictional Court are extracted below:-

“3. The Complainant was allotted Flat No.4055 in Jain Tufnell Garden and the Accused No.8 & 9 represented that occupancy certificate was obtained from the Thrikkakkara Municipality. Based on the representation the complainant carried out some interior works spending about Rs.10,00,000/- with an intent to move his family to the apartment. The complainant along with his family moved to the apartment on 7 April 2016.

4. The Complainant filed complaints with Kerala Human Rights Commission as the building was not being numbered and there were issues related to supply of water and electricity. In May 2019, the complainant came to hear the news that the Hon'ble Supreme Court had ordered demolition of another Project by the name 'coral cove' of the Accused No.7 company. The Complainant got jittery and started looking out for 'legalities' of the Project 'Tuffnel Park' especially when the building was not occupied by more than 15 families and the complainant heard about issues of the Accused No.7 company with some home buyers. The Complainant had no documents related to the Project and the Accused No.7 refused to give any documents

pertaining to the Project. The complainant even sought documents through RTI from public authorities.

5. The Complainant approached the Anti-Corruption Bureau of the Central Bureau of Investigation and filed a written complaint against all Public sector banks that had pre-approved the project and disbursed loan to the Builders. A copy of the said complaint to ACB, CBI dated 1 October 2019 is annexed to this complaint as **Annexure-B**. The complainant approached the ACB, CBI because the total value of disbursements would be over Rs.5 crores and all of these bankers came under the Central Government.

6. The Complainant also approached the Vigilance and Anti-corruption Bureau of the Kerala and complained about the collusion of the Builders with that of State officials like Municipality, Fire Department etc. A copy of the said complaint to Vigilance and Anti-corruption Bureau, dated 1 October 2019 is annexed to this complaint as **Annexure-C**.

7. The Complainant thereafter filed a Writ Petition in the Hon'ble High Court of Kerala which was numbered as W.P.(C)26935/2019. The reply filed by the Accused No.7 company showed that the Environmental Clearance was obtained by 'fraud'. The W.P.(C)26935/2019 was withdrawn as the Judge had opined that the matter is a Public Interest Litigation. Therefore, the Complainant again filed the same Petition as a Public Interest Litigation and was numbered as W.P.(C)24163/2020 and the same is pending. The Complainant also filed complaint with the Ministry of Environment and Forests and Climate Change.

8. The complainant came to know of an Original Application filed by Environment Protection and Research Council before the National Green Tribunal in Chennai. A copy of the order dated 10.12.2021 of the Hon'ble NGT in OA 205 of 2021 is annexed as **Annexure-D**. The proceedings before the NGT revealed shocking details mentioned below:

(a) The building is constructed illegally on a paddy land, a copy of the affidavit filed by the District Collector is annexed to this Complaint as **Annexure-E**.

- (b) The Building was constructed without obtaining the mandatory 'consent to Establish' from the Kerala Pollution Control Board (KPCB). The Building was occupied without obtaining 'Consent to operate' from the KPCB. The Affidavit filed by the Environment Engineer of KPCB is annexed to this Complaint as **Annexure-F**. The KPCB has recommended to impose Environment damage of about 14 crores on the Accused No.7 company.
- (c) The MoEF & CC has stated that the construction was started without obtaining Environment Clearance and that there is no valid FC after 2016 as the same had expired.

9. The Complainant states that corruption, collusion between the Builder and State officials is confirmed by the fact that when W.P.(C)24163/2020 was pending before the Hon'ble High Court and when the building/Project did not have a single valid permission from Statutory authorities like the KPCB, MoEF & CC, the District Collector, the Municipal Secretary of the Thrikkakkara Municipality granted 'occupancy certificate'. Thereafter the Kerala Real Estate Regulatory Authority granted them a registration under RERA without having a single mandatory certificate issued by the regulatory authorities.

10. The Complainant received a notice from the Accused No.1 by email and registered post under the Payments and Settlement Systems Act, 2007, a copy of which is annexed to this complaint as **Annexure-G**. The Complainant replied to the said notice directly to the then chairman and managing director. A copy of the reply dated 10 December 2021 is appended to this Complaint as **Annexure-H**.

11. xx xxx xxx

12. It is clear that the Accused No.7, 8 and 9 were aware at all times and more particularly at the time of signing of the sale deed that the Project did not have a single valid mandatory permission and therefore it was an illegal construction. The Accused No.1 & 2 also were aware at all time and more particularly during the pre-

approval process and at the time of sanction of the loan that the Project was being built on a paddy land which is prohibited and that the project did not have any mandatory approvals from the statutory authorities. The Accused No.1, 2, 7, 8 & 9 conspired with each other with an intent to cheat the complainant and to cause wrongful loss to the complainant and make a wrongful gain for the Accused No.1,2,7,8 & 9 committed offences under Section 406, 415 and 420 of the IPC read with Sec.120B and 34 of the IPC.

13. On 15.11.2022, the Complainant was shocked to receive a call from the neighbours informing him that some bank officials along with the Police personnel have broken the lock of the apartment of the complainant. The complainant had received no notice as regards this from any bank officials. The Accused No.3,4,5 and 6 were clearly aware of the reply notice dated 10 December 2021 and were clearly aware of the illegality of their actions. The complainant has issued a notice to both the Branch Manager of the Accused No.1 as well as the Jurisdictional Police (Info Park Police Station) as to under what provisions of law did they break open the apartment of the complainant without informing the complainant. The info park police refused to accept the notice and therefore the complainant sent the notice by registered post. However, the info park police stated that they have not sent any policeman to break open any apartment. Therefore, the complainant has reason to believe that the bank officials brought its henchmen in the uniform of policemen. There were unknown officials of the bank and persons in police uniform whom the complainant saw in the apartment which was broken open before his presence. In continuation of the acts of the Accused No.1, 2, 7, 8 & 9, the Accused No.3,4,5,6 & 11 being fully aware of the illegality and the criminal intent of their acts further committed criminal trespass, house trespass punishable under 442 of IPC.

14. Until the Complainant came to know about the absolute illegalities committed by the accused, he remitted the EMI's without single default and thereafter he stopped the EMI's. The 1st and 2nd accused in collusion with the 7th, 8th and 9th accused cheated the Complainant and his wife by approving the loan for an illegal project for which the beneficiaries where the

Accused 1, 2, 7, 8 & 9 alone.”

8. The materials relied on by the petitioners as well as respondent No.2 would reveal that the project was built on a paddy land.

9. A proceeding was initiated before the National Green Tribunal South Zone, Chennai as Original Application No.205 of 2021 at the instance of the Environmental Protection & Research Council regarding the construction. The District Collector, Ernakulam filed a report before the Green Tribunal (Ext.R2(a)), the relevant portion of which reads thus:-

“On the basis of inspection and reports available, the Joint Committee has verified the issues as to whether the prior permission has been obtained by the 6th respondent for converting agricultural land for non-agricultural purposes on such a larger extent. For the purpose, the nature of the land, comprised in survey Nos.483/14, 484/7 & 485/1, in the revenue records and in the ‘data bank’ prepared under the Kerala Paddy and Wetland Act 2008 have been verified. As per Basic Tax Register maintained at the Village Office, resurvey Nos.484/7 and 485/1 are recorded as ‘nilam’ and it is also included as ‘nilam’ in the Data Bank. Resurvey No.483/14 is purayidom (garden land) and hence, the Act 2008 is not applicable. By virtue of provisions of this Act 2008, the owner, occupier or the person in custody of any paddy land (nilam) shall not undertake any activity for reclamation/conversion except in accordance with the provisions of this Act. In this case, the land is converted and used for building construction without obtaining any permission from the committee constituted under the Act (ie. LLMC/DLAC) or from the Revenue authorities.”

10. The Environmental Engineer, Kerala State Pollution

Control Board also filed a report before the Green Tribunal

(Ext.R2(b)) which reads thus:-

"1. It is respectfully submitted that the Original Application is filed against the illegal construction of residential project (by the 6th respondent M/s.Jain Housing & Construction Ltd.) "M/s.Tuffnel Gardens" situated in Survey No.485/1 of Kakkanad Village, Thrikkakara Municipality, Kanayannur Taluk.

2. It is respectfully submitted that M/s. Jain Housing & Constructions Ltd. Had applied for Consent to Establish (CTE) on 12.09.2012 before the Board for a built up area of 51,573.6 Sqm. The builder submitted the application for CTE after starting of the construction. The Board has not issued CTE to the project since the builder failed to submit the clarification asked by KSPCB. But, the builder continued the construction of building and completed the construction of 4 towers and started occupancy in one tower. They started construction based on the NOC obtained from the Thrikkakara Municipality. The builder constructed the project without obtaining CTE and started occupancy without Consent to Operate of the Board in the building which is in violation of Water Prevention and (Control of pollution) Act 1974 as well as the conditions of Environmental Clearance. The joint committee constituted by the Hon'ble NGT in OA 205/2021 had conducted detailed inspection in the site on 09.11.2021 and noted that the project does not have valid EC and need to obtain fresh EC for further construction. The finding of the committee summarized as follows:

- The builder has started the construction activities before obtaining the EC from MoEF & CC. The project does not have a valid EC as of now and prior to start of any additional work. The Project proponent is required to obtain a fresh EC from SEIAA, Kerala.
- The entire construction was done without obtaining Board's Consent to Establish and occupancy was started without obtaining Consent to Operate from Board violating the Water (Prevention & Control of Pollution) Act 1974, the Air (Prevention & Control of

Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

- The paddy land is used for building construction without obtaining any permission from local level monitoring committee and Revenue Divisional office. The conversion of agriculture lands disrupted the ecological set up of the area and affects the biological diversity of the area. Hence the construction had caused environmental damage.
- The Project Proponent shall remit the Environmental Compensation of Rs.14.97 Cr.”

11. The complainant pleaded that the officials of the Bank were aware of all these irregularities, including the fact that the project was built on paddy land, during the pre-approval process and at the time of sanctioning the loan. The case of the complainant is that the petitioners herein and the other accused conspired with each other with an intent to cheat the complainant and others and to make wrongful gain. It is the specific case of the defacto complainant that petitioner No.1/the banker with the knowledge that it was entrusted with public exchequer disposed the same to the Builder to proceed with an illegal construction with dishonest intention. According to the complainant, the Builder in collusion with the officials of the Bank dishonestly misappropriated the public money for the benefit of the accused in violation of the trust and used for unauthorized purpose. The complainant pleaded that from the very inception the petitioners and the other accused had a dishonest intention to cheat the

complainant. By the acts of the accused heavy revenue loss has been caused to the State as well, the complainant alleges.

12. It is settled by a long course of decisions of the Apex Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash criminal proceedings, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has been further held that the High Court has no jurisdiction to examine the correctness or otherwise of the allegations {Vide: **State of West Bengal v. Swapan Kumar Guha [(1982) 1 SCC 561]**, **Pratibha Rani v. Suraj Kumar [(1985) 2 SCC 370]**}.

13. In **State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651]**, the Apex Court held that while exercising the power, it is not possible for the Court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. In **State of U.P v. O.P.Sharma [(1996) 7 SCC 705]** a Three Judge Bench of the Apex Court observed that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 Cr.P.C or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. This

view was reiterated by another Three Judge Bench of the Apex Court in **Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397]**, wherein the Apex Court held that such power should be sparingly and cautiously exercised only when the Court is of the opinion that otherwise there will be gross miscarriage of justice. It is trite that the power of quashing criminal proceedings should be exercised with circumspection and that too, in the rarest of rare cases and it was not justified for this Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the Final report or the complaint. A finding on the veracity of a material relied on by the prosecution in a case where the allegations levelled by the prosecution disclose a cognizable offence, is not a consideration for the High Court while exercising its power under Section 482 Cr.P.C. This view is fortified by the decision of the Apex Court in **Mahendra K.C. v. State of Karnataka and Ors. (AIR 2021 SC 5711)**.

14. While dealing with the power under Section 482 Cr.P.C to quash the criminal proceedings the Apex Court in **M/s.Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others (AIR 2021 SC 1918)** concluded thus:-

“(i) xxx xxx xxx
xxx xxx xxx

(xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

(xiii) xxx xxx xxx

(xiv) xxx xxx xxx

(xv) When a prayer for quashing the FIR is made by the alleged Accused and the court when it exercises the power Under Section 482 Code of Criminal Procedure, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or W.P(Crl) No.407 of 2021 18 not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;”

15. In the present case, the FIR reveals cognizable offences.

The correctness or otherwise of the allegations levelled in the FIR is a matter to be tested during the course of the investigation.

16. Now, the question to be considered is whether the petitioners are entitled to protection under Section 32 of the SARFAESI Act. Section 32 reads thus:-

“**32. Protection of action taken in good faith.**- No suit, prosecution or other legal proceedings shall lie against the Reserve Bank or the Central Registry or any secured creditor or any of its officers for anything

done or omitted to be done in good faith under this Act.”

17. The defacto complainant has alleged in paragraph 13 of Annexure A1 complaint that the petitioners and other accused committed offence punishable under Section 442 read with Section 448 of IPC. The defacto complainant alleges that, at the instigation of the petitioners, some of the bank officials with the aid of their henchmen in police uniform, without informing the complainant, entered into the building, thereby they committed house trespass on 15.11.2022. The petitioners relied on Annexure A5 order of the Chief Judicial Magistrate, Ernakulam in an application filed by the bank under Section 14 of the SARFAESI Act and Annexure A7 report of the Commissioner dated 19.11.2022 to contend that the Advocate Commissioner had taken physical possession of the secured assets on 15.11.2022 with the help of the Police after following all statutory formalities. The possession of the secured assets was taken by the petitioners in compliance with the directions of the Chief Judicial Magistrate concerned as per Annexure A5 order. The complainant alleged that the bank officials had broken open the lock. The question is whether the acts of the petitioners in connection with the taking possession of the building/apartment is protected under Section

32 of the SARFAESI Act. The allegations contained in paragraph 13 of Annexure A1 complaint are acts done by the bank officials in good faith under the relevant provisions of the SARFAESI Act and as per the directions of the Chief Judicial Magistrate. The acts done by the officials are part of things done for the execution of statutory and lawful responsibilities. It is relevant to refer to the Constitution Bench decision of the Apex Court in **Matajog Dobey v. H.C.Bhari (AIR 1956 SC 44)**. In **Matajog Dobey** the Apex Court held that where a power is conferred or a duty is imposed by a statute or otherwise and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution because it is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command. The officials of the bank were doing such acts as are reasonably necessary for complying with the directions in Annexure A5 order and under the provisions of the SARFAESI Act. Though the action taken by the officials of the bank under the SARFAESI Act is neither unquestionable nor treated as

sacrosanct under all circumstances but if there is discrepancy in the manner the officials have proceeded, it will always be open to assail it in the forum provided. However, as far as those acts are concerned, the officials are protected from criminal prosecution under Section 32 of the SARFAESI Act. Therefore, registration of FIR under Section 442 read with Section 448 of IPC against the petitioners is an abuse of the process of law which is liable to be quashed.

18. The rest of the allegations in Annexure A1 complaint relate to the offences under Sections 406, 409 and 420 read with Section 120-B of the IPC. The complainant alleges that the Builder and the officials of the bank with dishonest intention conspired together and consequently the officials of the bank knowing fully well that the construction of the project was in a paddy land approved the same at the time of sanctioning the loan. The complainant further alleged that the officials of the bank with the knowledge that they were entrusted with public money delivered the same to the Builder to proceed with an illegal construction with dishonest intention.

19. The above mentioned acts allegedly committed by the officials of the bank are not actions taken under the provisions of

the SARFAESI Act.

20. The petitioners are entitled to the immunity under Section 32 of the SARFAESI Act only if the acts alleged are done in good faith under the provisions of the SARFAESI Act.

21. The learned counsel for the petitioners relied on **Priyanka Srivastava** (supra) to substantiate his contentions. In **Priyanka Srivastava**, the Apex Court was considering the merits of a complaint filed by a defaulter (party respondent therein) who had availed a housing loan from the Bank. When he committed default the Bank proceeded under the SARFAESI Act. The defaulter therein filed a complaint alleging offences punishable under Sections 163, 193 and 506 of the Indian Penal Code alleging that the accused therein had intentionally taken steps to cause injury to him. The learned Magistrate referred the complaint to the Police to investigate under Section 156(3) Cr.P.C.. While considering the facts mentioned above, after concluding that the attempt of the complainant therein was part of a design primarily to create mental pressure on the officials of the Bank and further to pressurise them ultimately to compel the Bank to accept the request of 'one-time settlement', it was held that the officials therein were entitled to the protection

under Section 32 of the SARFAESI Act. The facts in the present case, insofar as the offences under Sections 406, 409 and 420 read with Section 120-B of IPC are concerned, are distinguishable from the facts considered by the Apex Court in **Priyanka Srivastava**.

22. The petitioners herein failed to show that the acts alleged, except the acts relating to the offence under Section 442 r/w Section 448 of IPC, are done in good faith under the provisions of the SARFAESI Act. The resultant conclusion is that the FIR, insofar as the offences under Sections 406, 409 and 420 read with Section 120-B of IPC are concerned, is not liable to be quashed by the High Court while exercising the powers under Section 482 Cr.P.C.

23. The learned Public Prosecutor submitted that the Police, after conducting investigation, submitted a report under sub-section (2)(i) of Section 173 Cr.P.C. before the jurisdictional Magistrate stating that the allegations are false. The learned counsel for the petitioners submitted that in view of the final report as submitted by the learned Public Prosecutor the entire matter has become infructuous. The learned counsel for respondent No.2 contended that respondent No.2 still has the

remedy to challenge the report before the jurisdictional Magistrate. When the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 Cr.P.C. and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156 Cr.P.C. (vide: Bhagwant Singh v. Commissioner of

Police and Another [(1985) 2 SCC 537]. The fact that the Police submitted the final report under Sub-section (2) of Section 173 of Cr.P.C. stating that no offence appears to have been committed is not a ground for this Court to interfere in the matter in exercise of the power under Section 482 of Cr.P.C. Having found that the FIR registered, insofar as the offences under Sections 406, 409 and 420 r/w Section 120-B of IPC are concerned, is not liable to be quashed under Section 482 Cr.P.C. the matter is to be left to the discretion of the Magistrate to consider the report in accordance with the provisions of the Code of Criminal Procedure.

Therefore, the Crl.M.C. is partly allowed. The FIR, insofar as the offence punishable under Section 442 read with Section 448 of IPC is concerned, stands quashed. The learned Magistrate may proceed further in respect of the report filed by the Police in respect of the other offences in accordance with law.

Sd/-
K.BABU
Judge

TKS

APPENDIX OF CRL.MC 1301/2023

PETITIONER'S ANNEXURES

Annexure1 CERTIFIED COPY OF THE COMPLAINT DATED 25/11/2022
ALONG WITH DOCUMENTS

AnnexureA2 THE CERTIFIED COPY OF THE FIR NUMBERED AS CRIME
NO: 0919/2022 DATED 3-12-2022

Annexure A3 TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 13
(2) OF THE SARFAESI ACT DATED 4-2-2020

AnnexureA3 (a) ACKNOWLEDGMENT CARD EVIDENCING THE RECEIPT OF THE
DEMAND NOTICE BY THE PETITIONER AND HIS WIFE

Annexure A4 TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 13
(4) OF THE SARFAESI ACT DATED 15-12-2020

Annexure A5 TRUE COPY OF THE ORDER DATED 18-6-2022, PASSED BY
HON'BLE CJM ERNAKULAM IN MC NO. 380/2021

Annexure A6 TRUE COPY OF THE POSSESSION NOTICE DATED
15-11-2022 ALONG WITH THE ACKNOWLEDGMENT CARD OF
SERVICE ON PETITIONER AND HIS WIFE

Annexure A7 COPY OF THE ADVOCATE COMMISSION REPORT, SUBMITTED
BEFORE THE HON'BLE CJM, DATED 19-11-2022

Annexure A8 TRUE COPY OF THE CERTIFICATE OF REGISTRATION
PASSED BY KERALA REAL ESTATE REGULATORY AND
DEVELOPMENT) AUTHORITY AS AVAILABLE FROM THE
WEBSITE OF KERALA REAL ESTATE REGULATORY AND
DEVELOPMENT) AUTHORITY ON 2/1/2023

RESPONDENT EXHIBITS:

EXHIBIT R2 (A) TRUE COPY OF THE AFFIDAVIT FILED BY THE DISTRICT
COLLECTOR DATED 11.01.2022 FILED BEFORE THE
HON'BLE NATIONAL GREEN TRIBUNAL

EXHIBIT R2 (B) TRUE COPY OF THE AFFIDAVIT OF THE KERALA STATE
POLLUTION CONTROL BOARD DATED 17.10.2022 FILED
BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

EXHIBIT R2 (C) TRUE COPY OF SALE DEED NO. 67 OF 2016 OF
THRIKKAKARA SRO DATED 18.12.2015

TKS