



CIVIL

Criminal Proceedings Against HDFC Manager Dismissed: Key Takeaways from Supreme Court Judgment

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Introduction

The Supreme Court of India recently delivered a significant judgment in the case of Sivakumar vs the Inspector of Police & Anr. (SLP (CRL) Nos. 5815-5816 of 2023), where it quashed criminal proceedings against an HDFC manager. The case involved allegations of cheating and forgery during a loan recovery auction process. The court's decision hinged on the appellant's lack of direct involvement in the auction process and the abuse of legal process in initiating criminal proceedings against him. This article delves into the background of the case, the rival contentions, the legal provisions relied upon, and the court's analysis and final decision.

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Background of the Case

In 2004, Mr. A. Kannan borrowed a loan from HDFC Limited by mortgaging his immovable property located in Survey No. 145/1 (Plot No. 96) at Keela Natham Village, Palayankottai Taluk, Tirunelveli District. After defaulting on the loan repayment, HDFC Ltd. initiated proceedings under the SARFAESI Act and issued an auction notice for the property on 22 May 2012. The respondent no. 2 participated in the auction and purchased the property for Rs. 7,25,000/-. However, when she attempted to register the sale certificate, she discovered that the property had already been acquired by the Tamil Nadu Housing Board in 2003. This led to a consumer complaint filed by the respondent no. 2 against HDFC Ltd. in 2013, which was later dismissed. Subsequently, the respondent no. 2 filed a complaint under Section 190 of the Code of Criminal Procedure, 1973 (Cr.P.C.) before the Judicial Magistrate Court, Tirunelveli, leading to the registration of FIR in Crime No. 21/2014. The FIR accused the appellant, Sivakumar, and the Branch Manager of HDFC Limited of cheating the complainant by suppressing the fact that the property had been acquired by the Tamil Nadu Housing Board. After the investigation, a chargesheet was filed against the accused, prompting the appellant to seek to quash the criminal proceedings under Section 482 of the Cr.P.C.

Decision of the Madras High Court

The Madras High Court dismissed the appellant's petition under Section 482 of the Cr.P.C., holding that a prima facie case was made out against him. The High Court observed that the appellant had dishonestly suppressed the encumbrance on the property and made false promises to the complainant, inducing her to participate in the auction and purchase the property. It concluded that the appellant's actions prima facie constituted cheating, issuing a false certificate, and forgery.

Rival Contentions

The appellant contended that he was appointed as the Manager at the Head Office of HDFC Bank on 03 November 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 was not authorized to initiate proceedings under the SARFAESI Act. He argued that the FIR against him was an abuse of the legal process, giving a civil dispute an unjustified criminal colour. The appellant also highlighted that the consumer complaint had been dismissed, indicating that the complainant was aware of the acquisition process before participating in the auction. Additionally, he relied on Section 32 of the SARFAESI Act, which provides immunity to secured creditors and their officers for actions taken in good faith under the Act.

On the other hand, the respondent argued that the complainant was unaware that the property had been acquired by the Tamil Nadu Housing Board and only discovered this after attempting to register the property. The respondent contended that the appellant's actions, including the concealment of the property's acquisition status and misrepresentation, indicated deliberate wrongdoing. The respondent also argued that the protection under Section 32 of the SARFAESI Act does not apply as the appellant's actions were not in good faith.

Legal Provisions and Judgments Relied Upon

The appellant relied on Section 482 of the Cr.P.C. to seek the quashing of the criminal proceedings. He also cited Section 32 of the SARFAESI Act, which provides immunity to secured creditors and their officers for actions taken in good faith under the Act. The judgment in *K. Virupaksha v. State of Karnataka* was cited to argue that once proceedings under the SARFAESI Act have been initiated and concluded, criminal proceedings on the same subject matter cannot be entertained. The respondent relied on Section 55 of the Transfer of Property Act, 1882, and the judgment in *Mrs. Leelamma Mathew v. M/s Indian Overseas Banks & Ors.* to argue that the appellant cannot take the plea that the auction was done on the basis of "as is what is" and "as is where is."

Analysis of the Court

The Supreme Court focused on the appellant's argument that he was not the authorized officer at the relevant time. It noted that the sale certificate was issued by the appellant's predecessor and that the appellant was not the authorized officer empowered to issue the certificate during the period in question. The court found that the appellant had no role in the transaction leading to the FIR as he was not a signatory to the sale certificate and was not responsible for the auction process or issuance of the sale certificate. The court concluded that the continuation of the criminal proceedings against the appellant would lead to an abuse of the legal process and cause a miscarriage of justice.

Final Decision

The Supreme Court allowed the appeals and set aside the impugned order of the Madras High Court. It quashed the criminal proceedings against the appellant arising out of CC. No. 308 of 2016 on the file of the Judicial Magistrate No. 1, Tirunelveli. The court concluded that the allegations against the appellant were baseless and did not attract criminal liability.

Conclusion

The Supreme Court's decision in *Sivakumar vs the Inspector of Police & Anr.* underscores the importance of examining the direct involvement of individuals in alleged criminal activities. By quashing the criminal proceedings against the appellant, the court emphasized that legal processes should not be misused to harass individuals who have no direct involvement in the transactions leading to the dispute. This judgment serves as a reminder of the need to carefully assess the facts and legal provisions before initiating criminal proceedings.

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