

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.07.2015

Delivered on : 09.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.Nos.13345 and 16094 of 2015
and M.P.Nos.1,2 of 2015

CRL.O.P.No.13345 of 2015

Amrish Agarwal Petitioner/3rd Accused

Versus

1.The State,
Represented by Sub-Inspector of Police,
CCB, EDF-II Team-4,
Vepery, Chennai.

2.C.Uma Maheswari Respondents/Complainant
Rep. by her Power of Attorney
K.Ganapathi

CRL.O.P.No.16094 of 2015

Uma Maheswari Petitioner/Defacto
Complainant

Versus

The Sub-Inspector of Police,
CCB, EDF-II Team-4,
Vepery, Chennai.

... Respondent/Complainant

Prayer in CRL.O.P.No.13345 of 2015 : Criminal Original petition
filed under Section 482 of the Criminal Procedure Code praying to
call for the records culminating in the Charge Sheet in C.C.No.6235
of 2014 on the file of the 11th Metropolitan Magistrate Saidapet
Chennai and quash the same.

Prayer in CRL.O.P.No.16094 of 2015 : Criminal Original petition
filed under Section 482 of the Criminal Procedure Code praying to
direct the respondent police to conduct further investigation in

Crime No.49 of 2010 on the file of respondent police and file additional/supplementary report within a reasonable time as may be fixed by this Honble Court.

For Petitioner : Mr.V.Sankaranarayanan
in CrIOP.13345 of 2015

For Respondents : Mr.C.Emalias, APP [for R1]
in CrIOP.13345 of 2015 : Mr.N.Anand Venkatesh [for R2]

For Petitioner : Mr.N.Anand Venkatesh
in CrIOP.16094 of 2015

For Respondent : Mr.C.Emalias,
in CrIOP.16094 of 2015 Additional Public Prosecutor

C O M M O N O R D E R

Criminal Original petition No.13345 of 2015 has been filed under Section 482 of the Criminal Procedure Code praying to quash the proceedings in C.C.No.6235 of 2014 on the file of the 11th Metropolitan Magistrate Saidapet, Chennai and Criminal Original Petition No.16094 of 2015 has been filed under Section 482 of the Criminal Procedure Code praying to direct the respondent police to conduct further investigation in Crime No.49 of 2010 on the file of respondent police and file additional/supplementary report within a reasonable time.

2. Heard the learned counsel for the petitioner; the learned Additional Public Prosecutor appearing for the respondent and perused the materials placed on record.

3. It is the case of the prosecution that the house property in door No.14, Justice Sundaram Street, Chennai-4 [hereinafter would be referred to as the house] belongs to one C.Uma Maheswari who had entrusted the property and the title documents with her close relatives Vengatesh [A1] and Vijayalakshmi [A2] and had gone to the U.S.

4. It is alleged by Uma Maheswari that A1 and A2 had mortgaged the house with M/s.India Bulls Housing Finance by forging her signature and they have obtained huge loan. Amrish Agarwal [A3] who is the petitioner in CrI.OP.No.13345 of 2015 was working as Manager in M/s.India Bulls Housing Finance at the relevant point of time and that, he in collusion with Vengatesh [A1] and Vijayalakshmi [A2] had processed the papers and sanctioned the loan, knowing full well that Uma Maheswari is abroad.

5. On a complaint lodged by Uma Maheswari, the respondent Police registered a case in Crime No.49 of 2010 and after completing investigation, filed a Final Report in C.C.No.6235 of 2014 before the XI Metropolitan Magistrate, Saidapet, Chennai for offences under Section 120B, 419, 420, 465, 467, 468 read with 471 IPC against Vengatesh [A1], Vijayalakshmi [A2] and Amrish Agarwal [A3] challenging which, Amrish Agarwal [A3] is before this Court.

6. Learned counsel appearing for Amrish Agarwal [A3] submitted that as Manager in M/s.India Bulls Housing Finance, A3 had processed the papers and sanctioned the loan and when the borrower committed default, he also initiated legal action against them before the Debt Recovery forums. Learned counsel further submitted that there is no iota of material to show that A3 had conspired with Vengatesh [A1] and Vijayalakshmi [A2] for sanctioning the mortgage loan. Learned counsel contended that Uma Maheswari [defacto complainant] was very much aware of the loan transaction as she is a close relative of Vengatesh [A1] and Vijayalakshmi [A2] and now, in order to circumvent the debt recovery proceedings and save the house property, she has come up with a theory that the loan was illegally sanctioned.

7. Per contra, the learned counsel appearing for Uma Maheswari has filed a petition in Crl.OP.No.16094 of 2015 praying for further investigation of the case, on the ground that the prosecution has deliberately not collected any materials showing that complicity of A3 in the offence. He has also contended that A3 was neither arrested nor examined by the Investigating Officer and that has resulted in police filing a final report without any materials against A3, so that he can go scot-free.

8. Ms.S.P.Murugeswari, Sub Inspector of Police, CCB, EDF-II, Team-IV, Vepery, Chennai, has filed a counter, wherein in paragraph No.6, it is stated as follows:

"It is submitted that during the year 2012 and I took up the investigation and I have examined the complainant and recorded his statement and it revealed that the said forged transactions was held in the year 2006, but the said Balasubramanian was joined in A3's company during the year 2008-2009 and the part of A3 is only issued the DRT notice to the 2nd respondent.

Hence, I have deleted the said Balasubramanian in this case and after enquiry with India Bulls Housing Finance Ltd., officials came to know that during the year 2006, the petitioner/accused i.e. Mr.Amrish Agarwal while discharging his duties as Manager sanctioned/signed in the loan application submitted by the accused persons [A2 & A3] without proper verification, thereby the petitioner/accused [A3] has failed to do his duties.

9. Learned Additional Public Prosecutor submitted that Amrish Agarwal [A3] had left the services of M/s.India Bulls Housing Finance and the police were not able to locate his whereabouts.

10. Repelling this contention, the learned counsel appearing for A3 submitted that his erstwhile employer as well as the police knew very well about his address and that he was always ready to co-operate with the police.

11. This Court gave its anxious consideration to the assertions and asservations made by both sides. Even from the counter filed by the Investigating Officer, it is apparent that Amrish Agarwal [A3] has been made as an accused on the sole basis that he was the Manager who sanctioned the loan to A1 and A2. In the considered opinion of this Court, that by itself is not sufficient to criminally hold a person liable. His act of improperly sanctioning the loan can at the most amount to dereliction of duty.

12. What begs the question is, the police have made [A3] as a conspirator, even without collecting any material to support the charge. Thus, there appears to be sufficient force in the submission of the learned counsel appearing for Uma Maheswari that the investigation has been very perfunctory and the case requires further investigation.

13. This Court is of the view that it will serve the interest of justice, if further investigation is ordered in this case, as that may throw light on the culpability or innocence of both Uma Maheswari and Amrish Agarwal [A3]. If Uma Maheswari and her relatives had set up a phoney claim, in order to thwart the recovery proceedings, then the criminal law should catch upon them also. Similarly, if Amrish Agarwal [A3] had conspired with Vengatesh [A1] and Vijayalakshmi [A2] for defrauding Uma Maheswari, he cannot be allowed to go scot-free.

14. Under such circumstances, this Court directs Amrish Agarwal [A3] to first surrender before the learned XI Metropolitan Magistrate, Saidapet, Chennai in C.C.No.6235 of 2014 and give a bond for Rs.25,000/- under Section 88 Cr.P.C with two sureties for the lumpsum, one of whom must be a local resident. He should file an affidavit before the Trial Court disclosing his local address as well as his permanent address along with a photocopy of his passport. He should also furnish these details to the respondent police. On such surrender and execution of bond, the learned XI Metropolitan Magistrate is directed to release Amrish Agarwal [A3] on bail.

15. This Court directs the Assistant Commissioner of Police, CCB, EDF II, Vepery, Chennai to conduct further investigation in Crime No.49 of 2010. The defacto complainant Uma Maheswari and Amrish Agarwal [A3] shall appear before the Assistant Commissioner of Police as and when required and take part in the investigation. If Amrish Agarwal [A3] does not co-operate with the investigation, liberty is given to the respondent police to move the learned XI Metropolitan Magistrate for cancellation of bail. The bail can be cancelled by the Trial Court following the judgment of the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

With the above direction, these petitions are disposed of.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The XI Metropolitan Magistrate,
Saidapet, Chennai
- 2.Do- The Chief Metropolitan Magistrate,
Chennai.
- 3.The Assistant Commissioner of Police,
CCB, EDF - II,
Vepery, Chennai.
- 4.The Sub-Inspector of Police,
CCB, EDF-II Team-4,
Vepery, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Anand Venkatesh, Advocate, S.R.No.34642

+1cc to Mr.J.Sivanandaraaj, Advocate, S.R.No.34783

+1 cc to Mr.N.Anand Venkatesh, Advocate, sr.32724 (27/10/2015)

+1 cc to Mr.V.Sankaranarayanan, Advocate, sr.33293(28/10/2015)

CRL.O.P.Nos.16094 & 13345 of 2015

KK(CO)

CA(27/07/2015)