IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.20697 of 2013
Reserved on 06.01.2016

T.K.Babu ... Petitioner

Vs

1. The Central Bureau of Investigation,
   rep. By the Joint Director,
   Nungambakkam,
   Chennai.

2. The Registrar of Co-operative Societies,
   No.170, EVR Road, Kilpakkam,
   Chennai-600 010.

3. The General Manager,
   Kanchipuram Central Co.operative Bank,
   15, G.Sheckpet North Street,
   Kanchipuram-631 501.

4. The Chief General Manager,
   National Bank for Agriculture and Rural Development,
   No.48, Uttamar Gandhi Road,
   Nungambakkam,
   Chennai-34.

5. The Director of Vigilance and Anti Corruption,
   Abiramapuram, Chennai.

6. The Commercial Crime Investigation Wing (CI)
   C-48, 2nd Avenue, 3rd Floor,
   Anna Nagar, Chennai-40. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, to direct the 1st respondent to take the petitioner's complaint dated 6.7.2013 on the file and to register FIR and investigate the case and to take all necessary steps in accordance with law.

For Petitioner : Mr.K.P.Gopalakrishnan for
Mr.R.Nirmala Devi

For Respondent : Mr.K.Srinivasan,Spl.PP(CBI) for R1
Mrs.T.P.Savitha, GA for R2
Mrs.G.Thilagavathi for R3
Mr.K.Sukumaran for R4
Mr.C.Emalias,
Addl.Public Prosecutor for R 5 & 6

ORDER

This Writ Petition has been filed, praying for the issuance of Writ of Mandamus, to direct the 1st respondent to take the petitioner's complaint dated 6.7.2013 on the file and to register FIR and investigate the case and to take all necessary steps in accordance with law.

2. The petitioner is a retired Bank Manager. He has come forward with the present writ petition, highlighting the alleged corruption and malpractices committed by the officials in the 3rd respondent Co-operative bank and its branches. According to him, in Porur Branch of Kanchipuram Central Co-operative bank, nearly Rs.20 crores was swindled by its bank officials under the guise of fake loan to the self help groups, joint liability and petty traders loan. When the Fact Finding Committee submitted a report on 13.4.2010 about the fake loan, the officials of the Branch, namely, Thiru John Batcha, Manager had misappropriated to the tune of Rs.2 Crore and 41 lakhs. Tmt.Kamatchi, Joint Registrar/Special Officer had failed to take action on the report and thereby, the said John Batcha had continued the misappropriation to the tune of nearly Rs.20 crores. Apart from that, he also misappropriated Rs.29 lakhs by way of fake jewel loan, which resulted in registering FIR in Crime No.140 of 2011 on the file of Porur Police Station. Thereafter, a fire accident was set up on 10.9.2011 to destroy the documents in Porur Branch to cover up misappropriation of huge amount, which resulted in registering FIR in Crime No.427 of 2011. However, neither the police officials nor the respondednts 2 and 3 proceeded to recover the public money and their inaction would go to show the involvement of higher officials and therefore, unless the investigation is handed over to the first respondent, real facts would not come to light. According to the petitioner, he is also one of the depositors and account holder in Mugappair Branch of K.C.C.Bank and all the Co-operative banks are running under loss due to mal-administration and misappropriation of public money. It is also stated that in

Head Office, a sum of Rs.12,12,000/- was misappropriated by its staff, which resulted in constitution of fact finding committee, which conducted the enquiry and submitted its report on 29.10.2012 holding that there was misappropriation to the tune of Rs.12,12,000/-. Based on the said report, a complaint was lodged and a case in Crime No.27 of 2012 was registered for the offences under Sections 406, 408, 471, 430 IPC. The grievance of the petitioner is that no action was taken against the persons who induldged in misappropriation of huge money and there was no disciplinary action taken against the staff and they are at the verge of retirement and therefore, it is just and necessary to take action against the erring officials before their retirement. Hence, the petitoner made several representations to the respondents, requesting to take appropriate action against the erring officials who indulged in misappropriation of fake loan to self help groups, petty traders loan and joint liability group loan and fake jewel loan, etc., but no action was taken by the officials concerned nor the police officials. In such circumstances, the petitioner made a complaint, dated 6.7.2013 to the first respondent and since there was no action, the petitioner has come forward with the present writ petition.

3. The 3rd respondent has filed a counter affidavit, wherein, it is stated that the 3rd respondent bank is functioning as a banking institution with avowed object to reach the public, as a Co-operative Bank and in no manner of the obligation of the bank could be doubted to eclipse the interest of its functioning more than that of the petitioner, who is only an account holder. The 3rd respondent has never relegated its duties and responsibilities and for the reason that some maladministration had happened at the hands of the officials at relevant point of time, would not liberalise the petitioner to contend that the bank is functioning in an inefficient manner since the Bank takes effective steps as and when it is brought to its notice and corrective mechanism has been put into implementation by taking steps both at the bank level and at the department level. While denying the averments and contentions put forth by the petitioner in the writ petition as false, incorrect and unsustainable, it is stated that the petitioner has chosen only to implicate the responsible officials without meager information which gravely prejudice the interest of the institution and degrade the morale of the officials who work dedicatedly. It is stated that the Audit and Appraiser team deducted 135 packets of jewels as fake in Pallavaram Branch and on the basis of the then General Manager, a complaint was lodged on 16.3.2011 which was registered as FIR No.57 of 2011 on the file of City Crime Branch II and action is in process. Consequently, disciplinary action was initiated against the

erring employees and surcharge proceedings were initiated to recover the loss. Likewise, in Porur branch, fake jewel loan was deducted on 21.4.2011 and a complaint was lodged before Sri Ramachandra Medical College Police Station on 23.4.2011. A criminal complaint was lodged by the Deputy Registrar of Kancheepuram Circle, which was registered in Crime No.6 of 2011 against Thiru D.Sanjeevikumar, Jewel Appraiser, Thiru A.Chan Batcha, Thiru S.Shanmugavel, Branch Managers, Thiru K.Arumugam, Thiru S.Kannappan and Thiru B.Babu, Cashiers and all of them were arrested and remanded on 20.12.2011 and their properties were also attached apart from initiating departmental proceedings. It is further stated that as regards the misappropriation said to have taken place in Tiruvottiyur and Ambattur Branches, appropriate action was initiated by framing the charges against the concerned officials and recovered the misappropriated amount and enquiry on them is still pending. With these averments, the 3rd respondent sought for dismissal of the writ petition as devoid of merits.

4. A status report has been filed by the Inspector of Police/6th respondent, wherein, it is stated that the 6th respondent had not received any complaint from the petitoner dated 6.7.2013. Based on the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 of Thiru Kothandaraman, Co-opeative Sub Registrar, Kancheepuram, the Deputy Registrar, Kancheepuram Central Co-operative Bank, Porur Branch lodged a complaint before the respondent police on 28.11.2011 and consequently, a case was registered in Crime No.6 of 2011 under Sections 408, 409, 468, 420 rw/ 109 IPC on 20.12.2011 against all the accused persons mentioned in the report. Thereafter, on completion of elaborate investigation, the then Inspector of Police, CCIW-CID, Chennai filed a charge sheet against A1 to A19 under Sections 408, 409, 468, 420 r/w 109 IPC before the Judicial Magistrate No.1, Poonamallee and the same is pending. While so, the Deputy Registrar, Kancheepuram Range preferred a complaint before the CCIW-CID, Chennai about the misappropriation done by one Chan Batcha, who worked as a Manager in K.C.C.Bank, Porur Branch and based on the said complaint a case was registered in Crime No.03 of 2013 under Sections 403, 406, 408, 420, 468, 477(A), 120(B) r/w 34 IPC. During the course of investigation, the respondent police asked the defacto complainant to produce relevant documents pertaining to the misappropriation, but no documents were produced. However, the General Manager sent a letter dated 5.2.2013 stating that the relevant documents, registers, loan ledgers, cash book, cheque leaves, etc., were burnt in a fire accident occrred on 10.9.2011. Based on the same, a case was registered in SRMC Crime No.427 of 2011 on 10.9.2011. However, as there was no documentary evidence to substantiate the allegations in

the report, the respondent police have no alternative except referring the case without any documentary evidence. Consequently, the respondent police served RCS No.1/2014 on 5.12.2014 to the Deputy Registrar, Kancheepuram Range and the same was acknowledged by him and therreafter they filed a final report along with served RCS before the concerned Judicial Magistrate. Thus, they placed the factual aspects with regard to the investigation conducted by the respondent police.

5. The 4th respondent/NABARD also filed a counter affidavit, inter alia, stating that in exercise of statutory powers, inspection of the books of accounts of the 3rd respondent with reference to its financial positions as on 31.3.2011 was conducted and it was revealed that the methods and systems of operation of 3rd respondent was not satisfactory. On the basis of the inspection conducted over the functioning of the 3rd respondent over the deficiencies and irregularities, particularly jewel loan, direct jewel loan, outstanding had increased to Rs.32,951.39 lakhs as on 31.3.2011 i.e. an increase of 9.91 % over the earlier year. The NPAs as on 31.3.2011 had been estimated to be Rs.14516.20 lakhs as against Rs.8358.64 lakhs as on 31.3.2010. It is also stated that the inspection team also observed that there were 155 cases of jewel loan against the pleding of spurious jewels in Pallavaram branch of 3rd respondent and the amount involved in spurious loan was Rs.71.36 lakhs. There were 48 cases of jewel loans as against spurious jewels with Porur branch of 3rd respondent to the tune of Rs.29.15 lakhs. The Inspection team also observed that the 3rd respondent had not conducted 100% jewel verification in its branches during the years 2009-2011. It has also been observed that the Porur branch had sanctioned and disbursed loan to JLGs of petty traders to the extent of Rs.1972.38 lakhs against the target of Rs.100 lakhs. Most of the loans became NPA and the 3rd respondent had made a provision of Rs.1048.39 lakhs. A copy of the inspection report was forwarded to the 3rd respondent on 30.1.2012 for compliance, but the 3rd respondent has not reported its compliance. Thereafter, vide letter dated March, 2012, a recommendatory note was forwarded to the Reserve Bank of India about the unsatisfactory functioning of the 3rd respondent. Therefore, it is stated that it is futile on the part of the petitioner to make wild allegations that the corruption has spread to this respondent.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for CBI and the respective banks/respondents 3 and 4 and the learned Government Advocate for respondent 2 and the learned Additinal Public Prosecutor for R5 and R6 and perused the entire materials available on record.

7. The learned counsel for the petitioner would submit that the officials of the Porur Branch of the 3rd respondent bank have indulged in misappropriation of public money to the tune of 20 crores under the guise of fake loan to self help groups, joint liability and petty traders loan and no proper action either by way of disciplinary proceedings or criminal proceedings was initiated against them and since the 6th respondent, without conducting the investigation properly in regard to the said misappropriation committed by the officials of the Porur Branch of 3rd resondent bank, filed referred charge sheet vide RCS No.01/2014, dated 5.12.2014 before the learned Judicial Magistrate, Poonamallee. Therefore, the petitioner has filed a complaint before the first respondent to take appropriate action and as there was no proper response, the petitioner has come forward with the present petition. Hence, the learned counsel sought for the relief as prayed for in the writ petition.

8. The learned Additional Public Prosecutor while stoutly opposing the petition, would submit that the 6th respondent has conducted the investigation and since the defacto complainant/Deputy Registrar of 3rd respondent bank had not produced relevant documents to substantiate the allegations made in his complaint, the 6th respondent filed the referred charge sheet before the concerned Magistrate. He pointed out that during the investigation, it came to light that all the relevant records pertaining to the alleged misappropriation were burnt in a fire accident that was occurred on 10.9.2011 and in such circumstances, there is no way except to file the referred charge sheet since the 6th respondent was unable to conduct the investigation without proper documentary evidence. Therefore, the learned Additional Public Prosecutor would submit that no direction to the first respondent as sought for by the petitioner is necessary.

9. The learned counsel appearing for the 3rd respondent would submit that the petitioner is a third party and he has no locus standi to file the present petition seeking a direction to the first respondent to take action on his complaint in regard to the misappropriation alleged to have taken place in 3rd respondent, for which, the 3rd respondent is the appropriate authority to lodge the complaint and accordingly, the Deputy Registrar of the 3rd respondent had already lodged the complaint, which ended in filing a referred charge sheet and hence, the petitioner cannot seek any direction and if at all he is interested as one of the depositors, he can very well file the petition by way of PIL. Hence, the learned counsel would submit that there are no merits in the writ petition and it is liable to be dismissed.

10. The learned counsel appearing for the 4th respondent/NABARD would submit that by virtue of Section 35 of the Banking Regulation Act, 1949, 4th respondent has been entrusted to supervise and inspect the State Co-operative banks/District Central Co-operative banks and in exercise of such statutory power, inspection of books of accounts of the 3rd respondent bank with reference to its financial positions as on 31.3.2011 and also over the functioning of the 3rd respondent regarding its deficiences and irregularities, was conducted and it was revealed that the methods and systems of operation of the 3rd respondent was not satisfactory and forwarded a copy of the inspection report to the 3rd respondent for its compliance, however, as there was no compliance, it was brought to the notice of the RBI as well as State of Tamil Nadu and absolutely there is no merit in the contention of the petitioner that the corruption has spread to the 4th respondent also.

11. The learned counsel appearing for the first respondent/CBI while placing reliance upon the decision of the Hon'ble Supreme Court reported in "State of West Bengal and others versus Committee for Protection of Democratic Rights, West Bengal & others" (2010) 3 SCC 571, would submit that while exercising extraordinary power, the Court cannot give direction to the CBI to register the case as a matter of routine merely based on some allegations levelled by the petitioner, which would not disclose any cognizable offence since no incriminating documentary material was produced by him.

12. On a perusal of the entire affidavit filed by the petitioner in support of the petition, I find that the petitioner has come forward with the present writ petition not for his own cause, but for the public interest, highlithing certain irregularities committed by the officials of the Branches of the 3rd respondent bank, viz., misappropriatin to the tune of Rs.20 crores and 69 lakhs had occurred at Porur and Pallavaram Branches of the third resondent on account of fake jewel loan and also the execution and liquidation savings account misappropriation to the tune of Rs.12,12,000/- caused by the Head Office and misappropriation with regard to Self Help Group loan occurred at Tiruvottiyur and Ambattur branches for Rs.3,00,000/-. According to the petitioner, though the above said irregularities brought to the knowledge of the higher officials, no action was taken against the erring officials, which prompted him to lodge a complaint before the first respondent/CBI.

13. It is the categoric version of the learned Public Prosecutor appearing for the respondents 5 and 6 that in fact,

based on the complaint preferred by the Deputy Registrar of 3rd respondent bank, after registering the case in Crime No.3 of 2013 for the offences under Sections 403, 406, 408, 420, 468, 477(A), 120(B) r/w 34 IPC, the 6th respondent proceeded with the investigation and requested the 3rd respondent to produce documents to substantiate the allegations made in the complaint, but 3rd respondent sent a letter, dated 5.2.2013 stating that the relevant records, viz., loan ledger, loan disbursement register, cashier scroll/chitta, cash books, admission register, cheque leaves, S.B.Ledger, etc., pertaining to the material period, were burnt in a fire accident that occurred on 10.9.2011, hence expressed its inability to produce the said documents. In such circumstances, finding no alternative since there was no documentary evidence to substantiate the allegations in the report, the respondent police have referred the case. Consequently, the 6th respondent police served RCS No.1/2014 on 5.12.2014 to the Deputy Registrar, Kancheepuram Range and the same was acknowledged by him and therreafter they filed final report along with served RCS before the concerned Judicial Magistrate. As regards the irregularities committed by the officials of the Branches of the 3rd respondent bank, it is stated by the 3rd respondent that the Audit and Appraiser team deducted 135 packets of jewels as fake in Pallavaram Branch and on the basis of the then General Manager, a complaint was lodged on 16.3.2011 which was registered as FIR No.57 of 2011 on the file of City Crime Branch II and action is in process. Consequently, disciplinary action was initiated against the erring employees and surcharge proceedings were initiated to recover the loss. Likewise, in Porur branch, fake jewel loan was deducted on 21.4.2011 and a complaint was lodged before Sri Ramachandra Medical College Police Station on 23.4.2011. A criminal complaint was lodged by the Deputy Registrar of Kancheepuram Circle, which was registered in Crime No.6 of 2011 against Thiru D.Sanjeevikumar, Jewel Appraiser, Thiru A.Chan Batcha, Thiru S.Shanmugavel, Branch Managers, Thiru K.Arumugam, Thiru S.Kannappan and Thiru B.Babu, Cashiers and all of them were arrested and remanded on 20.12.2011 and their properties were also attached apart from initiating departmental proceedings. It is further stated that as regards the misappropriation said to have taken place in Tiruvottiyur and Ambattur Branches, appropriate action was initiated by framing the charges against the concerned officials and recovered the misappropriated amount and enquiry on them is still pending. Therefore, it appears that the 3rd respondent had taken action by initiating proper proceedings against erring officials. Therefore, at this juncture, this Court cannot direct the first respondent to register the FIR and investigate the same. In this regard, it is worthwhile to refer the judgment rendered by the Hon'ble Supreme Court in "State of West Bengal and others versus Committee for Protection of Democratic rights, West Bengal and others" reported in (2010) 3 SCC 571, wherein, it has been held as under in para 70:

> "70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution,while passing any order,the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources,may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

14. In the above said dictum, the Hon'ble Supreme Court has cautioned the Courts conferred with powers by Articles 32 and 226 of the Constitution, to bear in mind certain self-imposed limitations on the exercise of their constitutional powers and not to pass orders, directing the transfer of the investigation to the CBI from the other investigating agency as a matter of routine or merely because a party has levelled some allegations. When such being the legal position even regarding the transfer of the investigation to the CBI, the direct prayer sought for by the petitioner, to direct the CBI to register the FIR based on his complaint and investigate the same, in my opinion, cannot be entertained. In fact, from the records, I find that the 6th respondent police have already referred the case and served RCs No.1/2014 as early as on 5.12.2014 to the Deputy Registrar, Kancheepuram Range,which was also acknowledged by him,however,it is to be noted that he has not chosen to file any protest

peitition as against the said RCs notice. Therefore, the prayer of the petitioner as sought for in this Writ Petition cannot be granted.

14. In view of the above, I do not find any valid ground to entertain this writ petition. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Suk

To

1. The Central Bureau of Investigation,
   rep. By the Joint Director,
   Nungambakkam, Chennai.

2. The Registrar of Co-operative Societies,
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6. The Commercial Crime Investigation Wing (CI)
   C-48, 2nd Avenue, 3rd Floor,
   Anna Nagar, Chennai-40.

+1cc to Mr.R.Nirmala Devi, Advocate, S.R.No.6650
+1cc to Mr.G.Thilagavathi, Advocate, S.R.No.5579
+1cc to the Government Pleader, S.R.No.5887

W.P.No.20697 of 2013

AD(CO)
CA(26/02/2016)