IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2017

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL OP No.3644/2017 and CRL.M.P.No.2649 of 2017

K.Devanathan ... Petitioner/ 4th Accused

-Vs-

The Sub Inspector of Police,
C.B.I, ACB,
Chennai. ... Respondent/ Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records in C.C.No.46 of 2015 on the file of the XI Additional Special Court for CBI cases, Chennai and quash the same insofar as it relate to the petitioner.

For Petitioner: Mrs.P.T.Asha

For Respondent: Mr.K.Srinivasan
Special Public Prosecutor for CBI cases

ORDER

This Criminal Original Petition is filed to quash the charges as against the petitioner/A4 in C.C.No.46 of 2015 on the file of the XI Additional Special Court for CBI cases, Chennai.

2. It is the contention of the petitioner that he was working as Chief Manager/Assistant General Manager as Branch-in-charge in Mylapore Branch, Chennai from 01.12.2011 to 15.07.2012 (for about six months) and he was in-charge of the Branch dealing with various accounts of the customers and one such account is that of M/s. Exim Focus, represented by its proprietor, S.Venkatraman (A-2). The allegation as against the petitioner/A4 in the charge sheet is that he allowed overdrawing of cash credit in account No.3148994479 of M/s. Exim Focus to the tune of Rs.165 lakhs as against the sanctioned limit of Rs.75 lakhs. Similarly, he enhanced the

credit limits from Rs.175 lakhs to Rs.300 lakhs on 15.03.2012 and from Rs.300 lakhs to Rs.500 lakhs on 29.06.2012.

3. A2 is a customer of the Bank, who was enjoying various credit facilities from the year 2011. Even before the petitioner taking charge of the Branch, other Chief Managers enhanced the credit facilities to A2, after satisfying themselves that this account was performing well. When A2 further sought for enhanced credit limit, the petitioner called for a valuation report of the security to the panel valuer of the Bank, who submitted a report assessing the property value at Rs.350 lakhs. This prompted the petitioner to enhance the credit facility and enhanced the limit. There was no evidence against the petitioner that he had taken illegal gratification or pecuniary advantage from A2. According to the guidelines of the RBI, the petitioner had enhanced the credit limit on the basis of the market value and on the basis of performance of the A2 with regard to bank account. Hence, he prayed for allowing this petition.

4. Learned Special Public Prosecutor appearing for the respondent has filed a counter affidavit, wherein paragraph Nos. 5 and 6 reads as follows:-

> 5. It is humbly submitted that the averments mentioned in para 5 is denied. When the petitioner was working in Central Bank of India, Mylapore Branch, Chennai between 01.12.2011 to 24.06.2012 as Chief Manager and from 25.06.2012 to 14.07.2012 as Assistant General Manager, he had allowed huge amount of overdrawings in the Cash Credit account bearing number 3148994479 of M/s. Exim Focus to the tune of Rs.165 lakhs against the sanctioned limit of Rs.75 lakhs. Subsequently, the petitioner enhanced the credit limits from Rs.175 lakhs (Cash Credit : Rs.75 lakhs and packing Credit : Rs 100 lakhs) to Rs.300 lakhs (Cash Credit : Rs 75 lakhs and packing Credit : Rs.225 lakhs) on 15.03.2012 to adjust the over drawings in the said account by releasing Rs.90 lakhs from the Packing Credit account without adequate collateral security within a period of less than 5 months from the date of take over of the account from Indus Ind Bank. Again, the petitioner had enhanced the limit from Rs.300 lakhs to Rs 500 lakhs on 29.06.2012 (i.e. within a period of approximately little over 3 months period from the previous enhancement made by him). This was stated by Shri.Raj Kumar Goyal (LW-41) in the Sanction for Prosecution for the

petitioner on 26.11.2015 (D-154). As per Loan Policy clause 14.2.6 and as per Annexure 24 of Loan Policy, delegate in the rank of Chief Manager (Scale IV) and above can permit excess drawings to the tune of, maximum of 15% of regular sanction limits. In the present case, the petitioner had allowed overdrawings to the extent of Rs.90 lakhs (120% of Rs.75 lakhs) against the permitted level of Rs.11.25 lakhs (15% of Rs.75 lakhs) though allowing indiscriminate excess over the sanctioned limit is prohibited. This was stated by Shri.K.Venkatesan (LW-2) and in the Loan Policy (D-111 and D-112). To avoid Non Performing Asset on account of excess drawings, the petitioner had enhanced the limit from Rs.175 lakhs to Rs.300 lakhs on 15.03.2012 as proved in D-25 and also from Rs.300 lakhs to Rs 500 lakhs on 29.06.2012 as proved in D-26 and stated by Shri K.Santhana Krishnan (LW-3), Chief Manager, Central Bank of India, Zonal Office, Chennai.

It is submitted that during the tenure of the petitioner in Central Bank of India, Mylapre Branch as a Branch Manager for the period from 01.12.2011 to 14.07.2012, he had enhanced twice (i.e. On 15.03.2012 and on 29.06.2012) the limit from Rs.175 lakhs to Rs.500 lakhs without adequate collateral security within a short span of 6 months period that too loan was taken over from Indus Ind Bank. The acts of the petitioner is the foundation for the criminality and major portion of huge loss to the Bank.

6. It is humbly submitted that the averments mentioned in para no: 6 is denied. The loan of M/s Exim Focus was taken over by Shri C.S.Balakrishnan (A-3), the predecessor of the petitioner, on 25.10.2011 from Indus Ind Bank as per the Original Loan Takeover agreement dated 25.10.2011 signed by Shri C.S.Balakrishnan (A-3) and Shri S.Venkatraman (A-2) vide D-27. The petitioner joined in the branch on 01.12.2011 and hence the customer is a new customer and not the old customer. When the petitioner is enhancing the limits for a new customer twice within 6 months from Rs.175 lakhs to Rs.500 lakhs and also by allowing overdrawings continuously, he had not verified the running of the account and healthy of the account.

5.The statement in the counter is sufficient to consider the issue on hand. This Court perused the materials and allegations made against the petitioner. This Court cannot enquire as to the admissibility of the evidence with regard to the accused. There is prima facie material as against the petitioner to proceed further, and even materials are suggesting a strong suspicion to proceed against the accused which is sufficient to proceed and the probative value of the materials cannot be gone into at this stage. It is only the trial Court which has domain over the examination of the witness and appreciate the evidence to come to the right conclusion. Taking into the consideration the serious allegations as against the petitioner for enhancement from Rs.300 lakhs to 500 lakhs within a period of three months and the previous enhancement made by them and CBI has also collected the materials from the Bank and the Bank officials have also given statement on that aspect, whether such act of the petitioner was done honestly or dishonestly can be tested only after conclusion of the trial. Therefore, this Court, considering the serious nature of the offence and prima facie materials available on record, as properly stated in the counter of the respondent, is of the opinion that at this stage, this Court cannot quash the proceedings. Accordingly, the Criminal Original Petition is dismissed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Kp/Adl

Sub Assistant Registrar

To

1. The XI Additional Special Court for CBI cases,
Chennai

2. The Sub Inspector of Police,
C.B.I, ACB,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s. Sarvabhuman Associates, S.R.No.40460

RS(15/06/2017)