IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2018

PRONOUNCED ON : 28.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.15875 of 2018
and Crl.M.P.No.8139 of 2018

P.Kamala Kannan ... Petitioner

Vs.

1.State represented by
The Sub Inspector of Police
District Crime Branch
Dharmapuri.

2.P.K.Vaidyanathan ... Respondents

Prayer:- Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the FIR in Cr.No.9 of 2017 on the file of the 1st respondent and quash the same as illegal.

For Petitioner	:	Mr.S.Radhakrishnan
For R1	:	Mrs.Kritika Kamal, P. Government Advocate (Crl.Side)
For R2	:	Mr.Om Prakash Senior Counsel for Mr.A.Ilangovan

O R D E R

This petition has been filed to call for the records pertaining to the FIR in Cr.No.9 of 2017 on the file of the 1st respondent and quash the same as illegal.

2. On the complaint lodged by the Chief Vigilance Officer, REPCO Bank, the first respondent police have registered a case in Cr.No.9 of 2017 on 15.11.2017 under Sections 409, 420, 423, 467, 468 and 477-A IPC against the petitioner herein, for quashing which, this petition has been filed.

3. Heard Mr.S.Radhakrishnanan, learned counsel for the accused, Mrs.Kritika Kamal, P., learned Government Advocate [Crl.Side] for the State and Mr.Om Prakash, learned Senior

Counsel representing Mr. A. Ilangovan, learned counsel on record for the second respondent.

3. It is the case of the de facto complainant that the petitioner was working as Chief Manager, REPCO Bank, Dharmapuri Branch from 14.03.2014 to 02.05.2017; the Credit Division of the Head Office reviewed the Early Mortality loan cases and observed that there were 67 cases in Dharmapuri Branch; this aroused a suspicion and when further enquiry was conducted, they were shocked to find that the accused had disbursed Rs.10 lakhs loan to one Doulath Basha without obtaining his signature in the forms and that the accused had not even obtained the document pertaining to the mortgage of his land and building property; further enquiry was conducted, in which, the inspection team observed serious discrepancies including procedural lapses, misappropriation of loan and embezzlement of money without the knowledge of the borrowers to a tune of Rs.141.66 lakhs.

4. There is yet another specific allegation in the FIR which reads as follows:

> "In furtherance, Sri.P.Kamalakannan also purported to have issued Loan Closure Receipt individually to seven borrowers, by affixing the bank round seal and signing them on a stamp paper of Rs.50/-, all on 06.01.2017, amouting to Rs.156.00 lakhs without accounting any amount in the branch books of account. Resultantly, the borrowers as above have now served Legal Notice on the bank to return the original property documents collected by him from the borrowers."

5. Mr.Radhakrishnan, learned counsel for the accused submitted that Doulath Basha himself is a dubious character and the Management has obtained a false complaint from him to fix the accused. He further submitted that under the Vigilance Manual, the complaint should have been given to the CBI and not to the local police. It is his contention that the REPCO Bank approached the CBI, but the CBI had refused to entertain the complaint, holding that the entire prosecution is civil in nature. He further submitted that the accused was a whistle-blower and had exposed the misdeeds of the Managing Director and that is why, he has been targeted.

6. Though these arguments were advanced across the Bar, the learned counsel for the accused was not able to produce any material to substantiate the charge of mala fides. In State of Bihar Vs. P.P.Sharma [AIR 1991 SC 1260], the Supreme Court has clearly held that an FIR cannot be quashed on the simple allegation of mala fides without anything more.

7. On the contrary, on a perusal of the records, it is seen that when the bank started to take disciplinary action against the accused, he had lodged three complaints dated 06.07.2017, 01.08.2017 and 22.08.2017 alleging that he was abused by his caste name by the Vigilance Officer on the instigation of the Managing Director of the bank. He has further sought action to be taken against his superior under the SC/ST Act. He has also filed a petition in Crl.O.P.No.15468 of 2017 for a direction to investigate his complaints. Thus, it appears that the accused is taking shelter under the umbrella of caste in order to stifle the ongoing domestic enquiry and criminal investigation against him, which cannot be countenanced and deserves to be deprecated.

8. The accused filed Crl.O.P.No.27439 of 2017 before this Court for a direction to transfer the investigation to the CBI on the ground that the Vigilance Manual contemplates CBI investigation, if the amount of misappropriation exceeds Rs.3 crores. This Court has dismissed Crl.O.P.No.27439 of 2017 on 13.12.2017 on the premise that the Vigilance Manual is only directory in nature and not mandatory, and that the District Crime Branch has the jurisdiction to conduct the investigation.

9. Since there are sufficient materials in the complaint lodged by the Bank against the accused, the FIR cannot be quashed in the light of the judgment of the Supreme Court in State of Haryana v. Bhajan Lal [AIR 1992 SC 604]. However, this Court finds that the accused has been lodging the complaint against all the Officers and has been consistently thwarting the progress of investigation. That apart, the de facto complainant is a Bank dealing with public money.

10. In such perspective of the matter, this Court directs the transfer of Dharmapuri District Crime Branch Cr.No.9 of 2017 to the file of the Central Bureau of Investigation, Chennai. The Inspector of Police, DCB, Dharmapuri, is directed to handover the entire C.D. file in Cr.No.9 of 2017 to the Superintendent of Police, Economic Offences Wing, CBI, Rajaji Bhavan, Besant Nagar, Chennai within two weeks from the date of receipt of a copy of this order. The Superintendent of Police, EOW, CBI, may in turn nominate a competent Officer subordinate to him to conduct the investigation.

Accordingly, this petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Sub Inspector of Police
District Crime Branch
Dharmapuri.

2.The Public Prosecutor
High Court, Madras.

3. The Superintendent of Police/Head of Branch
Economic Offences Wing, CBI,
Rajaji Bhavan,
Besant Nagar, Chennai

+1cc to Mr.S.Radhakrishnan, Advocate sr.no.41231
+1cc to Mr.A.Ilangovan, Advocate

Crl.O.P.No.15875 of 2018

nr 29/06/2018