BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.03.2018
Pronounced on : 24.05.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.OP.(MD)No.298 of 2018

Dhananjay Date
Senior Manager-Legal
National Bulk Handling Corporation Pvt. Ltd.,
7th Floor, 'A' Wing,
Dynasty Business Park, Andheri Kurla Road,
Chakala, Andheri (E),
Mumbai- 400 059. ... Petitioner

versus

1. The Superintendent of Police,
Dindigul District, Dindigul.

2. The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.
(Crime No.261/2017)

3. The Joint Director,
Central Bureau of Investigation,
'A' Wing, third respondent d Floor,
Rajaji Bhavan,
Besant Nagar,
Chennai. ... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code to withdraw the case in Cr.No.261 of 2017 on the file of the second respondent and transfer the investigation to any other independent investigating agency including the third respondent.

For Petitioner : Mr.V.Kathirvelu
Senior Counsel
for Mr. B. Vijay Karthikeyan
For Respondents : Mr. Prabu Ramachandran for R1
Government Advocate (Crl.Side)
Mr.G.Vanjinathan for R2.
Mr.S. Vijayan, for R3
Special Public Prosecutor (CBI)

O R D E R

This petition has been filed by the defacto complainant u/s.482 Cr.P.C., to withdraw the case in Cr.No.261 of 2017 from the file of the second respondent and transfer the investigation to any other independent investigating agency including the third respondent.

2. Heard Mr.V. Kathirvelu, learned Senior Counsel appearing for Mr. B. Vijay Karthikeyan, learned counsel for the petitioner and Mr. Prabu Ramachandran for R-1, Government Advocate (Crl.Side); Mr.G.Vanjinathan for R-2 and Mr.S.Vijayan for R-3, Special Public Prosecutor (CBI).

3. The learned Senior Counsel appearing for the petitioner has submitted that the petitioner is engaged in the business of Warehousing and Collateral Management Services and is offering services to various Banks and financial institutions with which it has tie-ups. The petitioner as a Collateral Manager of the Bank post inspection of the agricultural goods issues Storage Receipts for the same which thereafter is pledged with the Bank; the Bank after checking bonafides of Borrower-Client and on the basis of the Storage Receipt, disburses the loan amount to the Borrower-Client who had applied for Warehousing Receipt Finance ('WRF'). He further submitted that the accused persons (A1 to A10) in Cr.No.261 of 2017 on the file of the second respondent police were old WRF Borrower-Clients of IDBI Bank. He further submitted that the said Bank appointed the petitioner to go to the premises of the said persons for inspection of the Warehouse and the agricultural goods stored therein and submit a report regarding the premises in which the goods to be stored and also about the goods to be deposited in the said premises for getting the said finance. He further submitted that as per the directions of the said Bank, the petitioner inspected the Anandam Modern Rice Mill at Dindigul where the goods (paddy and rice) were deposited by the said accused persons. There were three godowns in the said Rice Mill. In the said godowns, 56,700 bags of paddy and rice were stored. The petitioner after inspection submitted a report to IDBI Bank and issued a storage receipt. Based on the said report, IDBI Bank has disbursed an amount of Rs.5 Crores (approximately) to the accused persons 1 to 10 as against the total value of goods of Rs.7 Crores. The said Bank appointed the petitioner as a Collateral Manager for the abovesaid three godowns to take care of agricultural goods stored therein for and on behalf of IDBI. Accordingly, the petitioner took charge of the said godowns and appointed a Supervisor, who was responsible for the stock in the said godowns. He further submitted that on 26.01.2017, while conducting an audit in three godowns, it was found that 45,000 bags worth about Rs.5.50 Crores were missing. On enquiry, the

Supervisor, one Illayaraja (A-11 in Cr.No.261 of 2017) could not give satisfactory reply. The petitioner came to know that the accused persons 1 to 10 with the help of A11, had taken away 45,000 bags on various dates. Immediately, a complaint dated 15.02.2017 was lodged with the Dindigul Police Station and since no action was taken, the petitioner filed a petition u/s.156 (3) of Cr.P.C., before the Judicial Magistrate No.I, Dindigul. He further submitted that the learned Judicial Magistrate has forwarded the said complaint to the second respondent with a direction to register a case and investigate the matter and file a report and as per the said direction of the learned Judicial Magistrate, the second respondent has registered a case in Cr.No.261 of 2017 against the accused Nos.1 to 11.

4. The learned Senior Counsel appearing for the petitioner has further submitted that the accused persons 1 to 11 have filed petitions before this court seeking anticipatory bail. This Court has dismissed all the petitions except the petition filed by Accused No.3. This court has specifically observed that there is a prima facie case against all the accused persons. In spite of such observation, till date the accused persons were not arrested and no recovery was made by the second respondent. The accused persons are roaming freely. Though the second respondent knowing fully well that all the accused persons are available, has not taken any steps to arrest them and he further submitted that as per the Clause 6.3 of the Vigilance Management in Public Sector Banks, vis-a-vis the role and functions of the Central Vigilance Commissioner (CVC) that where the amount of alleged fraud ranges between Rs.25 Lakhs and Rs.5 Crores, the information would be handled/investigated by the Branch of the Central Bureau of Investigation having territorial jurisdiction over the area. He further submitted that as per the notification issued by the Reserve Bank of India with regard to the fraud/embezzlement in Public Sector Banks involved Rs.30 Millions and above, the investigation should be done by Economic Offences Wing of CBI and hence, he prayed to transfer the investigation to the third respondent .

5. The second respondent has filed a status report stating that as per the order passed by the learned Judicial Magistrate No.I Dindigul, the then Inspector of Police Dindigul Taluk Police Station, on 11.06.2017, has registered a case in Cr.No.261 of 2017 u/.s 381, 403, 420 of IPC. He further stated that the then Inspector of Police after registering a case has taken up the matter for investigation and recorded the statement of Mr.M.Bharathinathan S/o.Mani residing at 10/10 -66, Munisamy Gounder street, Salem and visited the scene of crime and prepared observation mahazar and rough sketch. He further stated that he took investigation after assuming charge on 16.12.2017 and issued notice u/s.160 (1) of Cr.P.C., to the

defacto complainant for his personal appearance on 17.01.2018, 21.01.2018 and 09.02.2018 respectively. All the notices returned unserved and till today, there is no response from the defacto complainant's side. He also stated that the petitioner is not a defacto complainant. He further stated that it is a case of misappropriation and criminal breach of trust and committed fraud to the tune of Rs.5.5 Crores and the investigation will take time for collection of records. He further submitted that IDBI Bank, Dindigul Branch has also lodged a complaint dated 19.08.2017 stating that the petitioner herein also conspired with the other accused persons and committed breach of trust and the same is pending for consideration. He also produced the said complaint along with the case diary. He further stated that the defacto complainant, without assisting the second respondent for investigation, has repeatedly made allegations against the second respondent and therefore, he prayed to dismiss the above petition.

6. Learned Government Advocate, who is appearing for the respondents 1 and 2 has submitted that the petitioner is not cooperating for investigation. He further submitted that in spite of the sincere efforts taken by the second respondent, the accused persons could not be secured as they are absconding and hence, according to him that there is no necessity to transfer the investigation to any other agency.

7. Learned Special Public Prosecutor, who is appearing for the Central Bureau of Investigation has submitted that if the Court directs the third respondent, the third respondent will take up the matter for investigation.

8. A perusal of the typed set of papers submitted by the petitioner would show that on 15.02.2017 one Mr.M.Bharathinathan, on behalf of National Bulk handling Corporation Pvt. Ltd., (NBHC) lodged a complaint before the Dindigul Town Police Station, but it appears that no action has been taken on the said complaint. Thereafter Mr.M.Bharathinathan on behalf of the National Bulk handling Corporation Pvt. Ltd., (NBHC) has filed a petition/complaint u/s. 156 (3) of Cr.P.C., before the Judicial Magistrate No.I, Dindigul. The learned Judicial Magistrate, by his order dated 25.04.2017, has forwarded the said complaint to the Station House Officer, Taluk Police Station, Dindigul, for investigation and report on 11.06.2017. Thereafter, it appears that on 11.06.2017, the second respondent has registered a case in Cr.No.261 of 2017 u/s.381, 403 and 421 of IPC. In the complaint, it is specifically stated that the accused Nos.1 to 10 with the connivance of the accused No.11 had removed 45,000 rice bags worth more than Rs.5.50 Crores from the godowns which were shown as security for obtaining loan of about Rs.5 Crores. Though the case was registered on 11.06.2017, so far, the second respondent has not arrested any of the accused persons and also not taken steps to recover the goods or amount. The second respondent has simply

stated that despite sincere efforts taken, he could not arrest the accused as they are absconding.

9. The records produced by the parties would also show that anticipatory bail applications moved by the accused persons have been dismissed by this court except the application filed by the Accused No.3. Even thereafter, the accused were not arrested. It is also to be pointed out that IDBI Bank Dindigul has also lodged a complaint on 19.08.2017 stating that the petitioner herein also conspired with other accused persons and committed breach of trust and mis-appropriated the secured assets of the Bank which were kept under the care and custody of the petitioner herein. So it appears that the IDBI Bank is the really affected party. In Clause 6.3 of the Vigilance Management in Public Sector Banks viz-a-vis role and functions of Central Vigilance Commissioner (CVC), it is stated that if the amount of the alleged fraud ranges between Rs.25 Lakhs and Rs.5 Crores, the information would be handled by the investigation Branch of the Central Bureau of Investigation having territorial jurisdiction over the area. Therefore, this court is of the view that the investigation has to be transferred to the third respondent for effective and fair investigation.

10. In the result, this petition is allowed. The case in Cr.No.261 of 2017 is withdrawn from the file of the second respondent and transferred to the third respondent for investigation.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
   Dindigul District,
   Dindigul.

2. The Inspector of Police,
   Dindigul Taluk Police Station,
   Dindigul.

3. The Joint Director,
   Central Bureau of Investigation,
   'A' Wing, third respondent [d] Floor,
   Rajaji Bhavan, Besant Nagar,
   Chennai.

4. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

5. The Special Public Prosecutor for CBI Cases,
   Madurai Bench of Madras High Court,
   Madurai.

+ 1 CC TO Mr.B.VIJAY KARTHIKEYAN , ADVOCATE IN SR No. 66197

GV/VS
TE/SV-MMS/SAR-1 : 21/06/2018 : 6P/7C

order made in
CRL.OP.(MD)No.298 of 2018
24.05.2018