BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2018

CORAM:
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.[MD].No.8876 of 2015
and
M.P.[MD].No.1 of 2015

V.Sundararajulu : Petitioner/Accused No.5

Vs.

1.State Represented by
The Inspector of Police,
City Crime Branch, Trichy City.
(Crime No.7 of 2013)

2.Benito,
Area Debt Manager,
ICICI Bank, 11th Cross,
Thillai Nagar, Trichy. : Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to Crime No.7 of 2013, dated 30.03.2013, on the file of the first respondent, Inspector of Police, City Crime Branch, Trichy City and quash the same as against the petitioner.

For Petitioner : Mr.M.Karunanithi
For R-1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl. side)
For R-2 : Mr.Pala Ramasamy

ORDER

The Criminal Original Petition has been filed to quash the First Information Report in Crime No.7 of 2013, dated 30.03.2013, on the file of the first respondent, Inspector of Police, City Crime Branch, Trichy City, for the offences under Sections 464, 465, 468, 471, 420 r/w Section 120 of IPC.

2. The case of the prosecution is that the first and second accused are partners of M/s.Chivas Trading Corporation and they are in-charge of day-to-day affairs of the said Firm. They are having Current Account with the complainant's Bank and they had sanctioned overdraft facility to the tune of Rs.20.6 million based upon the third party security under Agricultural Credit Line (ACL) facility on March 2006. The said facility was processed through the complainant branch situated at Trichy. The other accused 2 and 3 submitted documents for the said overdraft facilities and in

verification, it was came to know that the said persons forged the documents. The said property was valued by the petitioner and on the basis of the valuation report, the loan amount has been disbursed by the de-facto complainant. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the petitioner is a valuer and he is only valued the properties shown by the loanee as per the documents produced by them. Even as per the case of the prosecution, the petitioner did not force any attempt and did not deposit any documents before the banker. The petitioner valued the property and various factors, such as, marketability of the property viz., the location of the property, the availability of transport facility, the width of the road, which leads to the property and availability of access to hospital, schools, bus terminals etc., and determine the property valuation. The loan has been disbursed by the complainant. Further, he would submit that he is not an expert to test the genuineness of the documents and he is not equipped with the knowledge to identify a document as a fabricated or concocted one. He would also submit that he is not a competent person to check up whether the documents submitted by the loanee as genuine or not. Therefore, he is nothing to do with the crime as alleged by the prosecution. Therefore, he sought for quashing the First Information Report.

4. The learned counsel for the second respondent/complainant would submit that the First Information Report cannot be quashed on its threshold. There are specific allegations as against the petitioner and it has to be gone into in a full fledged investigation. Therefore, he sought for dismissal of the quash petition.

5. The learned Government Advocate (criminal side) would submit that though the petitioner is a valuer of the property, the property document itself forged one and only with the connivance of the valuer, the property has been valued in a high value, to that extent, the de-facto complainant disbursed the loan amount. Further, it is only a First Information Report and at this stage, it cannot be quashed without any investigation. Therefore, he vehemently opposed to quash the petition and sought for dismissal of the same.

6. This Court has carefully considered the rival submissions on either side.

7. As far as the petitioner is concerned, the case of the prosecution is that the documents submitted by A-1 and A-2 with the bank were valued by the petitioner. The valuation accessed by the petitioner on various factors, such as, the location of the property, the transport facility, width of the road, which leads to the property, other access to the hospital, schools, bus terminals and determine the value of the property. Further, the petitioner is not an expert to test the genuineness of the document and also it is not his duty to check the veracity of the genuineness of documents

which are produced by A-1 and A-2. Whatever the documents furnished as security to be handed over to the petitioner by the banker for valuation. The only duty of the petitioner is that he has valued the property on his inspection. Accordingly, he inspected the property and submitted his valuation report. On the basis of his valuation report, the overdraft facility has been granted in favour of first and second accused to the tune of Rs.20.6 million. Therefore, the petitioner has no role to play as alleged by the prosecution.

8. Therefore, the learned counsel for the petitioner relied upon the order passed by this Court in Crl.R.C.No.1063 of 2008, dated 10.08.2009, which extracted hereunder:-

> "7.The guidelines prescribed by the bank had not been produced by the investigating agency................A valuer is supposed to estimate the marketability of the property referred for valuation by the bank based on the documents provided by it. Of course, the valuer is bound to inspect the property referred by the bank for valuation purpose. The valuer cannot simply go to a location of a property on his own. For the purpose of identification, e takes the Branch Manager or some authorized agent to the location at the time of inspection for the purpose of identifying the property. The valuers takes this precaution just to avoid any mistake in the identification of the property. Even if the Branch Manager locates the property for the purpose of inspection by the approved valuer, the valuer is supposed to identify the property with the schedule found in the copy of the document furnished to him for valuing the property.
>
> 9.It is definitely not the duty of the valuer to look into the authenticity of the documents. He is not an expert to test the genuineness of the documents. He is not equipped with knowledge to identify a document as a fabricated or concocted one. For assessing the value of the property which is the prime job of the valuer, he is not supposed to identify and meet the owner of the property."

9. The above order cited by the learned counsel for the petitioner is squarely apply to this case on hand. This Court finds that as observed in the above order, the valuer cannot simply go to the location or a property on his own and he would take the Branch Manager or some authorized agent to the location at the time of inspection for the purpose of identifying the property. Again as

observed that, it is not the duty of the valuer to look into the authenticity of the documents and neither he is an expert to test the genuineness of the documents nor equipped with the knowledge to identify a document as a fabricated or concocted one. The valuer is not associated with the business transaction, when the application for loan is submitted by the borrower and it is not his duty to identify the owner of the property.

10. In view of the above reasons, the investigation in Crime No.7 of 2013, dated 30.03.2013, on the file of the first respondent, Inspector of Police, City Crime Branch, Trichy City, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The Inspector of Police,
City Crime Branch, Trichy City.

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

- 1 CC TO Mr.M.KARUNANITHI , ADVOCATE IN SR No.90987.
- \+ 1 CC TO Mr.PALA RAMASAMY , ADVOCATE IN SR No.91235.
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