

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-40207 of 2014

Date of Decision:- 01.06.2018

Umesh Kumar Bhuker

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM:HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Dinesh Arora, Advocate, for the petitioner.

Mr. Vikas Malik, DAG, Haryana.

Mr. Surender Pal, Advocate, for respondent No.2.

MAHABIR SINGH SINDHU, J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for quashing of an FIR No.156 dated 11.05.2012, under Sections 419, 420, 406, 467, 468, 471, 506 and 120-B of the Indian Penal Code (for short "IPC"), registered at Police Station Meham, District Rohtak.

The FIR was registered on the basis of complaint made by Sandeep s/o Chander Bhan, resident of Sisar Khas, Tehsil Meham, District Rohtak-respondent No.2 with the allegations that he is a co-sharer up to the extent of 1/4th share of the agricultural land in khewat No.274/246 Khatoni No.291, total measuring 359 kanals 2 marlas situated

at Village Sisar Khas, Tehsil Meham, District Rohtak. That on 02.01.2012, when he obtained the copy of '*Fard Jamabandi*' (Revenue Record) from the Patwari for getting a Kissan Credit Card prepared on the basis of said land, then he found that there was an entry of loan amount of Rs.6,50,000/- (Six lakhs fifty thousand) advanced by Oriental Bank of Commerce, Madina Branch (for short 'Bank'). On account of this, he suffered mental tension as he never applied for the alleged loan, thus, there was no question of availing any loan facility. The complainant visited the OBC, Madina and enquired from the concerned officials/officers and they told that one Sandeep son of Chander Bhan of village Behalba had taken the loan. Thereafter, the complainant made it clear to the Bank that he is neither the resident of village Behalba; nor he had taken any loan, but when the Bank officials/officers of the Bank showed the record, including mortgage deed of the land, then it transpired that there was some photographs and thumb impressions/signatures of some other persons and thus, it was a case of impersonation and fraud played by accused along with some other persons. It is further alleged that the documents were not bearing the thumb impressions/signatures and photographs of the complainant and he was not aware about the alleged witnesses, who have signed the relevant papers. The whereabouts of all those persons are to be disclosed by the accused. Since neither the complainant had availed the loan; nor mortgaged his land, therefore, there was no question of visiting in the office of OBC, Madina. After coming into knowledge about the said fraud, the complainant filed a civil suit

against the Bank and when the accused came to know about the suit their they cleared the loan amount and a letter dated 02.01.2012 to that effect has been issued by the Bank regarding clearance of the loan. In the said letter it has been mentioned that the loan has been cleared by Sandeep son of Chander Bhan, resident of village Behalba, Tehsil Meham, District Rohtak. Thus, all the accused by hatching a conspiracy along with others have committed the offence. The matter was enquired from both the witnesses i.e. Azad Lambardar and Vinod son of Om Parkash, but they denied their signatures and thumb impressions on the papers. Accused Jagdish is also extending threats to the complainant that in case he moves to the Court, he would be put to death, and as such the accused have committed the offence as mentioned above and they are liable to be punished. Further alleged that written complaints dated 10.02.2012 and 16.03.2012 were made to the police, but that since the accused are powerful persons, therefore, no action has been taken so far.

It is contended that at the relevant point of time, the petitioner was posted as an Agricultural Officer in the Bank and his role was only to verify the original documents for loan and then to make his recommendations. It is further contended that petitioner found the documents in order in respect of the land in question to be mortgaged and the recommendations had been in a bonafide manner and consequently loan was sanctioned by the Manager of the Bank. It is further contended that even at the time of registration of the mortgage deed, the customer was identified by two persons and one of them is Lambardar of the

village. Also contended that petitioner is neither the beneficiary; nor any specific role has been attributed to him regarding the commission of the alleged offences. It is also argued that FIR qua co-accused/Jagdish Lal Malhotra, Branch Manager, has already been quashed by this Court, vide order dated 17.07.2014 (P-12) and case of the petitioner is also on the similar footings, therefore, the FIR in question along with the consequential proceedings are liable to be quashed against the petitioner also.

The reply by way of affidavit of Mukesh Kumar, Deputy Superintendent of Police, Meham has been filed and on the basis thereof it is contended by learned State counsel that during investigation of the case the petitioner was arrested and after completion of the investigation, a report under Section 173 Cr.P.C. has been submitted and on the basis of the sufficient material, the learned trial Court has already framed the charges against the petitioner on 13.01.2015. It is further contended that the petitioner has actively participated in forging the documents and specific role has been attributed to him. It is also contended that the petitioner was responsible for sanctioning of the loan, as admittedly, it was his duty to verify all the documents, but instead of visiting on the spot, made the recommendations with malafide intention while sitting in the office in total breach of the bank regulations and thus, he is liable to be prosecuted. It is further submitted that the petitioner cannot claim any parity with the Branch Manager, as his case was entirely different and it is only the petitioner, who is responsible for physical verification of the

documents as well as land in question. Therefore, these are all disputed question of facts which can be decided during trial and no interference is required by this Court while exercising powers under Section 482 Cr.P.C.

Separate reply on behalf of respondent No.2 has been filed and it has been contended that since charges have already been framed and the case is fixed for prosecution evidence and pleas raised by learned State counsel has been reiterated. It is further contended that during investigation co-accused-Anil @ Sonu @ Sunil, in his disclosure stated that he asked co-accused Niraj to get a loan sanctioned against the land of respondent No.2 and he procured the documents of the land in question as well as ration card of one Sandeep son of Chander Bhan, resident of Village Behalba, which was already in his possession and he forged the name of said Sandeep in place of respondent No.2 and in the voter ID card also he committed the similar forgery. It is further contended that photograph of Niraj co-accused was affixed on the documents and he forged and impersonated respondent No.2 in connivance with the Bank officials as well as the present petitioner and land was mortgaged with the Bank on 28.07.2010 for a loan of Rs.6,47,000/- (Six Lakhs Forty Seven Thousand). It is further contended that the entire amount was withdrawn by opening a bank account in the name of one Sandeep son of Chander Bhan and he gave a bribe of Rs.22,000/- (Twenty Two Thousand) to the present petitioner and the same is duly corroborated by the co-accused namely, Niraj also in his disclosure during investigation. It is further contended that even the petitioner made a disclosure that on 22.07.2010,

he was posted as Agriculture Officer in the OBC, Madina and one Niraj in connivance with Anil came for obtaining loan by way of Kissan Credit Card on agricultural land of respondent No.2 by impersonation and for that he was supposed to visit for verification of the land in question, but by taking a bribe of Rs.22,000/- (Twenty Two Thousand) from Niraj and Anil, he prepared the verification while sitting in the Bank itself and signed the sanctioned letter as well as other documents in the capacity of Agriculture Officer. It is further contended that an amount of Rs.22,000/- (Twenty Two Thousand) has already been recovered by the police during investigation from the friend of the petitioner, namely, Mahender and thus, *prima-facie* strong case is made out against the petitioner and the present petition deserves to be dismissed.

Heard learned counsel for the parties and perused the record.

There is no dispute that in the present case a report under Section 173 Cr.P.C. has already been submitted against the petitioner and on the basis of the material available on record, the charges have already been framed.

It is also an admitted fact that a civil suit was filed by respondent No.2 and the same was permitted to be withdrawn by learned Additional Civil Judge, (Sr. Divn.), Meham, vide order dated 07.05.2012 (P-11) in view of the statement made on behalf of the OBC, Madina, to the effect that nothing is due against respondent No.2. Thus, it is apparently clear that in view of statement made on behalf of the Bank, the allegations of respondent No.2 that he did not avail any loan from the

Bank are duly accepted.

The contention on behalf of the petitioner that vide order dated 17.07.2014 (P-12) the FIR has been quashed against the Branch Manager is not helpful for the simple reason that duties and functions of the petitioner as well as of the Bank Manager are quite different and the relevant duties and responsibilities of the Agriculture Officer (petitioner), as described in the Master Circular dated 26.12.2005 (P-7), read as under: -

“After a hiatus, recruitment of AOs was resumed in the year 2003. However, the real impetus came after April 05 and 125 AOs were recruited in Jan 05. Since our Bank is now utilizing services of a large number of Agriculture Officers, it has been decided to advise the revised operational guidelines on working of these officers. The guidelines contained in this circular shall supercede all previous instructions on the subject.

Utility and importance of Specialist officers in Agricultural Sector.

As per stipulation of Reserve Bank of India, 18% of Net Bank Credit must be directed towards lending to Agriculture. However, our Bank is lagging behind the RBI norms. In view of this more emphasis is being given for recruitment of specialist officer under Agriculture Sector to augment the flow of credit to this particular sector. In view of this each Agriculture Officer must be utilized only and only for lending towards priority Sector/Agriculture.

Functions and Duties of the Agriculture Officers

1. The nature of duties to be performed by the AOs will be two fold i.e. extending credit facilities and fostering Rural Development Advances for the purpose means those to Agriculture micro finance and other small loans under Priority Sectors as specified vide our circular No.HO SL&PS 64:2004-05 dated 08.11.2001.

2. They will attend to overall duties connected with Agriculture Advances and will be mainly responsible for the following: -

Introduction of loan proposals to the Branch and processing thereof.

Identification of Borrowers, Pre and Post Appraisal visits.
 Supervision and follow up of Agricultural loans.
 Instruction of securities.
 Recovery of instalments.
 Follow up of SMA/NPA accounts of the above nature.
 Implementation of micro Finance & Farmers Club specially
 Oriental Bank Grameen Project (OBGP).
 Implementation of the Government sponsored schemes.
 Promotion of Agri Clinic and Agri Business-Centres (ACABC).”

Perusal of the relevant portion of Master Circular reproduced
 herienabove makes it apparently clear that it was imperative for the
 petitioner to identify the borrowers and to inspect the securities for
 introduction of loan proposal to the Branch and processing thereof. It was
 the obligation of the petitioner, being Agriculture Officer, to personally
 visit for physical verification of the land, documents and loanee before
 making the recommendations for the loan. It seems that instead of
 visiting on spot for verification the petitioner prepared the report while
 sitting in his office and to clarify the position in this regard the Interview-
 cum-Assessment/Process Note (P-3) is reproduced as under: -

“Recommendation of the Appraising Officer:

The relevant land record/documents have been obtained and
 verified and found correct. The farm was visited by me on 22.07.2010
 which is at a distance 8 kms. from the branch and found the address as
 mentioned in the application form is correct. We contacted in the village:

1. Shri _____ s/o Shri _____
2. Shri _____ s/o Shri _____

The applicant(s):

- i) has been resident of the area since three years and three months.
- ii) has satisfactory reputation. Yes
- iii) has old debts of Rs. _____ from non-institutional sources.

The net worth of the borrower as assessed from the applicant(s) is:

Assets (immovable) Rs.1,15,00,000/- (movable)
Rs.1,30,000/- (Less) Liabilities Rs. _____ = Rs.1,16,30,000/-”

Perusal of the recommendations clearly reveal that the petitioner did not contact anyone in the village and both the columns of the identifier are left blanks and therefore, this goes to prove that the petitioner made the recommendations while sitting in the office.

So far as the contention that the petitioner is not the beneficiary in the present case is also not acceptable for the simple reason that he made a disclosure during investigation that an amount of Rs.22,000/- (Twenty Two Thousand) has been received by him from co-accused Niraj and Anil @ Sonu @ Sunil for making the recommendations. Therefore, prima facie, it is established that he actively participated in the commission of offences.

The further contention that there is no specific allegation in the complaint against the petitioner is also liable to be rejected as after investigation the report under Section 173 Cr.P.C. has been submitted and after collecting the sufficient material, the charges have also been framed against the petitioner by the learned trial Court and now the case is fixed for prosecution evidence.

Still further, the petitioner cannot take the benefit of order dated 17.07.2014 (P-12) passed in the case of his co-accused Jagdish Lal Malhotra, Branch Manager, as in that case also the entire blame was shifted upon the present petitioner that loan was sanctioned after making the recommendations by the Agriculture Officer of the Bank and it was the present petitioner who checked and verified the documents up to his satisfaction and the relevant part of the said order reads as under: -

“The petitioner has alleged that agricultural loan applied in this case was sanctioned by the petitioner on the recommendations of the concerned officer i.e. Agricultural Officer of the bank. The Branch Manager has least participation in the matter of sanction of agricultural loan as all the verification and recommendations are made by the Agricultural Officer. The scrutiny of documents produced by the customers was also conducted by the Agricultural Officer who after his satisfaction sent the same to the lawyer to get legal opinion. After legal opinion, the matter again came to the Agricultural Officer for final submission of the report. The Agricultural Officer after checking and verifying the documents again and on his satisfaction direct the customer to open saving account in the bank. He then made pre-sanction visit to the property to be mortgaged, verified the documents, filled the form after taking information from the customer. After completing all these formalities and satisfying himself with regard to genuineness of the property to be mortgaged, recommendations were made by the Agricultural Officer for sanction of loan. The above procedure clearly shows that the Branch Manager has least role to play in sanctioning of the agricultural loan.

In the present case, the customer had forged and fabricated the documents which were verified by the Agricultural Officer and after such verification and legal search report, he had made the recommendations. The panel counsel had also verified the chain of title which was complete.”

The law is well settled that after framing of the charges by learned trial Court, this Court should not exercise the power under Section 482 Cr.P.C. for quashing of an FIR in routine manner; rather the same is to be exercised sparingly and with due caution and that too only in exceptional case(s) where the chances of proving the charges are very bleak and pendency of criminal proceedings are misuse of the process of the Court or to secure the end of justice. The facts and circumstances of the case clearly reveal that prima facie offences alleged in the present case are made out

against the petitioner and quashing of the FIR along with consequential proceedings is not justified.

Needless to say that Bank officials/officers are the trustees of the public money and they are supposed to sanction and disburse the loan in accordance with the relevant instructions/circulars in vogue while exercising due diligence and not to advance the loan as largesee by taking the same as their private properties in connivance with the fraudulent loanee(s).

In view of the facts and circumstances discussed hereinabove, this Court does not find any merit in the present petition and consequently, the same is hereby dismissed.

The observations made above shall not be constructed as an expression of opinion on the merits of the case and the trial Court shall not be influenced by the same.

Since the matter is pending for more than six years, therefore, learned trial Court is requested to expedite the trial.

[MAHABIR SINGH SINDHU]
JUDGE

June 01, 2018
rashmi/naresh.k

Whether speaking/reasoned	Yes
Whether reportable?	Yes