IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2018
Pronounced on : 22.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.2674 of 2011
and
M.P.No.1 of 2011

P.Ashok Kumar ... Petitioner/A6

Vs.

1.State Rep. by
the Inspector of Police,
Central Crime Branch,
Salem City. ... Respondent/Complainant

2.M/s. Indian Overseas Bank,
Rep. by its Senior Regional Manager,
Salem Region,
Salem. ... Respondent/Defacto-Complainant

(Impleaded the second respondent as per the order of this Court dated 17.02.2011 in M.P.No.3 of 2011)

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to C.C.No.822 of 2004 pending on the file of the learned Judicial Magistrate No.2, Salem and quash the same, in so far it relates to the petitioner herein (A6).

For Petitioner : Mr.V.Gopinath, Senior Counsel for Mr.K.Srinivasan

For R1 : Mrs.V.Saratha Devi, Government Advocate [Crl.Side]

For R2 : Mr.Ananda Gomathy Sivakumar

O R D E R

The petitioner is Accused No.6 in CC No.822 of 2004 which is pending trial on the file of Judicial Magistrate No.II, Salem for offence U/s.120(B), 409, 420, 468 and 477-A IPC r/w 109 IPC.

2.The above case was registered on a complaint given by the Senior Regional Manager, Indian Overseas Bank, Salem and a case in Crime No.12 of 99 was registered. The 1st respondent on completion of investigation filed a final report. The 2nd respondent is the defacto complainant. The case of the prosecution is that the 1st accused Jeganathan was working as Clerk in IOB Suramangalam Branch from 3-7-1993. His wife Pushpammal is A.2, his brother in law Sadasivam is A.3, his friend shanmugam is A.4 and Sumathi A.5 is the wife of A.4. The petitioner/A.6 P.Ashok Kumar is the Senior Manager in IOB Suramangalam from 4.8.1997. A.1 was having a SB Account in IOB Ac No.13901. He has also opened an account for his wife and Brother in law in Ac. No.14000 and 16268 respectively. A.4 and A.5 were having SB Account in A/c.No.16551. All the accused entered into criminal conspiracy to swindle the money of IOB by issuing cheques of IOB to the credit of A.2 and A.3, having Accounts at United Commercial Bank Shevapet in AcNo.7763 and 7523 and to the credit of A.4 and A.5, having account at Salem District Co-Operative Society Central Bank. In furtherance of their conspiracy during the period from December 1997 to March 1999, A.1 who was employed as Clerk in IOB Suramangalam Branch, who was entrusted with the transaction of money and maintenance of relevant registers issued as many as 44 cheques drawn in the name of A.2 and A.3, who sent them to UCO Bank Shevapet for credit to their account and also issued two cheques in favour of A.4 and A.5 Salem District Co-Operative Society Central bank and thereby committed criminal breach of trust to a total sum of Rs.100 lakhs to IOB. The particulars and details of the 46 transactions have been furnished. During investigation it is found that A.1 to A.6 in furtherance to their conspiracy though there was no balance amount in their accounts at IOB allowed the same to be credited to the accounts of A.2 to A.5 in UCO bank and Salem District Co-Operative Society Central bank. Further it is found that fictitious accounts have been opened by the accused and cheques were issued in the account No. of Savithri SB A/c.No.14713 S.Periyasamy SB A/c.No.14783 R.Radhakrishnan SB A/c.No.14215, S.Sumathi SB A/c.No.16551 and K.Parthsarathy SB A/c.No.14584 by forging signatures. The said forged cheques were sent for collection to be credited into the accounts of A.2 to A.5. Further, to cover up the same, corrections have been made in the day book and the general registers on various dates from 14-3-98 to 8-1-99. False entries have been made in the ledger accounts, day book general ledgers regarding the day to day debit and credit transactions, to project as though the transactions are genuine. Thus the accused has misappropriated the public funds of the bank by creating forged documents falsifying their accounts, committed cheating by abetment and conspiracy.

3.The contention of the petitioner is that the petitioner who is the Senior Manager of IOB Suramangalam Branch has been falsely implicated in this case as though he has conspired with other accused and intentionally aided the other accused for which there is no material, statement of witnesses and documents filed U/s.173 Cr.P.C. along with the final report. The petitioner's name does not find place in the FIR and he was later implicated in this case. Further placed reliance on the letter of Senior Regional Manager, IOB Dt.23-10-2011 from the respondent stating that the petitioner being the Asst.General Secretary IOB Officers Association for Salem Region had serious difference of opinion with Sr.Regional Manager and hence he had been falsely implicated. Further he contended that the bank is an institution where in each are allocated with their respective work and the cheques in this case have been passed after the other officers of the bank had approved and recommended. As the head of the bank he is the final authority who on verification of its subordinates approval approved the same and he cannot be held responsible for the fault if it was committed by his subordinates. Further had departmental action for the same offence.

4.The respondent police has filed a counter and submitted that the defacto complainant filed a complaint before the SI, Suramangalm Police and a case was registered against A.1 to A.3 in Crime No.999 of 1999 for offences U/s.409, 420, 465, 468, 477-A and 120-B IPC on 5-8-99. Thereafter the case was transferred to CCB, Salem City and Crime No.12/99 was assigned for offence Us. U/s.409, 420, 465, 468, 477-A and 120-B IPC on 16-8-1999. Thereafter on investigation, it was found that A.2 and A.3 presented the cheques drawn in the name of IOB posted for collection in their account at UCO Bank. A.1 in the capacity of clerk being entrusted with the transaction of money and maintenance of registers issued 46 cheques drawn in the name of A.2 and A.5 and given credit in their respective accounts knowing that there was no balance for the same. Thereafter, further witnesses were examined and the overt act of each of the accused had been tabulated :

S.No.	Name and Rank of the Accused persons	Overt act of the accused persons
1.	Jaganathan, A.1 - Clerk of IOB, Sooramangalam, Salem.	He has conspired with the other accused to swindle public money by issuing cheques to the credit of the account of other accused A.2 to A.5. A.1 being entrusted with transaction of money has issued 46 cheques drawn in the favour of A.2 to A.5. The said cheques have been issued by A.1 from the account of Public by forging the signature and has cheated to tune of Rs.100 lakhs A.1 has made false entries in the Savings Bank account day book and general ledger regarding the debit and credit transactions.
2.	Pushpammal, A.2 Sadhasivam, A.3 Shanmugam, A.4 and Sumathi, A.5	A.2 to A.5 they conspired together along with the accused A.1 & A.6 and got the public money credited to the Savings account held by them in other banks.
3.	Ashok Kumar, Petitoiner herein, A.6 - Senior Manager of IOB, Sooramangalam Branch, Salem.	He has intentionally aided A.1 to A.5 for commission of the above said offences. He has withdrawn sum of Rs.5 lakhs from the account of A.3 by forging his signature in the withdrawal slip.

5.Further the witnesses have specifically deposed about withdrawal of Rs.5 lakhs on 27-10-98 by the petitioner. When the concerned person in the bank questioned about the name in the withdrawal slip A.6 stated that he is aware of the account holder and is very well known to him. Further, it is also found that the petitioners wife is a partner along with A.3 in Senthur Finance. The accused have given confession corroborating the same and incriminating materials have been recovered on the confession. The UCO bank officials corroborated about the transactions and the transactions are not an one day affair and it has been going on for several months. The complaint itself was filed only after internal verification and checking of postings in the general ledger, day book vouchers, verification of other relevant documents of the bank. The inspecting officers of IOB have given a detailed report which were verified along with the relevant documents and found that this petitioner had connived and actively participated in facilitating the commission of offence by A.1, using his family members and friends. It is also found that this petitioner is also benefited on the said transactions and it is not merely dereliction of duty. All the accused have committed the offence of cheating on the public funds by forging and creating documents using the same in a clandestine manner had misappropriated the bank funds. The offence was committed in consensus of all the accused in a well orchestrated manner. The respondent police after detailed enquiry, examination of witnesses, study and scrutiny of the documents filed the charge sheet. The points raised by the petitioner has to be raised only during trial and the petition praying for quash has to be dismissed.

6.The second respondent, the bank had produced a typed set from which it is found that the petitioner had been charge sheeted for various dereliction of duty. The above case is one such instance of the enquiry. On Enquiry it was found that the charges were proved by the Disciplinary authority and the disciplinary authority in the order had categorically detailed about the instances, the failure of the petitioner had been highlighted. For the omission and commission of the petitioner Disciplinary authority awarded penalty. In the enquiry report it is also found that the petitioner has allowed his wife to become a Partner in M/s.Senthur Finance in which A.2 and A.3 are partners. A.3 is the brother in law of A.1. Further submitted that the public money of the bank to the tune of Rs.100 lakhs have been misappropriated and cheated by committing forgery and by creating forged documents. The inspectorate of the bank had also confirmed about the hands of the accused and opposed the quash petition.

7.Considering the submissions on either side it is found that there are statements and documents in the charge sheet to proceed against the petitioner. The Petitioner being the Senior Manager of the branch have allowed A.1 the clerk, his family members and friends to siphon out huge sums of money and further to camouflage the same, the Day book, General ledger, day to day debit and credit vouchers have been corrected on regular basis to project as though the accounts have been reconciled with the actual transaction and facilitated for the fraud to be undetected, resulting in huge loss of Rs.1 Crore of the public money.

8.In view of the above the Quash petition is dismissed. The trial court is directed to proceed with the case and to decide the case on merits based on the evidence uninfluenced by the observations made herein. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

ah

To

1.The Judicial Magistrate No.2, Salem.

2. -do-Through The chief Judicial Magistrate, Salem.

3.The Inspector of Police,
Central Crime Branch,
Salem City.

4. The Senior Regional Manager,
Indian Overseas Bank,
Salem Region, Salem.

5.The Public Prosecutor, High Court, Madras.

+1cc to Mr.K.Srinivasan, Advocate SR.No.27900

+1cc to M/s.Ananda Gomathy, Advocate SR.No.27962

Crl.O.P.No.2674 of 2011

NRL(CO)
GMY(02/05/2019)