IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17..06..2019
CORAM

The Honourable Mr Justice M.M.SUNDRESH
and
The Honourable Mr Justice M. NIRMAL KUMAR

Writ Appeal No.394 of 2016
and
C.M.P.No.5761 of 2016

T.K.Babu ... Appellant /Petitioner

-Versus-

1.The Central Bureau of Investigation,
Rep. by its Joint Director,
Nungambakkam, Chennai.

2.The Registrar of Co-operative Societies,
No.170, E.V.R. Road,
Kilpauk, Chennai 600010.

3.The General Manager,
Kancheepuram Central Co-operative Bank,
No.15, G.Sheckpet North Street,
Kancheepuram 631 501.

4.The Chief General Manager,
National Bank of Agriculture and Rural Development,
No.48, Uttamar Gandhi Road,
Nungambakkam, Chennai 600034.

5.The Director of Vigilance and Anti-Corruption,
Abhiramapuram, Chennai.

6.The Commercial Crime Investigation Wing (CI),
C-48, 2nd Avenue, 3rd Floor, Anna Nagar,
Chennai 600040.

7.The Government of Tamil Nadu,
Rep. by its Secretary,
Home Department, Fort St. George,
Chennai 600009.

[7th respondent was impleaded as per order of this court dated 30.11.2017 made in C.M.P.No.5761 of 2016]

8.Mr.K.Baskaran,
Son of V.K.Kannappa Mudaliyar,
Deputy Registrar of Co-operative Societies /
the then Co-operative Sub Registrar / (81 Enquiry Officer),
No.M.360m Ragavendira Nagar,
Kanchipuram 631 501.

9.Mr.V.Duraisamy,
S/o. P.R.Venkatesan,
Deputy Registrar of Co-operative Societies,
No.32, Perumal Koil Street,
Peranamallur Village & Post,
Vandavasi Taluk,
Thiruvannamalai District.

10.Mr.G.Gnanasekaran,
S/o.Seetharaman,
Erstwhile Deputy Registrar of Kancheepuram
Co-operative Society,
Mazhaiyur Village & Post,
Vandavasi Taluk,
Thiruvannamalai District.

[Respondents 8 to 10 were impleaded as per order of this court dated 20.09.2018 made in W.A.No.394 of 2016]

... Respondents

Appeal filed under Clause 15 of The Letters Patent against the order dated 29.01.2016 passed in W.P.No.20697 of 2013.

This Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus to direct the 1st respondent to take the petitioner complaint dated 06/07/2013 on the file of the registrar FIR & investigate the case and to take all necessary steps in accordance with law.

For Petitioner	: Mr.V.Raghavachari
For Respondents	: Mr.K.Sreenivasan Special Public Prosecutor for CBI Cases for R1 Mrs.Narmadha Sampath, AAG Assisted by Ms.T.Girija, GA for R2 Mrs.G.Thilagavathi, Senior Counsel for Mr.R.Gopinath for R3

For Petitioner : Mr.V.Raghavachari

Mr.S.Sathia Chandran for R10

Mr.K.Sukumaran for R-4
No Appearance for RR5 to 9

JUDGMENT

[Judgment of the court was delivered by Justice M.M.SUNDRESH]

This Writ Appeal is preferred by the Appellant, who is incidentally a retired employee of the 3rd respondent Society, seeking transfer of investigation to the 1st respondent - Central Bureau of Investigation for the reasons stated in the affidavit filed in support of thereof.

2. Before going into the submissions made by the learned counsel on either side, let us consider the factual matrices involved in this case. There have been three complaints given with respect to misappropriation, embezzlement and cheating on the jewel loans given and the money given to the creation of fake groups namely, joint liability group. The alleged occurrence took place before two branches namely, Pallavaram and Porur. The Pallavaram Branch is the subject matter of Crime No.57 of 2011 on the file of City Crime Branch-II, Chennai. This is with respect to jewel loans.

3.Insofar as the Porur Branch is concerned, two cases have been registered in Crime No.140 of 2011 on the file of Porur Police Station and Crime No.03 of 2013 on the file of Commercial Crime Investigation Wing, Anna Nagar, Chennai for the jewel loans as well as the creation of fake groups and disbursement of money touching upon the joint liability groups. The accused persons have been specifically named.

4.As far as the complaint registered in Crime No.57 of 2011 with respect to Pallavaram Branch, the Investigating Agency, for the reasons known to them, had not chosen to proceed further on a strange stand that as two complaints have been made, no further progress could be made. Such a stand, as we all know, is contrary to the settled principle of law that the second FIR for the same occurrence will have to be factored into the first one. After all a complaint given is the initiation of the process of criminal proceedings by asking the competent agency to start the investigation into a cognizable offence having been made. We may note that the complaints given in the year 2011 and thereafter, have been kept pending till now without any basis. Suffice it to state that that no action has also been taken by the officials of the cooperative department on this.

5. The case in Crime No.140 of 2011 has been taken cognizance by the Judicial Magistrate-I, Poonamallee, in C.C.No.6 of 2011. However, no progress has been made in this case. This court has called for the files and the same are with the Registry of this court. We do not know as to whether the investigation has been done properly or not and involvement of the higher ups, if any. Suffice it to state that the main accused involved in Crime No.140 of 2011 are also main accused in Cr.No.3 of 2013 in the same capacity. Therefore, for more than one reason, we are of the view that this case also will have to be treated on par with the pending investigation in Cr.No.3 of 2013.

6. Crime No.3 of 2013, as stated above, involves creation of the fake groups followed by the disbursement of the amount by the named accused. In this case, a report has been filed by the investigating agency on the so-called ground that there was a fire accident and therefore, the records were destroyed. There was a confession statement regarding, availability of the records with the society and apart from that, some of them are available with the investigating agency. We also note that the authorities conducted proceedings under Section 81 and Section 87 of The Tamil Nadu Cooperative Societies Act after the alleged destruction of records and passed appropriate orders holding that the named persons are liable to pay the amount. The complaint in Crime No.3 of 2013 came to be lodged on 29.08.2013 notwithstanding the fact that fire accident had taken place on 10.09.2011.

7. The learned single Judge of this court was pleased to dismiss the writ petition placing reliance upon the judgment of the Constitution Bench of the Apex Court in State of West Bengal v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571. Challenging the above, the present writ appeal has been filed. Incidentally, it has been held inasmuch as the complaint was closed and no protest petition has been filed by the petitioner, the relief as sought for cannot be granted.

8. The learned counsel for the appellant would submit that the facts and circumstances of the case would certainly warrant investigation by the Central Bureau of Investigation. FIR is not an encyclopedia. What was unearthed is only a tip of the iceberg. The appellant has got locus standi. His attempt is only to bring to the notice of the authorities and the court on the criminality involved. The very closure report filed followed by acceptance by the court itself is bad in law. The facts, including the receipt of the records by the police and the communication sent by the Deputy Registrar of Cooperative Society, Kancheepuram to the Joint Registrar of Cooperative

Society / Managing Director, Kancheepuram Central Cooperative Bank in Na.Ka.No.3968/2011 A3 dated 05.06.2018 and Na.Ka.No.3968/2011 A3(1) dated 06.07.2017 would clearly show the availability of the records. In any case, there cannot be any explanation for not proceeding further in Cr.No.57 of 2011. Thus, it is a fit case for referring the matter to the CBI for investigation and the learned single Judge has wrongly understood the ratio laid down by the Apex Court in the judgment cited supra.

9. The learned senior counsel appearing for the co-operative bank would fairly submit that truth will have to be unearthed. The authorities who have conducted enquiry would have perused the records. The so-called fire accident is said to have occurred on 10.09.2011 and thereafter only a report under Section 81 of the Tamil Nadu Cooperative Societies Act was given and the enquiry report clearly states about the perusal of the records. The Enquiry Officer who had conducted the enquiry did not say that the records were destroyed. Only thereafter, the enquiry under Section 87 of the Tamil Nadu Cooperative Societies Act was concluded. Strangely, a stand was taken by the police authorities for not proceeding further with respect to the complaint given for the occurrence at Pallavaram

Branch that two complaints have been made and, therefore, no further enquiry could be conducted. This is contrary to the law. Therefore, it would be appropriate to direct a comprehensive enquiry by the CBI.

10. The learned Additional Advocate General would submit that though there is need for further investigation, instead of CBI, CBCID may be directed to conduct the same. She made reliance heavily upon the communication sent to the Office of the Government Pleader by the Additional Secretary to Government dated 13.04.2018 and the letter of the Director General of Police, Chennai, dated 12.04.2018, in support of her submissions.

11. The learned counsel appearing for the 10th respondent would submit that though there is no objection for further investigation, no finding need be given against the 10th respondent at this stage.

12. The facts, as narrated above, would speak for themselves. One thing is certain which is the misappropriation done. This has been fortified by the report under Section 81 and Section 87 of the Tamil Nadu Cooperative Societies Act. There is also a confession statement by one of the officers concerned. We do not really appreciate the stand taken by the police with regard to the non progress of the investigation pursuant to the

registration of the complaint in Cr.No.57 of 2011. As stated above, the investigating agency ought to have proceeded further with the investigation by treating the second complaint as part and parcel of the first one. For the reasons known, the complaint given in the year 2011 has not been proceeded till now. We are in the year 2019. Secondly, the official respondents namely, the authorities of the cooperative Department also have not proceeded further by accepting the stand of the police.

13. Insofar as the complaint given in Cr.No.140 of 2011 which was taken on file in C.C.No.6 of 2011 is concerned, as discussed above, we feel that this complaint also will have to be taken along with the other complaints including the case in Cr.No.3 of 2013 since the main accused are more or less same. We also feel that there may be a case of involvement of the higher officials. Therefore, even here also further investigation is required. The case in Cr.No.3 of 2013 has not been proceeded on the ground that the records were destroyed. Our discussion made above would clearly show that there were sufficient records available. The investigating officer had taken the FIR (relating to the fire accident) as a gospel truth with respect to the occurrence and the availability of the records. The learned counsel appearing for the cooperative bank has fairly submitted that the counter entries are available with the bank and all possible cooperation would be extended by the Assistant General Manager (Admin), Assistant General Manager (Banking) and the General Manager (Banking) to find out the truth. Unfortunately, no such attempt was made by the investigating officer while filing the closure report and the learned jurisdictional Magistrate has also simply accepted it without applying his judicial mind. Furthermore, the investigation done was only with respect to the part of the misappropriation made. National Bank for Agricultural and Rural Development (NABARD), which had conducted an inspection in Kancheepuram Central Cooperative Bank, has found irregularities in Jewel Loans and Joint Liabilities Group (JLG). The inspection report has also been sent to the Reserve Bank of India, Chief Secretary to the State of Tamil Nadu. It is surprising to note that Commercial Crime Branch has taken a stand that the documents of the cases have been destroyed in December 2015 floods in their communication dated 07.09.2017 to Deputy Registrar of Kancheepuram in Na.Ka.3968/2011. There are traces of other similar case involved as fairly submitted by the learned counsel for the cooperative bank. Thus, we feel that it is a fit case where CBI will have to be directed to conduct further investigation. The learned counsel appearing for CBI also would submit that if the court directs, then appropriate investigation would be done.

14. We are of the view that the order of the learned single Judge requires interference at the hands of this Court. The powers under Article 226 of the Constitution of India is rather well known and even in the judgment of the Full Bench of the Apex Court cited supra, it has been stated by way of final conclusion which we are inclined to extract hereunder:-

> "69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.
>
> 70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and

enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya [(2002) 5 SCC 521 : 2002 SCC (L&S) 775] this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations."

15. The facts narrated above would certainly come within the parameters as held by the Apex Court. In such view of the matter we are inclined to direct the Central Bureau of Investigation to undertake the investigation in Cr.Nos.57 of 2011, 140 of 2011 and 03 of 2013. The State Investigating Agency which was dealing with the matters hitherto is directed to hand over the entire records pertaining to the investigation of the above cases which are available with them in favour of the Officer to be appointed by the Joint Director of the Central Investigation Bureau. We place on record the submissions made by the learned counsel for the cooperative bank that the cooperative department would extend all the cooperation in this regard.

16. Accordingly, the closure report in Cr.No.03 of 2013 stands set aside and the pending case in C.C.No.06 of 2011 on the file of the Judicial Magistrate-I, Poonamalee also stand closed. The records available on the file of this court would get transferred to the CBI to be handed over to the Office to whom the CBI entrusts the investigation of the cases. No outer limit is fixed for completion of the investigation as lot of investigation is required to be done in this case. We also make it clear that the investigating officer of the CBI shall also go into the issue of the alleged fire accident in crime No.427 of 2011 said to have occurred leading to the destruction of the records. We further clarify that it is for the appropriate officer of the CBI either to entrust the investigation to Anti-Corruption Branch or Economic Offences Branch.

17. In the result, this Writ Appeal is disposed of accordingly with the above directions. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar (CS-III)
Dated: 27/11/2019

*** Corrected as per the Order of this Court dated 13.11.2019 made in W.A.No. 394 of 2016**

Sd/- Assistant Registrar(CS-IV)
Dated: 27/11/2019

//True Copy//

Sub Assistant Registrar

kmk
To

1. The Joint Director,
   The Central Bureau of Investigation,
   Nungambakkam, Chennai.

2. The Registrar of Co-operative Societies,
   No.170, E.V.R. Road,
   Kilpauk, Chennai 600010.

3. The Chief General Manager,
   National Bank of Agriculture and Rural Development,
   No.48, Uttamar Gandhi Road,
   Nungambakkam, Chennai 600034.

4. The Director of Vigilance and Anti-Corruption,
   Abhiramapuram, Chennai.

5. The Commercial Crime Investigation Wing (CI),
   C-48, 2nd Avenue,
   3rd Floor, Anna Nagar,
   Chennai 600040.

6. The Secretary,
   The Government of Tamil Nadu,
   Home Department,
   Fort St. George, Chennai 600009.

8.The Director, CBI, New Delhi.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 48937
+1cc to Mr.Srinivasan, Advocate, S.R.No. 48949
+1cc to Mr.S.Sathiachandran, Advocate, S.R.No.49059
+1cc to Mr.R.Gopinath, Advocate, S.R.No. 49621
+1cc to the Government Pleader(Co Operative), S.R.No. 49397
+1cc to The Public Prosecutor, Advocate, S.R.No. 49990
+1cc to the Government Pleader Sr.95095 [20/12/2019]
+1cc to M/s.K.Sukumaran, Advocate Sr.94942[20/12/2019]

VG II(CO)
GN(22/07/2019)