IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.07.2019
CORAM:
THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH
Crl.O.P.No.15526 of 2019

N.Gurumurthy ... Petitioner

Vs.

1.The Director General of Police,
Puducherry.

2.The Superintendent of Police,
CB-CID,
Puducherry.

3.The Superintendent of Police (East),
J.L. Nehru Street,
Puducherry.

4.The Inspector of Police,
Grand Bazaar Police Station,
Puducherry
... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure seeking to transfer the investigation in Crime No.13 of 2019 on the file of the 4th respondent to the 2nd respondent police or to any other competent agency for a thorough and impartial investigation.

For Petitioner : Mr.Sharath Chandran

For Respondents : Mr.Bharatha Chakaravarthi
Public Prosecutor, Puducherry

ORDER

This petition has been filed seeking for transfer of investigation pending on the file of the fourth respondent in Crime No.13 of 2019.

2. The petition was filed mainly on the ground that the branch manager had forged the signature of the petitioner and withdrawn amounts from the account of the petitioner and when this was brought to the knowledge of the fourth respondent, the fourth respondent did not even register an FIR. Therefore, the petitioner was forced to come before this Court and pursuant to

the notice issued by this Court, an FIR was registered. Even thereafter, the investigation did not proceed in the correct path. Therefore, the petitioner apprehends that a fair investigation will not be conducted in this case and therefore, prays for investigation to be transferred to some other agency.

3. The fourth respondent has filed a counter affidavit in this case. It will be relevant to extract certain portions of the counter affidavit for proper appreciation which reads as follows:

> " 4.I respectfully submit that during the course of investigation, the place of occurrence was visited, Crime Details Form was prepared and witnesses were examined and also their statements recorded. Requisition was given to the Regional Manager, Syndicate Bank, Regional Office -II, No.2/13, Sri Guru Misri Complex, II Floor, Kamarajar Street, West Tambaram, Chennai - 600 045 with a request to furnish the Inspection report conducted by Vigilance Squad of Syndicate Bank, Puducherry Branch of the accounts of the complainant to ascertain the truth. In this regard, D.V.Subrahmanyam, Senior Manager, Vigilance in the report vide No.VC 08/2015-16, dated: 07.11.2015 stated that the accused Balasubramanian Emp.No.434317, erstwhile Senior Branch Manager and presently working as Regional Officer, Chennai has resorted to debiting of customers accounts without their consent by signing the debit vouchers in an unauthorized manner for reducing the cash balance which resulted in customer's complaint thereby exposing the bank to reputational risk. He has unauthorizedly transferred funds from the OD account of the de-facto complainant. Gurumurthy to that of Mr.Sunakar for upgrading the NPL account. It is on record that and admitted by him that he paid 9 lakh to the complainant Gurumurthy on 20.03.2015 in the presence of the staff. He has paid the amount behind the screen in a suspicious manner without involving Regional Officer or the Law Enforcement Agency. It is evident that he is having Financial dealing with the customer which is detrimental to the interest of the bank and unbecoming of his position as Branch Manager. Hence, the malafides are discernible on the part of the employees concerned.
>
> 5.It is further submitted Court that the vigilance team of Syndicate bank concludes in the report that the branch had debited to OD accounts of the customers in an unauthorized manner without

their authentication for the purpose of minimizing the cash balance on the reporting Friday and kept the case in double lock without recording the same in the single lock book exposing the cash to risk and causing the customer to lodge complaint against the bank. The said Balasubramanian has resorted to transfer of funds from the account of one customer to a OD of a different customers without their knowledge and authentication for upgrading the NPL account. He had paid Rs.9 Lakhs to the complaint in the presence of staff to resolve the complaint without informing the matter to anybody which implies that he has financial dealing with the complainant which is detrimental to the interest of the bank.

6. It is further submitted that during the further course of investigation, on 20/06/2019 the above accused was summoned to GBPS at about 15.30 hrs. He was thoroughly interrogated, during which he admitted his involvement in this case. At 19.45 hrs, the above accused was arrested at Grand Bazaar PS. He was searched in person in the presence of independent witnesses. The grounds of arrest has been furnished to the accused person. The information about the arrest was furnished both to his wife and the Puducherry Branch Manager through cell phone & arrest memo. The voluntary confession statement of the accused was recorded in the presence of two independent witnesses. The investigation of this case could not be completed for seizure of forged documents and other properties and also examination of witnesses. Hence, the accused was remanded to the Judicial custody. I respectfully submit that the accused was enlarged on bail by this Hon'ble Court on 18.07.2019 in Crl.O.P.No.19114 of 2019.

7. It is at this stage, the above Criminal Original Petition for transfer of investigation is filed. It is respectfully submitted that the gist of allegations in the complaint dated 03/02/2019, is the accused Balasubramaniam, taking advantage of the proximity as the tenant, had fraudulently withdrawn money to the tune of Rs.29,00,000/- from his account and Rs.5,50,000/- from his wife's account and thereby cheated him. This apart, in his further statement, he had stated that he had also on various dates entrusted with the accused a sum of Rs.10,00,000/- as cash to be deposited into his account, which was not deposited.

8.It is respectfully submitted that the

investigation so far reveals that the (i) account is an OD account; (ii) that a sum of Rs.29,00,000/- from Mr.Gurumurthy's, account and Rs.5,50,000/- from his wife's account has been illegally withdrawn by the accused on various dates, but however re-deposited on the next day. The date of re-deposited details are as follows:-

Sl. No.	Date	Amount of misappropriation	Re-deposit date	Re-deposit amount
1.	25.11.2011	5,00,000/-	26.11.2011	5,00,000/-
2.	15.06.2012	9,00,000/-	16.06.2012	9,00,000/-
3.	10.08.2012	10,00,000/-	11.08.2012	10,00,000/-
4.	30.03.2013	5,00,000/-	02.04.2013	5,00,000/-
5.	08.03.2013	1,00,000/-	12.03.2013	50,000/-
			13.03.2013	50,000/-
6.	15.03.2013	2,50,000/-	16.03.2013	2,50,000/-
7.	30.03.2013	2,00,000/-	02.04.2013	2,00,000/-
Total		34,50,000/-	Total	34,50,000/-

Therefore, there (a) temporary misappropriation; (b) forging of signature in the withdrawal slip. The temporary misappropriation is confirmed. Forgery will be confirmed only after receipt of the actual withdrawal slips and comparing of signatures. As far as the second set of facts relating to Rs.10 Lakhs is concerned, (i) the de-facto complainant avers that he had given as cash on various occasions and that he does not have any proof for that; (ii) he has received a sum of Rs.9 Lakhs from the accused and given a letter dated 20/03/2015 to the Syndicate Bank stating that he is withdrawing all this complaints; (iii) Either in the complaint or in the direction petition filed before this Hon'ble Court, the petitioner omitted to say that he was not actually deprived of the amount of Rs.34.5 Lakhs and also about the giving of the letter in the year 2015 and keeping quiet thereafter and the bank authorities since are now taking proceedings under SARFAESI Act, he has now preferred the complaint and also now wants to include the other officers of the Bank also only to avoid payment from the Bank. Just because during investigation the petitioner de-facto complainant was questioned on these facts, the present petition for transfer of investigation is filed.

4. The learned Public Prosecutor appearing on behalf of the respondent police submitted that the fourth respondent is proceeding further with investigation in a proper manner and during the course of investigation, it is seen that the accused person has forged the signature of the petitioner in the withdrawal slip and there is also a misappropriation for a temporary period. The learned Public Prosecutor further submitted that the petitioner wants to expand the scope of investigation and he wants to get away from the proceedings initiated by the authorities under the SARFAESI Act. The learned Public Prosecutor further submitted that the respondent police is proceeding further with the investigation and he is taking all steps to collect the materials and to file final report as expeditiously as possible.

5. This Court has carefully considered the submissions made on either side and the counter affidavit filed by the fourth respondent.

6. The counter affidavit reveals the fact that the fourth respondent has proceeded further with the investigation and has come to a preliminary conclusion that there has been temporary misappropriation of money by the accused person by forging the signature of the petitioner in the withdrawal slip.

7. The fourth respondent had also collected materials for the same.

8. This Court is of the considered view that the fourth respondent can continue with the investigation. However, considering the seriousness of this case, the investigation can be monitored by the Superintendent of Police (East), Puducherry. This will ensure that there is some supervision when the investigation is conducted by the fourth respondent.

9. This Criminal Original Petition is disposed of with a direction that the fourth respondent will continue with the investigation effectively and the same shall be monitored by the third respondent viz., The Superintendent of Police (East), Puducherry and the investigation shall be completed as expeditiously as possible and a final report shall be filed before the appropriate court.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Director General of Police,
Puducherry.

2.The Superintendent of Police,
CB-CID,
Puducherry.

3.The Superintendent of Police (East),
J.L. Nehru Street,
Puducherry.

4.The Inspector of Police,
Grand Bazaar Police Station,
Puducherry

5.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.Govind Chandrasekhar, Advocate sr.65896
+1cc to Public Prosecutor, Puducherry sr.65670

Crl.O.P.No.15526 of 2019

sv(co)
nr 20/09/2019