IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.12938 of 2020

Smt.A.K.Vijayalakshmi ...Petitioner

Vs.

1. The Joint Director & Head of Zone,
   Central Bureau of Investigation,
   3rd Floor, EVK Sampath Building,
   College Road, Chennai-6.

2. The Central Vigilance Officer,
   Indian Bank Head Office,
   Avvai Shanmugam Salai,
   Royappettah,
   Chennai. ...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the respondents herein to register the petitioners complaint dated 03.07.2020 and initiate necessary action.

For Petitioner : Mr.Vimal B.Crimson

For R1 : Mr.K.Srinivasan
Special Public Prosecutor
for CBI Cases

For R2 : Mr.P.V.Muralidhar

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ORDER

This Criminal Original Petition has been filed to register the complaint dated 03.07.2020 and initiate necessary action.

2.The petitioner had sent a complaint dated 12.03.2020 to the Joint Director, Central Bureau of Investigation, Head of Zone, 3rd Floor, E.V.K Sampath Building, College Road, Chennai and to the Chairman of Central Vigilance Commission for registering a criminal case against the Indian Bank officials, Mount Road Branch, Chennai for forging the signature of the petitioner's mother and thereby, created forged documents, granted loan to the loanees by using the house documents of the petitioner which was stolen in the year 1989. The petitioner's father died in the year 1989, her mother died in the year 2006, her elder brother is blind. Taking advantage of the family situation, one of her neighbour had stolen the house documents from the petitioner's house in the year 1989 and mortgaged the same with the Indian Bank in the year 1990 and got a loan by forging her mother signature in connivance with the bank officials.

3.For non payment of the said loan, the bank filed O.A.No.515 of 2015 before the Debt Recovery Tribunal-II, Chennai, in which, the Debt Recovery Tribunal-II, Chennai by order dated 21.03.2016, held as follows:-

> "18.On perusal of the signatures found in the D4's vakalat and D4's written statement, both the signatures are entirely different from the Exh.A20-Letter acknowledging the deposit of title deeds and the Agreements of Guarantee (Exh.A19 & A34). In exhibits A20, A19 & A34, the signatures found as 'Mrs.A.K.Nithy' but in vakalat and written statement of D4, the signatures found as 'Mrs.Kalavathy Karunanithy'. Further, when we compare the signatures of D4 found in Exh.A20-Letter acknowledging deposit of title deeds, A19 & A34-Agreements of Guarantee and the signatures of D4 found in the passports of D4, it clearly shows that the signatures found in Exh.A20, A19 & A34 are entirely different from the signatures found in the passports. Therefore, I come to the conclusion that the signatures in the Exh-A20-Letter acknowledging deposit of title deeds and the Exh.A19 & A34-Agreements of Guarantee are not the signatures of D4. Therefore, the schedule mentioned property is not a mortgaged property. The applicant bank cannot proceed against this property. Therefore, I find D5 & D6 are not liable, to applicant bank's claim in the OA and also in respect of the schedule mentioned property. It is true that the D4 has not created equitable mortgage in favour of the applicant bank in respect of the schedule mentioned property and guaranteed the loan. Point No.(ii) is answered accordingly."

4.Further directed the bank to recover its dues from defendants 1 to 3 therein viz., M/s.Expo Team, No.2, 3rd Cross Street, Sylvan Lodge Colony, Kilpauk, Chennai, Shri E.K.Jeevaraj and Shri C.A.Srikumar. As far as the petitioner and her brother Sri.Srikanth are concerned, they were relieved from the liability as well her mother Kalavathi Karunanithi (deceased).

5.The petitioner had sent the above complaint dated 12.03.2020 to the 1st respondent and marked a copy to the Central Vigilance Commission, New Delhi, narrating the forgery committed by the bank officials, by enclosing the order passed by the Debt Recovery Tribunal-II, Chennai in O.A.No.515 of 2015, dated 21.03.2016. The Central Vigilance Commission registered the complaint of the petitioner and numbered as 152387 of 2020 and forwarded the same to the 2nd respondent. Thereafter, the petitioner filed Crl.O.P.No.9020 of 2020, before this Court, seeking direction to register the petitioner's complaint dated 12.03.2020, in which, this Court by order dated 26.06.2020, closed the matter by recording the submissions of the learned Special Public Prosecutor for CBI cases that the complaint of the petitioner dated 12.03.2020 was forwarded to the Chief Vigilance Officer, Indian Bank, Chennai and the same was pending before them. Thereafter, the petitioner was not informed about the plight of the complaint, hence she again sent a complaint dated 03.07.2020 to the 2nd respondent. Since there was no response, the above petition came to be filed.

6.The contention of the petitioner is that M/s.Expo Team, a partnership firm, in which, the partners E.K.Jeevaraj and C.A.Srikumar approached the Indian Bank, Anna Salai Branch, Chennai for financial assistance to develop the business. The bank initially sanctioned Packing Credit facility of Rs.1 lakh and thereafter, FBN facility of Rs.1 lakh. The said facilities were availed by M/s.Expo Team and the credit facility was being enhanced periodically. The property of the petitioner's mother was shown to be mortgaged on 25.04.1991 for a sum not exceeding Rs.53 lakhs. Further, the loans were collaterally secured by creation of equitable mortgage over the property and the petitioner's mother by letter dated 01.07.1991 confirmed the deposit of title deeds in respect of the immovable property. Thereafter, the Packing Credit and other limits got enhanced. The petitioner's mother is said to have signed the personal guaranteed and the mortgaged documents to the bank. After availing the loans, M/s.Expo Teams and its partners failed to repay the loan and the loan became NPA. Therefore, the bank filed recovery proceedings in O.A.No.515 of 2015 before the Debt Recovery Tribunal-II, Chennai, in which, the petitioner's mother was made as defendant. After the demise of her mother, the petitioner and her brother as legal heir to their mother, they were made as defendants. The petitioner's mother denied about signing of documents and mortgaging the share of above property to the bank.

7.The categorical case of the petitioner is that after the death of her father on 15.10.1989, there was an oral partition amongst the petitioner, her mother and her brother, in which the petitioner had got 1/5 share in the property. The execution of guarantees dated 25.04.1991 and 16.05.1992 by the petitioner's mother, letter confirming the deposit of title deeds and creation of equitable mortgage over the schedule property were denied. Further contended that the petitioner's mother normally sign as Mrs.Kalavathy Karunanithy in all the documents, but in the alleged documents filed in OA before the Debt Recovery Tribunal-II, Chennai, the signature of her mother is found as A.K.Nithy. Hence, the petitioner's mother not signed these documents. Considering the above submission of the petitioner and on perusal of the documents, the Debt Recovery Tribunal-II, Chennai gave a finding that the signature of the petitioner's mother is forged and she has not executed the mortgage deed. Thereafter, the petitioner sent a representation to the respondents, but no action was taken, despite the Debt Recovery Tribunal-II, Chennai giving a finding that the signature of the petitioner's mother is forged in the documents, based on the forged signature, the bank officials in collusion with other loanees, granted loan. Hence, the respondents are to initiate proceedings against them.

8.The learned Special Public Prosecutor appearing for the 1st respondent submitted that the petitioner moved a complaint dated 12.03.2020, seeking registration of case, which was received by the Central Bureau of Investigation and forwarded to the Central Vigilance Officer, Indian Bank, Chennai. This Court by order dated 26.06.2020 in Crl.O.P.No.9020 of 2020, recording the same, closed the matter. Thereafter, the enquriy is being conducted by the Central Vigilance Officer and nothing is pending with the 1st respondent.

9.The learned counsel for the 2nd respondent filed counter and typed set and submitted that the finding of Debt Recover Tribunal-II, Chennai in O.A.No.515 of 2015 was challenged by way of appeal before the Debt Recovery Appellate Tribunal, Chennai in R.A.No.35 of 2017. The Debt Recovery Appellate Tribunal, Chennai, by order dated 30.10.2018 in R.A.No.35 of 2017, had set aside the order of the Debt Recovery Tribunal-II, Chennai, against which, the petitioner as well her brother Srikanth filed Writ Petitions in W.P.Nos.2528 & 6287 of 2019 before this Court, in which, the Hon'ble Division Bench by order dated 13.11.2019, found the order of the Debt Recovery Appellate Tribunal, Chennai in R.A.No.35 of 2017 is well reasoned and affirmed the same.

10.The learned counsel for the 2nd respondent further submitted that the petitioner also filed civil suit in C.S.No.771 of 2002 before this Court, which subsequently transferred to the file of the IV Additional City Civil Court, Chennai on the point of jurisdiction and renumbered as O.S.No.1216 of 2011. The learned IV Additional Judge, Chennai, by judgment, dated 22.01.2018, dismissed O.S.No.1216 of 2011 for default, which has become final. Suppressing all these facts, the petitioner by one way or other, is attempting to wriggle out from the liability to the bank and to stall the recovery proceedings.

11.It is further submitted that the complaint of the petitioner dated 03.07.2020 was enquired and disposed, which was communicated to her vide letter dated 30.07.2020. This petition, thereafter, has been filed. Thus, the prayer of the petitioner is not maintainable. In view of the same, he prayed for dismissal of the petition.

12.This Court considered the submissions made on either side and perused the materials available on records.

13.It is seen that the Debt Recovery Tribunal-III, Chennai, by order, dated 21.03.2016 in O.A.No.515 of 2015, observed as follows:-

> "18.On perusal of the signatures found in the D4's vakalat and D4's written statement, both the signatures are entirely different from the Exh.A20-Letter acknowledging the deposit of title deeds and the Agreements of Guarantee (Exh.A19 & A34). In exhibits A20, A19 & A34, the signatures found as 'Mrs.A.K.Nithy' but in vakalat and written statement of D4, the signatures found as 'Mrs.Kalavathy Karunanithy'. Further, when we compare the signatures of D4 found in Exh.A20-Letter acknowledging deposit of title deeds, A19 & A34-Agreements of Guarantee and the signatures of D4 found in the passports of D4, it clearly shows that the signatures found in Exh.A20, A19 & A34 are entirely different from the signatures found in the passports. Therefore, I come to the conclusion that the signatures in the Exh-A20-Letter acknowledging deposit of title deeds and the Exh.A19 & A34-Agreements of Guarantee are not the signatures of D4. Therefore, the schedule mentioned property is not a mortgaged property. The applicant bank cannot proceed against this property. Therefore, I find D5 & D6 are not liable, to applicant bank's claim in the OA and also in respect of the schedule mentioned property. It is true that the D4 has not created equitable mortgage in favour of the applicant bank in respect of the schedule mentioned property and guaranteed the loan. Point No.(ii) is answered accordingly."

14.Aggrieved over the same, the bank preferred an appeal before Debt Recovery Appellate Tribunal, Chennai in R.A.No.35 of 2017. The Debt Recovery Appellate Tribunal, Chennai, by order dated 30.10.2018, set aside the order of the Debt Recovery Tribunal-II, Chennai in O.A.No.515 of 2015, which was confirmed by this Court in W.P.Nos.2528 & 6287 of 2019. Thus, the petitioner further harping on the same issue again and again, would not arise.

15.Further, the petitioner's complaint dated 12.03.2020 was received by the 1st respondent and also by the Central Vigilance Commission, from there, the same was forwarded to the 2nd respondent herein. On receipt of the same, the 2nd respondent conducted an enquiry. Thereafter, she filed another complaint dated 03.07.2020, reiterating the earlier complaint dated 12.03.2020. The 2nd respondent on receipt of the complaint dated 03.07.2020 conducted an enquriy and disposed the same. This fact has been communicated to the petitioner on 30.07.2020.

16.In view of the complaint of the petitioner dated 03.07.2020 being disposed by the 2nd respondent, this Criminal Original Petition stands dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Joint Director & Head of Zone,
   Central Bureau of Investigation,
   3rd Floor, EVK Sampath Building,
   College Road, Chennai-6.

2. The Central Vigilance Officer,
   Indian Bank Head Office,
   Avvai Shanmugam Salai,
   Royappettah,
   Chennai.

3. The Special Public Prosecutor,
   High Court, Madras.

+1cc to Mr.P.V.Muralidhar, Advocate, S.R.No.32000

Crl.O.P.No.12938 of 2020

SVI(CO)
RV(30/11/2020)