IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.12.2020

PRONOUNCED ON : 30.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.R.C.No.1341 of 2017

R.Parthasarathy .. Petitioner/Accused No.2

Vs.

State Rep. By Inspector of Police,
CC1W CID,
Anna Nagar,
Chennai - 600 040. .. Respondent/Complainant

Prayer: The Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records in connection with Crl.M.P.No.879 of 2011 in C.C.No.7454 of 2010, dated 17.08.2017 on the file of the XI Metropolitan magistrate, Saidapet, Chennai and set aside the same and allow the revision.

For Petitioner : Mr.V.Chandra Prabu

For Respondent : Mr.K.Madhan,
Government Advocate (Crl.side)

ORDER

This criminal revision petition is filed against the order passed by the learned XI Metropolitan Magistrate, Saidapet in Crl.M.P.No.879 of 2011 in C.C.No.7454 of 2010.

2. Crl.MP No.879 of 2011 in C.C.No.7451 of 2010 was filed under Section 239 of the Criminal Procedure Code by the petitioner, the 2nd accused in C.C.No.7454 of 2010 for discharging him from this.

3. The brief facts of the case are as follows:

The respondent registered a case in crime No.1 of 2009 under Sections 408, 409, 477 (a), 420 r/w 120 B of IPC against 13 persons. A1 to A7 are the officers of Tamilnadu Primary and Agricultural and Rural Development Bank. Gist of the case is that the Deputy Registrar Co-operative Society, Ponneri Division lodged a complaint with the respondent police alleging that during an enquiry conducted under section 81 of Tamilnadu Co-operative Societies Act, certain irregularities were found in sanctioning of loans. Bogus documents were given as security for obtaining loan and thereby financial loss was caused to the bank. The alleged occurrence took place in GI030 Saidapet Co-operative Primary Agriculture and Rural Development Bank. After investigation, the respondent filed two separate charge sheets under Sections 468, 471, 420 and 109 of IPC against the petitioner. In this case, the petitioner is a 2nd accused and the principal borrower is shown as the 1st accused. A3 is a staff of Regional Office. It is seen from the documents produced in this case that the prosecution has not made out a prima facie case against the petitioner. There is no material on record to show any complicity against the petitioner in the alleged offence. Loan application and the documents of title with other connected documents are scrutinised and verified at various stages. The petitioner is not obligated to verify the genuineness of the documents submitted for availing loan. The duty of the petitioner is to get the valuation certificate from the office of the Sub Registrar, prepare a valuation certificate and send the file with his note to the Primary Bank at Saidapet. Prosecution filed a charge sheet under sections 468,471,and 420 IPC against the first accused and filed the charge sheet against the petitioner invoking section 109 IPC. There is no material to show that the petitioner abetted the commission of the offence. The respondent Police exonerated the persons whoever in a position to sanction loan and wrongly implicated the petitioner as accused. The petitioner is very aged person and suffering from multiple diseases. Therefore, the petitioner has to be discharged from this case.

4. The respondent filed a counter contesting the claim of the petitioner and stated that there are sufficient materials to frame charges against the petitioner under Sections 408, 465, 467, 468 r/w 471, 477(A), r/w 120 (B), 109 of IPC. It is the duty of the petitioner, one Subramani and Karthikeyan, Junior Engineer to verify the place of business of the applicant,inspect the premises to see that the business is going on and peruse the documents regarding the purchase of new machineries. But the petitioner has not done these things and he colluded with A3 and without verifying the documents,without verifying the price list helped the first accused Subramani in

getting the machine modern gram roaster valued Rs.5,60,000/ on the basis of false documents and caused loss to the Bank. There is enough materials available to frame charges against him under Sections 408, 409, 477(A), 420 & 120 (B) of IPC. Hence the respondent prays for dismissal of the revision petition.

5. The learned counsel for the petitioner would submit that the enquiry was conducted under Section 81 of the Tamilnadu Cooperative Societies Act in respect of various irregularities alleged to have been committed in granting the loan. Based on the enquiry report dated 18.02.2008, a complaint was lodged. The Defacto complainant mentioned that A1, namely Subramani admitted that he fabricated documents and submitted to the bank authorities and availed loan. He has specifically given a statement that he alone had fabricated the documents. Instead of prosecuting Subramani alone, FIR was registered against A.Subramani and some bank officers. However, after investigation, the persons responsible for sanctioning the loan have been let off and the petitioner was tagged along with Subramani and Karthikeyan as accused. The petitioner had no role in the commission of the alleged offence. The findings arrived by the trial Court on the basis of the document called "Duties and Responsibilities of the Land Estimation Engineer" is not correct and it is not a document collected in the course of investigation. It was filed at the time of argument by the learned Assistant Public Prosecutor. Even if the allegation that the petitioner has not properly performed his duties, it would amount only to dereliction of duty, only a departmental proceeding could be taken and not a criminal proceedings like the one initiated now. Therefore, the learned counsel appearing for the petitioner prays for setting aside the order of the learned Judicial Magistrate by acquitting the accused.

6. He places his reliance on State of Karnataka Vs L.Muniswamy and others reported in 1977 2 SCC 699, P.Thangaraju Vs State rep. Deputy Supreintendent of Police, Vigilance & Corruption reported in 2011 Crl LJ 1044 and K.Suresh kumar Vs State reported in 2014 (3) MLJ (Crl) 3 10 with regard to the facts to be considered at the time of framing charges or disposing the discharge petition.

7. Point for consideration in this petition is whether the order of the learned XI Metropolitan Magistrate, Saidapet suffers from any incorrectness, illegality or impropriety?

8. It is a settled position of law that at the time of framing charges,

i. The Courts need not have to go into evidentiary value of the materials filed along with final report

ii. The court should not appreciate the evidence

iii. The materials brought on record have to be accepted that it is true

iv. There is no need to conduct a mini trial rowing and fishing enquiry are impermissible.

v. The Court is not required to go into details of the investigation.

vi. The court is required to find out whether the materials placed discloses a strong suspicion against the accused and whether there is sufficient ground of proceeding against the accused.

9. Admittedly the petitioner is a land valuer. It is seen from the copy of the enquiry report dated 12.04.2009 that six instances of cheating, forgery and use of forged document as genuine have been unearthed. Out of these six offences, petitioner is concerned with item No.1, item No.2, item no.4 and item no.6. Along with the petitioner some other officials have been shown as accused involved in the commission of the offences. A complaint was lodged and a case in Crime No.1 of 2009 was registered against 13 persons. However, it is seen from the final reports, one charge sheet was filed against the accused 1.A. Subramani 2. R.Parthasarathy 3.S.Karthikeyan and another charge sheet was filed against the accused Subramani and Parthasarathy. Now these charge sheets have been taken cognizance in C.C.No.7451 of 2009 and C.C.No.7454 of 2010.

10.This case relates to cheating the bank to the tune of Rs.5,00,000/- by producing bogus documents. Final report reads that the accused Subramani created false and fabricated documents and using those documents secured a loan of Rs.5,00,000/- and caused a loss to the bank. It is the duty and responsibility of the land valuer who is the petitioner/2nd accused to verify the properties offered as a security/ mortgage to avail the loan by making spot inspection. He has to give the valuation certificate after consulting the Sub Registrar and Village Administrative Officer and after physically verifying the availability of property on ground. However, it is alleged that the petitioner, without actually verifying that whether the property was really in existence and without conducting any enquiry with regard to the genuineness of the documents and ownership, in connivance with the co-accused Subramani recommended to sanction the loan. More specifically, even before the accused Subramani obtain the quotation on 23.03.2001, the petitioner submitted the project report dated 22.03.2001, without verifying the necessary details, recommended the sanction of the loan and caused loss to the bank.

11. The failure to perform his duty as required has been stated by Sub Registrar, Selvaraj, S/o, Sadayandi in his statement. He conducted the enquiry u/s.81 of Tamil Nadu Co-

operative Societies Act, 1983 and given elaborate statement with regard to the role played by the borrower Subramani in producing the bogus sale deed. He also specifically stated that the role of the petitioner in not properly enquiring the existence and genuineness of the property and sale deed and colluding with the accused Subramani in recommending the loan to him for illegal consideration.

12. Similarly Mr.Praburam, in-charge Secretary of Saidapet Primary Cooperative Agricultural and Rural Development bank has also stated about the non performance of duty expected to be performed by the petitioner. It is seen from their statements that the petitioner, as a land valuer has to inspect the property offered as security, conduct enquiry among the persons living nearby the property and the Village Administrative Officer about the true nature, ownership of the property, get guideline value from SRO and give a valuation certificate. Similar statement was given by witness Venkateswaran.

13. It is necessary to see the "Duties and Responsibilities of land and Estimation Engineer" to have a better understanding of the role of a land valuer.

> "2. By local enquiry, the land Valuation and Estimation Officer, in respect of every loan applications referred to him shall ascertain the following aspects and furnish certificate in the loan application.
> (a) Credit worthiness of the borrowers
> (b) Any other undisclosed debts or court proceedings etc.,
> (c) Verify the correctness of the particulars furnished in loan application.
>
> 3. During the course of inspection of the hypotheca, he should contact the village officers and verify Village accounts, such as 10-1 Chitta, Adangal, Field measurement Boom (FMB), Settlement Register etc. He should collect from the village officers, information such as payment, of gist and other dues to Governement, without arrears, particulars of Government loan dues, if any, and the applicant's holdings in order to ensure that his holdings do not exceed the ceiling limit, and also other particulars as are required in relation to loan applications. He should also obtain assistance of village officers in the identification of lands at the time of Inspection of lands at the time of Inspection of Lands.
>
> 4. He should inspect the hypotheca assess its value, and applicant's repaying capacity and make a detailed appraisal and recommend Loans in accordance

with the instructions issued from time to time by the Head Office. He should verify genealogical tables, record statements, affidavits, attest the part-field sketch, etc. He should record his candid opinion regarding the genuine need of the loan and the repaying capacity of the applicant.

5. The Land Valuation and Estimation Officer will gather sales statistics and / or obtain guideline value from the Sub-Registrar's Office. For this purpose, they may search the records in the Sub-Registrar's Office.

The aforementioned passage are self explanatory about the duties of Land Valuer."

14. This document may have been produced during the course of arguments in the discharge petition. Still it is relevant for arriving a decision in this case. It is seen from the materials produced in this case, especially the statement of material witnesses that the petitioner has not performed his duty in accordance with the duties and responsibilities of the land valuer and was also responsible for causing loss to the bank. Even before the borrower obtained the quotation for the machinery, he recommended the loan. Merely because some of the persons, who were earlier shown as accused on FIR, now deleted in the final report, the petitioner cannot expect the same kind of treatment for him. There are sufficient materials to show his complicity in the commission of crime. Even if they are not shown as accused now, there is a possibility of adding them as an additional accused under Section 319 of the Criminal Procedure Code offence.

15. The learned trial Judge properly shuffled the evidence and found that there are sufficient grounds to proceed further against the accused by framing appropriate charges. There is nothing incorrectness or illegality or impropriety in the order of the learned trial Judge. Therefore, the order of the learned trial Judge is confirmed and Criminal Revision is dismissed. The trial Court is directed to dispose of the case as early as possible, preferably within a period of three months, from the date of receipt of a copy of this order.

15. With the above direction, this Criminal Revision is disposed of.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The XI Metropolitan Magistrate,
   Saidapet.

2. The Chief Judicial Magistrate,
   Chennai.

3. The Inspector of Police,
   CCIW CID, Anna Nagar,
   Chennai- 600 040.

4. The Public Prosecutor,
   HighCourt, Madras-104.

CA(CO)
SM/11/02/2021

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