IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2020
PRONOUNCED ON : 30.11.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.24291 of 2017
and CRL.M.P.No.14034 of 2017

1.S.A.Kumar
2.Jayanthi
3.S.K.Arun .. Petitioners

Vs.

1.State
Sub Inspector of Police
Central Crime Branch
Salem

2.Shankar Balasubramanian
Authorised Signatory
ICICI Bank
No.1, Cenotaph Road
Teynampet
Chennai 600 018 .. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the F.I.R. bearing Cr.No.12 of 2017 dated 28.08.2017 on the file of the Sub Inspector of Police, Central Crime Branch, Salem as against the petitioners.

For Petitioners : Mr.A.Ramesh
Senior Counsel
for Mr.B.A.Sujay Prasanna

For 1st Respondent : Mr.L.Charles Premkumar
Govt. Advocate (Crl. Side)

For 2nd Respondent : Mr.R.Rajarathinam
Assisted by Mr.Elayaraj Kumar
for M/s.Ramalingam & Associates

O R D E R

This matter is taken up for hearing via video conferencing.

2. For the sake of convenience, the parties will be referred to by their names.

3. On a complaint dated 05.02.2016 lodged by one Shankar Balasubramanian, Chief Manager and Authorised Signatory of ICICI Bank, Chennai, the Central Crime Branch, Salem registered a case in Crime No.12 of 2017 on 28.08.2017 for offences under Section 420 IPC against Kumar (A1), Jayanthi (A2), Arun (A3) and Sundareshwaran (A4), for quashing which, Kumar (A1), Jayanthi (A2) and Arun (A3) are before this Court under Section 482 Cr.P.C.

4. Facts appearing on the face of the record are as under :

Nandhi Dall Mill in Salem is a partnership firm in which, Kumar (A1), Jayanthi (A2) and Arun (A3) are partners. The ICICI Bank gave cash credit loan of Rs.15 Crores (hereinafter called "loan-1") in December 2010. The partners did not give their own property as security, but, the property of one Smt.Ashwathamma sitatuted in Karnataka was given as security. Smt.Ashwathamma had authorised one Lakshman Reddy by a Power of Attorney dated 18.12.2010 to sign the mortgage papers on her behalf.

4.1. Nandhi Dall Mill was given a short term loan of Rs.15 Crores (hereinafter called as "loan-2") in March 2011, for which, they gave the property of one Sundareshwaran (A4) as security. In February 2012, the limits of Rs.15 Crores in respect of loan-1 was enhanced to Rs.22 Crores by ICICI Bank.

4.2. Nandhi Dal Mill defaulted in repayment and the account was classified as Non-Performing Asset in March 2014 and a sum of Rs.30,13,06,198/- was due to the bank as on 28.12.2015.

4.3. When the bank initiated Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002, proceedings, it came to light that the property given by Sundareshwaran (A4) was not free from encumbrance inasmuch as a partition suit in O.S.No.18 of 2010 was pending and further, he had alienated the property by executing a Deed of Sale registered as document No.5490 of 2011 dated 02.11.2011 in favour of one Velumani and his wife Selvi.

4.4. The grievance of the ICICI Bank is that Sundareshwaran (A4) had suppressed the pendency of the partition suit at the time of giving the property as security and has further created encumbrance on the property by executing a Sale Deed registered as document No.5490 of 2011 dated 02.11.2011 in favour of one

Velumani and his wife Selvi, though the original Title Deeds are with the bank.

4.5. As stated above, one Shankar Balasubramanian, Chief Manager of ICICI Bank lodged a complaint dated 05.02.2016 in the office of the Commissioner of Police, Salem. The police did not register an F.I.R. immediately, but, started conducting enquiries. Apprehending arrest, Kumar (A1), Jayanthi (A2) and Arun (A3) filed Crl.O.P.No.10824 of 2016 for anticipatory bail and this Court, by order dated 19.05.2016, directed the police not to arrest them till 06.06.2016. On 06.06.2016, the anticipatory bail petition was closed on the representation made by the Prosecutor that an enquiry was conducted by the police and the same has been closed on the ground that the dispute is civil in nature. This was recorded and the anticipatory bail was closed by this Court on 06.06.2016. However, the police registered a regular F.I.R. on 28.08.2017 and therefore, Kumar (A1), Jayanthi (A2) and Arun (A3) once again filed a petition in Crl.O.P.No.19149 of 2017 for anticipatory bail and this Court, by order dated 14.09.2017, granted them the relief on the ground that the accused/petitioners have paid Rs.25 Crores to the bank and that the allegations in the F.I.R. are mainly against Sundareshwaran (A4). After getting anticipatory bail, the petitioners filed the present petition on 09.11.2017 for quashing the F.I.R. This Court, by order dated 24.04.2019 directed the police not to file the final report.

5. Heard Mr.A.Ramesh, learned Senior Counsel on the Counsel on record for the accused, Mr.L.Charles Premkumar, learned Government Advocate (Crl. Side) for the respondent State and Mr.R.Rajarathinam assisted by Mr.Elayaraj Kumar for the ICICI Bank.

6. Mr.A.Ramesh filed several typed sets of papers and took this Court through various documents and made the following submissions :

a) There is a delay in the registration of the F.I.R.;
b) The F.I.R. does not disclose the commission of a cognizable offence;
c) The allegations are only against Sundareshwaran (A4) for suppression and not against Kumar (A1), Jayanthi (A2) and Arun (A3);
d) Kumar (A1), Jayanthi (A2) and Arun (A3) had no criminal intention; and
e) Nandhi Dall Mill wanted only Rs.5 Crores as loan from ICICI Bank, but, two officials viz. Selvakumar, Relationship Manager (Services), ICICI Bank, Chennai and Brijesh Kumar, Relationship Manager (Services), ICICI Bank,

Coimbatore had forced Nandhi Dall Mills to take a loan of Rs.15 Crores on the promise of arranging for sureties, but, on condition that Nandhi Dall Mills should give kickbacks. Accordingly, it was the officials of the ICICI Bank, who had arranged for getting Smt.Ashwathamma's property as security, for which, Nandhi Dall Mills gave Rs.11 Crores as kickbacks in the following manner :

Person/Institution	Amount (Rs.)	Date
Lakshman Reddy/Shantha Gowda	2 Crores	06.01.2011
	2.5 Crores	15.02.2011
	1.5 Crores	31.03.2011
	0.5 Crores	15.04.2011
Krishna Departmental Stores/ Sathiyam Engineering College	1.5 Crores	02.02.2011
	2.5 Crores	28.03.2011
	25 Lakhs	21.05.2011
	25 Lakhs	30.05.2011
Total	11 Crores	

He further contended that these facts were brought by Nandhi Dall Mills even to the notice of the Banking Ombudsman, despite which, the F.I.R. has been registered against the petitioners and hence, the same deserves to be quashed. He also placed strong reliance on a catena of judgments of the Supreme Court in support of his submissions.

7. Per contra, Mr.Rajarathinam appearing for ICICI Bank and Mr.Charles Premkumar, learned Government Advocate (Crl. Side) refuted the aforesaid contentions and submitted that on account of the pendency of this petition, the police had not proceeded further with the investigation and only if the police are allowed to investigate the case, will the whole truth come to light.

8. This Court gave its anxious consideration to the rival submissions.

9. Coming to the first submission of Mr.A.Ramesh that, there is a delay in the registration of the F.I.R., this Court is of

the view that, delay in registration of the F.I.R. cannot by itself be a ground for quashing the F.I.R., given the manner in which our police system works. Otherwise, there was no reason for a Constitution Bench of the Supreme Court to issue a slew of directions to the police in the celebrated case, Lalita Kumari Vs. Government of Uttar Pradesh [(2014) 2 SCC 1]. It is true that on receipt of the complaint, the police did not register a regular F.I.R., but, conducted an enquiry and closed the case as civil in nature.

10. Mr.Rajarathinam contended that, the ICICI Bank were forced to approach the Commissioner of Police for the perfunctory manner in which their complaint was closed by the police without even registering an F.I.R. Therefore, the police have now registered a regular F.I.R. and begun the investigation, but, their hands have been tied on account of the pendency of this petition for quash.

11. There is sufficient force in the submission of Mr.Rajarathinam inasmuch as, after obtaining anticipatory bail from this Court on 06.06.2016, the petitioners have filed the present petition for quashing the F.I.R. on 09.11.2017, without even giving sufficient time for the police to conduct the investigation and either close the case or file a charge sheet. The petitioners after getting protection from arrest could have allowed the investigation to proceed to its logical conclusion, which they did not do.

12. The issue at hand can be approached from two angles. Firstly, applying the test laid down by the Supreme Court in State of Haryana Vs. Bhajan Lal and Others (AIR 1992 SC 604), can the F.I.R. be quashed? Answer to this question is an emphatic “No”. The complaint states that loan-2 was obtained by the petitioners as partners of Nandhi Dall Mill, for which, Sundareshwaran (A4) gave his property as security with a declaration that it was free from lis and encumbrance. Whereas, subsequently, the bank came to know that a partition suit was pending, in which Sundareshwaran (A4) was a defendant, even at the time when the property was given as security and that, subsequently Sundareshwaran (A4) sold the property to Velumani and his wife Selvi on 02.11.2011. Thus, in the opinion of this Court, this is sufficient for police investigation to commence and therefore, the parameters laid down in Bhajan Lal (supra) for quashing an F.I.R. cannot be applied to this case. Mr.A.Ramesh contended that when Nandhi Dall Mill has repaid loan-2, for which, Sundareshwaran (A4) had given the property in question as security and so, the suppression of facts by him has lost their relevance.

13. Refuting this submission, Mr.Rajarathinam submitted that

after loan-2 was repaid, when Nandhi Dall Mill wanted enhancement of loan-1 from Rs.15 Crores to Rs.22 Crores, the bank asked them to substitute Sundhareshwaran's (A4) property as security in place of Smt.Ashwathamma's and that was done.

14. Mr.A.Ramesh's submission that the allegations are mainly against Sundareshwaran (A4) and not against A1 to A3/petitioners cannot be determined in this quash petition, for, A1 to A3/petitioners being the beneficiaries, cannot be given a clean chit by this Court now. When Mr.A.Ramesh laboured hard to read through the documents in the typed set of papers to show that A1 to A3/petitioners were not acting in tandem with Sundareshwaran (A4), this Court posed a simple question to him, "Can this constitutional Court wear a khaki uniform, step into the shoes of the Investigating Officer, pore over the typed set of papers and give a finding that the petitioners had no mens rea?" Mr.A.Ramesh candidly admitted that this Court cannot do so. The law as it stands today, does not allow the Court to adorn the mantle of an Investigating Officer and venture to investigate the allegations in a complaint. Who knows, the police may even take these petitioners as approvers, instead of showing them as accused. Hence, it is too early to predict the outcome of the investigation. Thus, on this short ground alone, this quash petition deserves to be dismissed.

15. Coming to the second angle, the petitioners have put in their petition, in black and white, that they had paid kickbacks to a tune of Rs.11Crores to the bank officials via Lakshman Reddy/Shantha Gowda and Krishna Departmental Stores/Sathiyam Engineeing College.

16. Mr.A.Ramesh contended that it was the bank officials, who organised to get the property of the said Smt.Ashwathamma as security for loan-1 and that, they released the property of Smt.Ashwathamma from the mortgage on 16.02.2012 by executing a release deed, wherein, it is, inter alia, stated as under :

> "II. The schedule property, by oversight, was given in mortgage in favour of the Bank by way of a registered "MEMORANDUM OF TITLE DEEDS" dated 27.12.2010 duly registered as Document No.BNG(U)-VRT-06209/2010-2011, in Book 1, stored in C.D.No.VRTD90 in the office of the Senior Sub Registrar, Varthur SRO, Varthur, Bangalore District on 28.12.2010;
>
> III. The Bank hereby decided to release the said property free from all encumbrances including the charge created as stated above;"

17. It is trite that an F.I.R. cannot be treated as an encyclopedia of the prosecution case. Instances are galore where complainants have been transposed as accused by the police in the final report. Mr.A.Ramesh's contention that the present Branch Manager, who has lodged the complaint, has suppressed all these facts in the complaint and therefore, the F.I.R. should be quashed, cannot be countenanced. In the opinion of this Court, the aforesaid allegations made by the petitioners are, by themselves, good ground for the investigation to be taken to its logical conclusion for unraveling the mystery, if any, in the transactions in question. If the present F.I.R. is quashed, the allegations made by the petitioners against the bank officials would get swept under the carpet. Mr.Rajarathinam contended that the bank has no intention to protect its employees and if the police find that they were also involved in the offence, they have to inevitably face the music. Thus, in the teeth of the aforesaid allegations made by the petitioners themselves, a full-fledged investigation is sine qua non in this case.

In the result, this Criminal Original Petition is dismissed and the police are directed to proceed with the investigation in accordance with law. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1.The Sub Inspector of Police
Central Crime Branch
Salem

2.The Public Prosecutor
High Court
Madras

+2ccs to M/s.B.A.Sujay Prasanna, Advocate, Sr.No. 38181

CRL.O.P.No.24291 of 2017

NRL(CO)
RMP(15/12/2020)