IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2020

PRONOUNCED ON : 05.06.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.30512 OF 2019 AND
CRL.M.P.NOS.15722 & 15723 OF 2019
AND
CRL.R.C.NO.1184 OF 2019

Crl.O.P.No.30512 of 2019

1.Malaichamy
2.Usha Nandhini
3.S.Amudha
4.A.Murugan ... Petitioners/2nd Accused/
Petitioner/3rd Accused/
Petitioner/4th Accused/
Petitioner/5th Accused

Vs.

State rep. by,
Deputy Superintendent of Police,
Central Bureau of Investigation,
Anti-Corruption Branch Chennai.
... Respondent/Complainant

Crl.R.C.No.1184 of 2019

M.Palani ... Petitioner/1st Accused

Vs.

State rep. by,
Deputy Superintendent of Police,
SPE, CBI, ACB, Chennai. ... Respondent/Complainant

PRAYER in Crl.O.P.No.30512 of 2019:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records pertaining to C.C.No.15 of 2016 pending before the learned XI Additional Special Judge for CBI Cases, Chennai, quash the same as against the petitioners.

PRAYER in Crl.R.C.No.1184 of 2019:

Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records in CC.No.15 of 2016 on the file of the learned XI Additional Special Judge for CBI Cases and set aside the order dated 03.10.2019 in Crl.M.P.No.2994 of 2018.

For Petitioners in Crl.O.P.No.30512 of 2019	:	Mr.V.Krishnakumar
For Petitioner in Crl.R.C.No.1184 of 2019	:	Mr.N.R.Elango Senior Counsel for Mr.E.Raj Thilak
For Respondents in both cases	:	Mr.K.Srinivasan Special Public Prosecutor

COMMON ORDER

Criminal Original Petition is filed by the Petitioners/A2 to A5, praying to quash entire proceedings in C.C.No.15 of 2016. The Criminal Revision is filed by the Petitioner/A1 praying to call for records in C.C.No.15 of 2016, on the file of the XI Additional Special Court for CBI Cases and set aside the order dated 03.10.2019 in Crl.M.P.No.2994 of 2018. The petitioners are facing trial for the offence under Sections 120-B r/w 420, 468, 471 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2.For the sake of clarity, the petitioners are referred as, according to their ranks, as mentioned in the charge.

3.The petitioners are A2 to A5 and A1 respectively in Criminal Original Petition and Criminal Revision Case. Since the grounds raised by them are similar, both the petitions are taken up together for final disposal and disposed by way of a Common Order.

4.The short facts of the case are as follows:-

(i)On the basis of a written complaint given by one R.Kumaresan, Chief Vigilance Officer, Repco Bank, Head Office, Chennai, alleging that A1/M.Palani, while working as Head of Branch at Pallavaram and T.Nagar Branches of REPCO Bank, during the period 2008 to 2013, entered into a criminal conspiracy with A2/A.Malaisamy and unknown others, in pursuance of conspiracy A1/M.Palani, by abusing his official position knowingly obtained forged documents from A2/A.Malaisamy, appraised and recommended the loan proposals of A2 and forwarded them to Head office of Repco bank for sanction. Based on the favourable recommendations made by A1/M.Palani, Repco Bank Head office sanctioned many secured Loans to A2/A.Malaisamy. A2/M.Malaisamy did not repay the loans within the stipulated time and thus cheated the Bank and caused wrongful loss to Repco Bank to the extent of Rs.4.53 Crores and made corresponding wrongful gain. A1 to A5 entered into a criminal conspiracy, cheated the Repco Bank by availing credit facilities like Secured Loans and Cash Credit limit by dishonestly making false representations about their business, financial status, individual net worth etc., A1 by abusing official position caused wrongful loss to the Repco Bank.

5.Mr.V.Krishna Kumar, the learned counsel for the petitioners/A2 to A5 in Crl.O.P.No.30512 of 2019 submitted that the petitioners/A2 to A5 are private individuals. A1 is the Branch Manager of REPCO Bank. A2 is doing business real estate business and whole sale business of electronic goods; A3 is the wife of A2; A4 is the sister of A2 and A5 is the brother of A2. Further, there is no loss to the Bank as stated in the charge sheet and it is vindictive approach being followed by the Bank officials to settle scores with A1 and A2 for different issues, in the cross fire A3, A4 and A5 were put to hardship for no fault of theirs.

6.The learned counsel further submitted that as per the charge sheet, the loans availed by A2 from the Pallavaram Branch of the Bank is Rs.265 Lakhs. For the said loan, three properties were given as security, which are (i) For SDL No.644, as seen in LD4, where a land measuring 9 grounds actual possession of 7 grounds as per the documents in S.No.1088/2A3, Madhavaram. This property is jointly owned by A2 and A3 and is worth Rs.5,21,15,000/- (ii) The second property given as security by A2 is also at Madhavaram, R.S.No.18/A, new Door No.15, Old Door No.33, Madhavaram High Road and its worth is about Rs.1,16,13,000/- and the (iii) the third property given as security by A2 is that of a flat owned by A4 worth Rs.33,71,000/-, the total security is worth about Rs.6,70,99,000/-, as against the loan availed in Pallavaram Branch of Rs.265/- Lakhs. These loans were settled with principal and interest on 30.08.2011, 16.08.2011 and 17.08.2011 which is an admitted fact.

7.The learned counsel further submitted that after settlement of loans availed from the Pallavaram Branch of the Bank, loans to the tune of Rs.765 Crores, on different dates, were given to A2, as sought by him, from T.Nagar Branch of the

Bank. The same properties were given as securities as seen in LD32. Further, out of the total five loans to the tune of Rs.765 Crores, availed from T.Nagar Branch, one loan No.1370 for Rs.115 lakhs was fully settled and closed. This would clearly show that there is no mensrea to cheat the Bank on the part of A2. The property given as security worth Rs.6,70,99,000/- plus the built up area worth about Rs.10,70,00,000/- are still with the Bank. Now, the outstanding amount as on 30.09.2015 is Rs.4,68,41,364/-, but the security value is Rs.10,70,00,000/- which is with the Bank and the bank can easily attach and sell the properties given as security under SARFAESI Act. Hence, the loan is fully secured and there can be no loss to the Bank due to the transaction of A2.

8.The title dispute with TALCO for property in survey No.1088/2A3 ended in favour of A2 by judgment dated 22.06.2016 in A.S.No.21 of 2007. A2 was directed to make payment of Rs.67,61,750/-. This amount was paid through five demand drafts dated 05.07.2016. Further A2 and his family members are victimized for A2 making complaint to CBI against top officials of Repco Bank on 19.05.2015 for corrupt practice of the officials, as a counter blast the petitioners A2 to A5 are implicated in the above case. Hence, he prayed to quash the proceedings.

9.Mr.N.R.Elango, the learned senior counsel appearing for the petitioner/A1 in Crl.R.C.No.1184 of 2019 submitted that the petitioner/A1 was Deputy General Manager of Repco Bank, T.Nagar Branch, at the time of registration of FIR. The petitioner was not an authority for disbursal of the loans, as per the procedures, after receipt of loan application from the borrower with relevant documents, the same will be verified by the Panel valuer and legal adviser and on their opinion, the proposal would be sent with his recommendation to the Board of Directors. It is the Board of Directors, who finally sanction the loan. Further the petitioner has made his recommendation note along with the loan applications. The petitioner has rightly given the financial status of the applicants and their creditworthiness, along with relevant documents, including their self-audited balance sheets. The authenticity of the rental agreements and documents relating to title to the disputed property was to be confirmed by the legal advisor and not by the petitioner, who is neither qualified nor equipped in this regard. If the rental agreement is a false document, that alone would not amount to forgery. Only if the petitioner knowingly uses the false rental agreement as genuine then only offence of forgery is said to have been committed. Further there should be dishonest intention to create wrongful loss or gain, which is absent in the present case. The petitioner has clearly mentioned about the nature of the 2nd accused's electronic goods sales and business. The respondent could not produce any evidence to show or make a prima facie case that the business of A2 actually did not exist . Further, the existence of the office was immaterial to the sanction of the loan, as neither the office nor the goods were pledged as security.

10.The petitioner was Branch Head of Pallavaram Repco Bank from 09.06.2008 to 20.04.2011 and Branch Head of T.Nagar Repco Bank from 21.04.2011 to 06.10.2015. The loans availed from Pallavaram Branch were fully repaid, thereafter, loans were disbursed from T.Nagar Branch. In any event the approval and sanction of loan was done by the Head office and the Board of Directors. In this case A2 has repaid around Rs.7.50 crores against the total loan amount of Rs.7.65 crores. The ownership of the land in survey No.1088/2A3 has been conclusively proved by the Judgment of a competent Court. In pursuance to the Judgment of the civil Court A2 and A3 paid Rs.67,61,750/- through demand draft dated 05.07.2016. The petitioner following the banking norms and procedures after obtaining proper security and execution of documents and undertaking from borrower, co-borrower and on the report from the approved valuer and legal opinion forwarded the loan proposal and documents to Head Office. The Board of Director has sanctioned and approved the loan. The petitioner cannot be singled out and victimized. A2 in this case has made complaint to CBI against the top officials of Repco Bank. All the loans are secured loans, the interest of the bank is well safeguarded. The valuation report of Executive Engineer and CPWD, Valves one of the property building alone to the tune of Rs.5,63,61,300/- which is in commensurate to the loan availed. This testimony is available in listed document No.116. The trial Court without considering the facts, has given a finding that these loan applications of A2 were processed when A2's loan at Pallavaram Branch was due. The trial Court failed to consider the entire documents and statements on a holistic view, on the contrary with a predetermined notion dismissed the discharge petition which is perverse liable to be set aside.

11.Mr.K.Srinivasan, the learned Special Public Prosecutor for CBI Cases submitted that on the basis of the written complaint given by one R.Kumaresan, Chief Vigilance Officer of REPCO Bank, Head Office Chennai, against the accused persons / A1 to A5, case was registered after investigation charge sheet filed. Further, A1 / M.Palani, while working as Head of Branch at Pallavaram and T.Nagar Branches of REPCO Bank, during the period 2008 to 2013, entered into a criminal conspiracy with A-2 / A.Malaisamy and other unknown persons and in pursuance of the said criminal conspiracy A1/ M.Palani, by abusing his official position knowingly obtained forged documents from A2 / A.Malaisamy, appraised and recommended the loan proposals of A2, on the basis of forged documents and forwarded them to Head office of Repco Bank for sanction. Based on recommendations of A1 the Bank sanctioned many secured Loans to A2 / A.Malaisamy, A2 failed to repay the loans within the stipulated time and thus, cheated the Bank and caused wrongful loss to Repco Bank to the extent of Rs.4.53 Crores.

12.The learned Special Public Prosecutor for CBI Cases further submitted that investigation also reveals the involvement of A3 / Usha Nandhini, wife of A2 / Malaisamy; A4 / Amutha, elder sister of A2 and A5/Murugan, younger brother of A2. The accused entered into criminal conspiracy at Chennai to cheat the Repco Bank, availed credit facilities by making false representation about their business, financial status, individul net worth etc. In furtherance of the aforesaid criminal conspiracy, A2 availed the following Secured Loans and Cash Credit Limit from the Repco Bank, Pallavaram Branch, which were sanctioned by Head Office of the Bank based on the recommendation made by A1 / Palani.

S.No.	Details of Loan	Date of Sanction	Amount	Purpose
1	Secured Load SLD No.644	02.09.2008	Rs.65 Lakhs	For purchase of property at Survey No.1088/2A3, Madhavaram Village, Chennai
2	Cash Credit Limit	24.09.2009	Rs.50 Lakhs	Sanctioned as working capital
3	Secured Loan SDL No.853	26.08.2010	Rs.150 Lakhs	For clearance of the existing Cash Credit account and as working capital assistance for electronic goods business

13.The learned Special Public Prosecutor for CBI Cases further submitted that A3 and A5 were co-borrowers along with A2 in all the above loan accounts and they have signed all the loan documents along with A2. Further, A2 submitted a loan application to A1 at T.Nagar Branch, while the Secured Loans already sanctioned at Pallavaram Branch were still not been repaid fully. The property at Survey No.1088/2A3, Madhavaram jointly owned by A2 and A3 worth Rs.5,21,15,000/-; the property at R.S.No.18/A, New Door No.15, Old Door No.33, Madhavaram High Road owned by A-2 worth Rs.1,16,13,000/- and property at Flat No.2, Plot No.92/2 & 92/3 owned by A4, worth Rs.33,71,000/- were offered as security for the loan. Further, on the recommendation of A1, sanctioned the following amounts to A2:-

S.No.	Details of Loan	Date of Sanction	Amount	Purpose
1	Secured Loan SDL No.1328	17/08/2011	Rs.265 Lakhs	As working capital assistance for construction of flats at Madhavaram.
2	Secured Loan SDL No.1329	17/08/2011	Rs.150 Lakhs	As working capital assistance for electronic goods sales business.
3	Secured Load SDL No.1370	07/03/2012	Rs.115 Lakhs	For purchase of a commercial plot on GNT Road
4	Secured Load SDL No.1371	07/03/2012	Rs.135 Lakhs	As additional loan for construction of flats at Madhavaram
5	Secured Load SDL No.1447	27/03/2013	Rs.100 Lakhs	As additional loan for construction of flats at Madhavaram
	TOTAL		Rs.765 Lakhs	

14.The Special Public Prosecutor further submitted that LW6, LW10, LW18, Assistant and Assistant Managers of Repco Bank have clearly stated the note prepared by the petitioner/A1 with false particulars. Further the security document being forged was produced by A2. LW30 to LW35 has stated about the forged rental agreement and non existence of shop and business of A2. The basic documents have not been verified by A1. Further the dispute in Madhavaram property of survey No.1088/2A3 given as security was not properly scrutinized. The power of attorney and subsequent sale were proved to be forged.

15.The learned Special Public Prosecutor for CBI Cases further contended that the planing permit issued to A2 by the CMDA for construction of the flats was valid only upto 22.02.2014. In May 2013, one Sakthivel, the then General Manager, District Industries Centre (DIC), Thiruvallur had requested the Sub Registrar, Madhavaram not to register the property at Survey No.1088/2A3 or any undivided share of it vide his letters, dated 15.05.2013, 17.05.2013 and 30.05.2013. The General Manager, DIC claimed that the land under Survey No.1088/2A3 belonged to erstwhile Tamil Nadu Leather Corporation (TALCO). A1 and A2 with dishonest and fraudulent intention suppressed these facts while sending proposals to Head Office. Secured loans SDL Nos.1328, 1329, 1371 and 1447 were declared as NPA on 30.06.2015 and the outstanding in these loan accounts as on 30.09.2015 is Rs.4,68,41,364/-.

16.There are enough materials by way of statements and documents against the petitioners/A1 to A5 to proceed with the trial and the contention of the petitioners are to be decided only during trial. Hence, prayed for dismissal of the petitions.

17.I have heard the learned counsel appearing on either side and perused the documents available on record.

18.It is seen that the loan documents were not scrutinized with the proper care. Further A1 failed to carry out pre and post visit to the place of business and the properties given as security and failed to ascertain the genuineness of the loan. The utilization of the loan amount was not monitored, further the Bank not proceeded against the accused under SARFAESI Act. This would not absolve the petitioners/accused from the case.

19.The trial Court in dismissing the discharge petition of A1 has referred the statement of witnesses and documents implicating the petitioners which is a well reasoned order. This Court finds no reason to interfere with. Further the petitioners are facing charge of conspiracy as well.

20.This Court finds that there are prima facie materials to proceed against the petitioners at this stage. No roving enquiry to be made on the veracity of the statements and documents. The documents produced by the petitioners are disputed by the respondent. In view of the same, these documents have to be proved during trial in the manner known to law. This Court has no doubt on the materials produced by the prosecution, which are sufficient to frame charge for offence stated and to proceed further.

21.Hence, this Court is not inclined to quash and discharge the petitioners from the above case. In the result, both the petitions are dismissed. The petitioners are permitted to raise all their contentions during trial. It is made clear that the observations and finding made herein are only for the purpose of disposal of the petitions. The trial Court uninfluenced by this order is directed to proceed with the trial and decide the case on its own merits. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The XI Additional Special Judge for CBI Cases,
   Chennai.

2. The Deputy Superintendent of Police,
   Central Bureau of Investigation,
   Anti-Corruption Branch Chennai.

3. The Deputy Superintendent of Police,
   SPE, CBI, ACB, Chennai.

4. The Public Prosecutor,
   High Court, Madras.

Crl.O.P.No.30512 of 2019 and
and
Crl.R.C.No.1184 of 2019

AD(CO)
CS/17/07/2020