BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.(MD).No.1284 of 2020

M.Sathyanarayanan
S/o Late Manivel,
Branch Manager,
The Lakshmi Vilas Bank Ltd.,
Trichy Main Branch,
D.Nos.451 and 452,
Big Bazaar Street,
Trichy ...Petitioner

Vs.

1.The Inspector of Police,
Economic Offence Wing Police Station,
No.2 Abdual Salam Street,
Kaja Nagar, Mannarpuram,
Trichy 620020.

2.The Inspector of Police,
Central Bureau of Investigation,
Economic Offence Wing,
A Wing, 3 Floor,
Rajaji Bhavan,
Besant Nagar,
Chennai - 600 090. ... Respondents

Prayer:- Criminal Revision is filed under Sections 482 of Criminal Procedure Code for change of investigation agency from Economic Offence Wing, Trichy to Central Bureau of Investigation - Economic Offence Wing (EOW) Chennai and thereby direct the CBI (EOW), Chennai and to enquire the matter on the basis of the complaint dated 19.12.2019 made by the petitioner bank.

For Petitioner : Mr.S.I.Muthiah

For Respondents : Mr.N.Nagendran
Spl. Public Prosecutor for CBI

ORDER

This criminal original petition has been filed for change of Investigation Agency from the Economic Offence Wing, Trichy to the Central Bureau of Investigation - Economic Offence Wing (EOW) Chennai and further seeks a direction to the CBI (EOW), Chennai to enquire the matter, on the basis of the complaint, dated 19.12.2019, made by the petitioner Bank.

2.The facts of case, in short, are as follows:-

(i) The petitioner is the present Branch Manager of the Lakshmi Vilas Bank Ltd., Trichy Main Branch. In the regular course of the business transaction, M/s Sakthi Time & Co herein represented by its partners, by name, Gopalakrishnan, S.Thirunavukkarasu and S.Kalyanasundaram, had availed various credit facilities with the petitioner bank from 1993 and the same has been renewed periodically by executing necessary loan documents in favour of the petitioner bank. As security for the loan, Mr.C.Gopalakrishnan had deposited the original title deeds of his property to an extent of 6 acre 11 cents, bearing T.S.No.1350/IA2A, situated at Thiruchirapalli District, Srirangam Municipality, Thimmarayasamudram Village, formed into house sites and named as 'Cauvery Nagar' in which, Plot No.9 having extent of 2,800 square feet and building constructed therein.

(ii) On 11.06.1993, the mortgagor viz., Mr.C.Gopalakrishnan had executed a Memorandum of Deposit of Title Deeds, in favour of the petitioner bank, for the creation of equitable mortgage for the loan availed by M/s Sakthi Time & Co. Thereafter, on 03.01.1996, the mortgagor had executed a letter by confirming the earlier creation of mortgage for the advances granted to M/s Sakthi Time Co.

(iii) As the account was not operated satisfactorily and the repayment of the loan became irregular, the petitioner bank had advised the aforesaid borrowers to regularize the loan accounts. As the borrowers/guarantor did not repay the amount, the petitioner bank had issued legal notice and thereafter, filed mortgage suit before the Debt Recovery Tribunal, Chennai in O.A.No.1108/1999 and thereafter, the case was transferred to the Debt Recovery Tribunal, Coimbatore and re-numbered as T.A.No.1235/2002. Subsequently, the aforesaid suit was transferred to the Debt Recovery Tribunal, Madurai and re-numbered and taken on record as T.A.No.473/2007.

(iv) The mortgagor Mr.C.Gopalakrishnan and other defendants had contested the suit and after full-fledged enquiry, the Debt Recovery Tribunal was pleased to pass an order in favour of the petitioner bank directing the defendants in the suit to pay the outstanding dues to the bank. As per the decree, the borrowers are liable to pay Rs.10,55,34,001.37. Further, based on the afore said order, the Debt Recovery Tribunal, Madurai through its Recovery Officer had initiated recovery proceedings in RP No.248/2017 in DRC No.234/2017 dated 24.01.2018 and also passed an order of attachment of the aforesaid mortgaged property. In order to realize the dues to the petitioner bank, the Recovery Officer had directed the petitioner bank to comply with necessary procedure/conditions to bring the aforesaid property for sale and one of the conditions is to furnish them with the latest Encumbrance Certificate for the property mentioned in the recovery certificate issued by the Recovery Officer of the Debt Recovery Tribunal, Madurai.

(v) As instructed by the Recovery Officer of Debt Recovery Tribunal, Madurai, the petitioner bank applied for Encumbrance

Certificate for the property before the Sub-Registrar, Srirangam. The Sub-Registrar had issued the encumbrance certificate on 25.07.2018. On perusal of the same, the bank officials were shocked to find that the borrowers/mortgagor Mr.C.Gopalakrishnan had sold the mortgaged property on 29.10.1999 to one Mr.V.Hariharan and the same was registered as Doc.No.3115/1999. The borrower/mortgagor Mr.C.Gopalakrishnan had illegally sold the mortgaged property without the knowledge and consent of the bank, which is not valid under law and also the act of doing so is nothing but conspiring with the purchaser of the property Mr.V.Hariharan in order the cheat the bank and not to pay the dues to the bank. The borrowers and Mr.V.Hariharan in order to defraud the bank and to evade the payment of loan amount, have colluded together and created sham document.

(vi) The mortgagor of the property Mr.C.Gopalakrishnan is not empowered to sell the mortgaged property without any written consent of the bank and it shows the unlawful act of the borrowers/mortgagor is in collusion with the purchaser of the property Mr.V.Hariharan. This fact of sale of the mortgaged property by the mortgagor Mr.C.Gopalakrishnan is also brought to the knowledge of the Recovery Officer, Debt Recovery Tribunal and the said Officer had insisted the petitioner bank to lodge a criminal complaint.

(vii) Accordingly, for the criminal act committed by the borrowers and the purchaser Mr.V.Hariharan, the petitioner bank filed a complaint to the Deputy Commissioner (Crime) Trichy City on 08.11.2018. The said complaint was forwarded to the Assistant Commissioner of Police, City Crime Branch, Trichy. The City Crime Branch Police, Trichy has failed to take action on the basis of the complaint preferred by the petitioner bank. Though the petitioner has personally approached the Inspector of Police, City Crime Branch, Trichy on several occasions, no action was taken for the petitioner's complaint. Hence, the petitioner bank made a complaint on 20.04.2019 to the Commissioner of Police, Trichy to direct the Inspector of Police, City Crime Branch, Trichy to register an FIR against the accused and to investigate the case against the accused who are involved in the offence of cheating, criminal conspiracy etc, prosecute and to punish them in accordance with law.

(viii) Even for the complaint made to the Commissioner of Police, Trichy, there was no action from the police department. The petitioner bank had also forwarded the complaint through registered post, but the same did not evoke any sort of response. Hence, the petitioner bank had filed a petition before this Court in Crl.O.P (MD)No.13193 of 2019, seeking change of investigation agency from City Crime Branch to CBCID, Trichy.

(ix) On 05.11.2019, when the aforesaid petition came up for hearing, the learned Government Advocate (criminal side) has reported before this Court that the Assistant Commissioner of Police, City Crime Branch, Trichy closed the complaint for the reason of jurisdiction, since the amount involved in the crime is above 9 crores. Hence, recording the said contention, this Court was pleased to dismiss the aforementioned petition in Crl.O.P(MD) No.13193 of 2019 with liberty to file a fresh complaint before the Economic Offence Wing (EOW), Trichy i.e., the first respondent and this Court has further directed the Economic Offence Wing (EOW), Trichy to investigate the same.

(x) Pursuant to the direction of this Court and in due adherence of the same, the petitioner bank have preferred a complaint dated 19.12.2019 before the file of the first respondent vide registered post. Though the first respondent had received the above complaint, has not taken any action till date, despite the direction issued by this Court in Crl.O.P(MD)No.13193 of 2019 dated 05.11.2019. Further, the aforesaid borrower i.e., C.Gopalakrishnan's son is a Doctor by profession and a highly influential person in the local vicinity. Hence, the police authorities, including the first respondent personal at his behest are not investigating the above complaint and there was hardly any progress in the investigation of the crime. Hence, in order to sub-serve the ends of justice change of investigation is just and necessary. Further, in the case on hand, the aforesaid Gopalakrishnan and Hariharan have conspired together to defraud the petitioner bank and as of now 11 Crores is liable to be realized from them. Hence, this petition has been filed for change of agency from Economic Offence Wing, Trichy to CBI (EOW), Chennai.

3.When the matter was taken up for hearing on 28.02.2020, the learned Additional Public Prosecutor filed a status report. This Court, by order dated 28.02.2020, passed by the following orders:-

> “When the matter is taken up for hearing, the learned Special Public Prosecutor filed a status report, it is mentioned that the EOW-II was created in the year 2000, as per G.O.Ms.No.1697, dated 24.12.1999 to deal with the cases registered under TNPID Act 1997, MLM business fraud complaint of chits and depositors and online money collecting frauds.
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> 2.In this case, the borrower obtained a sum of Rs.9,35,128/- and Rs.5,66,128/- as loan from the Lakshmi Vilas Bank in the year 1996 and mortgaged some properties as surety. The petitioner/Bank calculated the interest from 1996 for the loan amount and says that the case amount is more than Rs.9 Crores.
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> 3.Further, it is seen that the Bank had also approached DRT only in the year 2018. The EOW-II is the special investigating agency created, for the purpose of investigating cases as per G.O.Ms.No.1697, dated 24.12.1999.
>
> 4.An opinion obtained from the Public Prosecutor is also produced wherein, it is seen that as per Director General of Police, Tamil Nadu in

R.C.No.267733/ R.A.1(2)/02, dated 12.12.2002, the EOW-II has been entrusted for the following cases :

1.Offences (other than civil in nature) relating to Traders and involving large scale frauds/cheating.

2.Cases relating to chit funds frauds of large scale (other than Chit Fund Act).

3.Organized job racketing by travel & other agencies involving large-scale frauds.

4.Cases involving large-scale frauds-cheating in violation of Prize Chits. & Money Circulation Schemes (Banning) Act. 1978.

5.Cases of organized & Technically advanced. Serious Large Scale Financial Frauds.

6.Large Scale corporate frauds where money was collected from public as investment, shares ad time-shares etc.

7.Other incorporated and unincorporated bodies who collected money in large scale from public in any form namely promising return of money or materials.

8.Financial frauds involving money laundering in large scale.

9.All other cases referred to EOW by Govt, DGP and endorsed by the court from time to time.

5.Further, the learned Special Public Prosecutor submitted that in Crl.O.P(MD)No.13193 of 2019, EOW-II was not a party and they were not given an opportunity to represent its view before the Court, when the order was passed on 05.11.2019. The learned Special Public Prosecutor to take steps to file necessary application in Crl.O.P(MD)No.13193 of 2019, with regard to the difficulty faced by EOW-II in this regard and to get necessary clarification from this Court. Hence, seeks time.

6.Post the matter on 17.03.2020."

4. When the matter is taken up for hearing today, Mrs.S.Bharathi, learned Government Advocate (criminal side) appearing for the first respondent would submit that the first respondent/Economic Offence Wing has no objection to transfer the case to the second respondent/CBI, since the Bank is scheduled bank, the competent authority to investigate the matter is CBI.

5. Mr.N.Nagendran, learned Special Public Prosecutor appearing for the second respondent/CBI would submit that this Court may

transfer the investigation along with the entire file to the SBCBI, Madurai and thereafter, the SBCBI will investigate the matter.

6. Considering the facts and circumstances of the case and recording the above submissions made by the learned counsels appearing for the Respondents, this Court is inclined to change the Investigating Agency. Accordingly, the investigation pending on the file of the Economic Offence Wing, Trichy is transferred to the file of S.B.CBI, Madurai. The first respondent is directed to transfer the entire case records to the second respondent. On receipt of entire case records, the second respondent is directed to conduct an investigation and complete the same, as expeditiously as possible.

With the above directions, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (AS)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Inspector of Police,
Economic Offence Wing Police Station,
No.2 Abdual Salam Street,
Kaja Nagar, Mannarpuram,Trichy 620020.

2.The Inspector of Police,
Central Bureau of Investigation,
Economic Offence Wing,
A Wing, 3 Floor,
Rajaji Bhavan,Besant Nagar,Chennai – 600 090.

3.The Inspector of Police,
S.B.CBI, Madurai.

4.The Special Public Prosecutor,(CBI)
Madurai Bench of Madras High Court,Madurai.

Copy to: The Record Keeper,
Criminal Section (Records),
Madurai Bench of Madras High Court,Madurai.

+1 CC to M/s.S.I.MUTHIAH, Advocate (SR-12040[F] dated 17/03/2020)

AP(15/06/2020) 6P 8C