IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.O.P.NO.25152/2015 & M.P.NO.1/2015

[Video Conferencing]

1. The Chairman,
   State Bank of India, Corporate Centre,
   Madame Cama Road,
   Nariman Point,
   Mumbai – 400 021.

2. The Managing Director,
   State Bank of India, State Bank Bhavan,
   Madame Cama Road,
   Mumbai – 400 004.

3. The Chief General Manager (LHO),
   State Bank of India, Circle Top House,
   No.16, College Lane,
   Chennai – 600 006.

4. The Authorized Officer,
   State Bank of India, SAMB,
   32, Montieth Road, Egmore,
   Chennai – 60 008.

5. The Chief Manager,
   State Bank of India,
   Commercial Branch,
   Cantonment, Trichy - 1. ... Petitioners/Accused Nos.1 to 5

Versus

S.Loganathan ... Respondent/Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.2721/2015 on the file of the learned Chief Metropolitan Magistrate, Chennai and quash the same.

For Petitioners : Mr.Om Prakash
Senior Counsel
Assisted by Mr.P.Elaya Raj Kumar

For Respondent : Mr.S.Kingston Jerold

ORDER

(1) A1 to A5 in CC.No.2721/2015, now pending on the file of the Court of the Chief Metropolitan Magistrate at Chennai, have filed the present petition u/s.482 Cr.P.C., seeking interference with further progress of the said Calendar Case.

(2) The respondent herein had occasion to file a complaint under Section 200 Cr.P.C and he had presented the same before the learned Chief Metropolitan Magistrate at Chennai. The list of accused in the said complaint are as follows:-

[1]The Chairman, State Bank of India, Mumbai, [2] The Managing Director, State Bank of India, Mumbai, [3] the Chief General Manager [LHO], State Bank of India, Chennai, [4] the Authorised Officer, State Bank of India, Chennai, [5] the Chief Manager, State Bank of India, Trichy.

(3) For good measure, there are also three other accused, namely, [1] the Commissioner of Police, Egmore, Chennai, [2] Gunasekaran, Sub Inspector of Police, Central Crime Branch and [3] Meena Priya, Sub Inspector of Police, Central Crime Branch, Vepery.

(4) In the complaint presented to the extent to which it can be read, the words, Chairman or Chief General Manager [LHO] or the Authorised Officer or Managing Director or Chief Manager, are not at all found. It is not known on what basis they were shown as accused and it is also pertinent to point out that the said accused had been shown in their designations and not in their names.

(5) The only reference in the complaint is, in paragraph No.4, to the Bank Manager to whom the present respondent had given a complaint. But again, the said Bank Manager is not shown as an accused either by way of designation or by way of name. This Court had therefore, raised preliminary objection as to how the learned Chief Metropolitan Magistrate, Chennai, could have taken cognizance of such a complaint in the absence of the names being given to the accused.

(6) The learned counsel for the 2nd respondent/defacto complainant however justified stating that it is sufficient if the name of the Company is given and in this connection, placed reliance on a judgment of the Hon'ble Supreme Court of India reported in CDJ 2010 SC 1001 [Iridium India Telecom Ltd Vs. Motorola Incorporated and Others].

(7) That was a case where a Company had filed an application to quash a criminal complaint. The said Company had been proceeded with under Section 420 read with 120-B IPC. The Hon'ble Supreme Court had correctly observed that the Company can be shown as an accused.

(8) It is to be noted that the words in the provision also always states ''as well as the Company'' while proceeding against the officers in-charge of the Company and also the Company, particularly with reference to the offence under Section 420 IPC and when there is a criminal conspiracy imputed.

(9) Here in the case on hand, the Company has not been shown as an accused independently. The accused have been designated as Managing Director, Chief General Manager, Authorised Officer and Chief Manager, all of the State Bank of India at Mumbai, Chennai and at Trichy.

(10) It is not known as to how process was issued to the said accused who are not named. It is common knowledge that these posts are rotatable in nature and the particular period in which the offence was committed, is also not been specifically given. It is required that a particular date will have to be given on which date, the offence alleged, had taken place.

(11) In the instant case, a series of transactions had taken place and it is seen in the complaint that the petitioners had sanctioned Cash Credit in the year 2006 and the transactions had gone on at least till the year 2012 and subsequently, a SARFAESI application in OA.No.213/2013 which was previously OA.No.248/2010 had been filed before the Debts Recovery Tribunal - III, Chennai, as against the respondent. It is also indicated that the transactions had been going on for a period of at least four or five years and in that particular period of time, the Chairman and all other officials would have changed and new persons would have taken charge. There is absolutely no indication as to which particular official had committed the particular offences as alleged.

(12) On this one ground alone, CC.No.272/2015 has to be quashed as against the petitioners herein/A1 to A5.

(13) However, even though this particular aspect was pointed out to the learned counsel for the 2nd respondent herein, the learned counsel sought to justify that showing of the accused/said officials by way of their designation alone is sufficient.

(14) This naturally led the learned Senior counsel appearing on behalf of the petitioners to reply on facts and I have been invited to examine the complaint which has been given and it is stated that the crux of the complaint was that the Bank Officials, who are not named, had apparently diverted the amounts payable to the respondent, to another account.

(15) The account number alone has been given, but the name of the account has not been given. That is very relevant because one of the account is Venkatesh Real Estate and the other account is Real Estate Venkatesh. This issue was specifically also taken by the respondent herein before the Debts Recovery Tribunal in OA.No.213/2013 and the order passed thereon, had been placed reliance by the learned Senior counsel appearing for the petitioners and it is urged that a specific finding has been given by the competent Court that the Bank Officials had not done anything wrong in transferring the amount, if at all there was a transfer because it is stated that both the accounts, that is, Venkatesh Real Estate and Real Estate Venkatesh, were operated by the same person, namely, the respondent herein. That is a finding which now stares the face of the respondent.

(16) The learned counsel for the respondent, however, stated that an appeal had been filed and that the said finding had been set aside by the Debts Recovery Appellate Tribunal. This submission has been disputed by the learned Senior Counsel for the petitioners who stated that the appeal has been dismissed.

(17) When neither of the two parties have produced a copy of the order passed in the SARFAESI Appeal, I can go only on the finding of the fact rendered by the Debts Recovery Tribunal-III, Chennai, wherein it has been categorically held that no irregularity has been made by the officials with respect to the operation of the accounts, namely, Venkatesh Real Estate and Real Estate Venkatesh. There has been a specific finding that both accounts have been operated by one and the same person, namely, the respondent herein.

(18) The learned Senior counsel appearing for the petitioners relied on the judgment reported in 2015 [6] SCC 287 [Priyanka Srivastava and Another V. State of Uttar Pradesh and Others], wherein also, a private complaint had been given by a borrower as against the Bank complaining about the operations of his account by the Bank officials and a specific reference was made by the learned Senior counsel to paragraphs No.19 and 20 and also to paragraph No.30. The said portions are extracted below:-

> ''19. We have narrated the facts in detail as the present case, as we find, exemplifies in enormous magnitude to take recourse to Section 156(3) CrPC, as if, it is a routine procedure. That apart, the proceedings initiated and the action taken by the authorities under the SARFAESI Act are assailable under the said Act before the higher forum and if, a borrower is allowed to take recourse to criminal law in the manner it has been taken, it needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. It is clearly noticeable that the statutory remedies have cleverly been bypassed and prosecution route has been undertaken for instilling fear amongst the individual authorities compelling them to concede to the request for one-time settlement which the financial institution possibly might not have acceded. That apart, despite agreeing for withdrawal of the complaint, no steps were taken in that regard at least to show the bona fides. On the contrary, there is a contest with a perverse sadistic attitude. Whether the complainant could have withdrawn the prosecution or not, is another matter. Fact remains, no efforts were made.
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> 20. The learned Magistrate, as we find, while exercising the power under Section 156(3) CrPC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) CrPC, cannot be marginalised. To understand the real purport of the same, we think it apt to reproduce the said provision:

"156.Police officer's power to investigate cognizable case.—(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2)No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned."

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.''

(19) The observations of the Hon'ble Supreme Court in paragraph No.30 are binding on this Court and they are very significant because the Hon'ble Supreme Court had very categorically stated that the Magistrate should verify the truth of any complaint and also call upon the complainant

to file an affidavit. The Hon'ble Supreme Court had also stated that it is very disturbing and alarming, where the complainant picks up people who are passing orders under the statutory provisions.

(20) In the case on hand, the situation is still worse since the names of the officials had not been disclosed by the respondent herein in the complaint and still, the learned Chief Metropolitan Magistrate, Chennai, had taken cognizance of the complaint as CC.No.2721/2015 and had actually issued process.

(21) I am informed that the learned Chief Metropolitan Magistrate, Chennai, had also directed the accused persons to furnish the names and thereafter, issued process to those persons. When the complainant himself had not chosen to name any individual as an accused, it does not lie in the realm of the learned Chief Metropolitan Magistrate, Chennai, to pick out and point out the accused, particularly with their names. This would be exceeding the jurisdiction.

(22) The learned Senior Counsel also placed reliance on a recent judgment of the Hon'ble Supreme Court of India reported in 2021 SCC Online SC 806 [Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd and others], wherein specific reference was made to Priyanka Srivastava's case [referred supra] and the Hon'ble Supreme Court had, in paragraph No.27, held as follows:-

> ''27.As held by this Court in the case of GHCL Employes Stock Option Trust Vs India Infoline Limited reported in 2013 [4] SCC 507 in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/ Supervisor of A1 & A6, without any specific role

attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.''

(23) Even in that case, a string of accused had been arrayed, namely, Chairman, Managing Director, Executive Director, Deputy General Manager and Planner and Executor. The Hon'ble Supreme Court had very specifically stated that merely because they hold those posts, it cannot be stated that they had committed the offences.

(24) In the present case, the names of the persons who held the posts have not even been mentioned in the complaint. The complaint has to necessarily fail on that particular ground and also on the ground that a competent Court, namely, the Debts Recovery Tribunal-III, Chennai, had entered into the merits of the allegations and had given a finding adverse to the respondent herein.

(25) In view of the above, the Criminal Original Petition stands allowed and the proceedings in C.C.No.2721/2015 on the file of the learned Chief Metropolitan Magistrate, Chennai, is hereby quashed as against the petitioners/A1 to A5. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Metropolitan Magistrate,
Chennai.

2. The Debts Recovery Tribunal – III,
Chennai.

3. The Chairman,
State Bank of India,
Corporate Centre,
Madame Cama Road,
Nariman Point,
Mumbai – 400 021.

4. The Managing Director,
   State Bank of India,
   State Bank Bhavan,
   Madame Cama Road,
   Mumbai - 400 004.

5. The Chief General Manager (LHO),
   State Bank of India,
   Circle Top House,
   No.16, College Lane,
   Chennai - 600 006.

6. The Authorized Officer,
   State Bank of India, SAMB,
   32, Montieth Road, Egmore,
   Chennai - 60 008.

7. The Chief Manager,
   State Bank of India,
   Commercial Branch,
   Cantonment, Trichy - 1.

8. The Public Prosecutor
   High Court, Chennai.

+1cc to Mr.S.Kingston Jerold, Advocate, S.R.No.54163
+3ccs to M/s.Ramalingam & Associates, Advocate, S.R.No.53752

CRL.OP.NO.25152 OF 2015

CA(CO)
PBS/11/11/2021