IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

CORaAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.No.5704 of 2021
and
Crl.M.P.No.3671 of 2021

1.M/s.PGC Corporation Limited
Rep. by its Managing Director
D.Prem
Registered Office
No.5, Prem Garden
Rajaji Nagar, P.N.Road, Tirupur-641 602

2.D.Prem
Managing Director

3.Aadith D.Vikram
Director

4.K.Kaleeswaran
Director ... Petitioners/Accused 1 to 4

Vs.

1.The State rep by its
Inspector of Police
Central Bureau of Investigation
Economic Offences Branch
Rajaji Bhavan, Chennai-90
(FIR No.RC0692020E0008
dt.29.12.2020) ...1st Respondent/Complainant

2.Mrs.Saraswathi
Chief Regional Manager
Indian Overseas Bank
Regional Office
No.11/952, Cross Cut Road,
Gandhipuram
Coimbatore - 641 012
...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to;

1. Grant stay all further investigation pursuant to 1st respondent's FIR No.RC0692020E0008, dated 29.12.2020, as against the petitioners/accused 1 to 4 pending disposal of the above Crl.O.P.

2. Call for the records culminated in the 1st respondent's FIR No.RC0692020E0008, dated 29.12.2020 and quash the same as illegal as against the petitioners/accused 1 to 4 and pass such other suitable orders.

For Petitioners : Mr.R.Prabhakaran

For Respondents : Mr.K.Srinivasan
Special Public Prosecutor for CBI Cases

O R D E R

(This case has been heard through video conference)

This Criminal Original Petition has been filed by the petitioners to quash the First Information Report No.RC0692020E0008, dated 29.12.2020 on the file of the Inspector of Police, Central Bureau of Investigation, Economic Offences Branch, Rajaji Bhavan, Chennai-90.

2. The brief facts of the case is that the 1st petitioner is a company, the 2nd petitioner is the Managing Director and the 3rd and 4th petitioners are Directors of the 1st petitioner company. The company was incorporated on 20.07.2006 and registered with ROC, Coimbatore and they were engaged in the business of exporting knitted garments. The further allegations is that the 1st petitioner company availed credit facilities of term loan, packing credit and Foreign Documentary Demand Bill Purchase (FDDBP)/ Foreign Documentary Under Bill Discount (FDUBD) under LC / Non-LC and letter of Guarantee (LG) from IOB main branch, Tiruppur, from the year 2001 (Initially in the name of proprietorship firm). Thereafter, as requested by the company, the bank has sanctioned enhanced credit facilities vide order dated 01.02.2001, 26.02.2004, 23.03.2007, 28.04.2010, 12.05.2011 and the last sanctioning renewal was made on 29.12.2012 in the name of the company vide sanctioning letter No.CO/LCD/198/2012-13 for credit facilities like cash credit, packing credit, FCTL, term loans etc. The further allegation is that the books of accounts submitted by the company did not match with the audited financial statements, the major portion of purchases were from their sister concerns and the sales invoices were fake/forged one and were not authentic and that the sales turnovers were

inflated and there was misappropriation and diversion of funds to the tune of Rs.392.38 Crores as per Forensic Audit Report and the account was classified as NPA on 31.03.2013 with an outstanding Rs.116.79 Crores. Thereby, the account was declared as fraud and the fraud was reported to the Reserve Bank Of India on 05.03.2020 by the Bank vide FMR No.IOBK-2001-0041. The further allegation is that the company and the Directors conspired with each other and also with other unknown public servants and unknown others with the criminal intention to cheat the Indian Overseas Bank and further to the conspiracy hatched at Coimbatore and other places during the period 2012 to 2020 and in furtherance of the conspiracy, the accused / borrowers fraudulently and dishonestly availed various credit facilities / enhanced limits to the tune of Rs.358.54 crores in the name of the company by submitting fudged accounts and fabricated documents, thereby cheated the bank constituting offence punishable under Sections 120B read with 420, 464, 468, 471 and 477-A IPC and Section 13(2) read with 13(1)(d) of PC Act, 1988. Based on the complaint, the case was registered in FIR No.RC0692020E0008 by the respondent.

3. The learned Counsel appearing for the petitioners would submit that a case of non repayment of loan simpliciter has been converted as a case of cheating and causing wrongful loss to the Bank. It is an admitted case of the complainant Bank that the petitioners had borrowed loans for their business from the year 2001 and that when the account was declared as NPA on 31.03.2013, the outstanding liability was Rs.117 Crores, whereas the petitioners' company has repaid an amount of Rs.136 Crores. In addition to that, the property of the petitioners' company has been attached and further, an amount of Rs.12 Crores has also been recovered from the petitioners. He would submit that as per the updated circular dated 03.07.2017 (Fraud Classification and reporting by commercial banks and select FIs), a case can be registered only after obtaining concurrence from the Reserve Bank of India and in this case, no such concurrence had been obtained and the respondent had in order to protect certain officials and to recover the outstanding liability had registered the case in order to arm twist the petitioners and recover the loan by coercive methods and thereby, the entire registration of FIR and further proceedings against the petitioners is nothing but an abuse of process law. Hence, he would seek for quashing the proceedings.

4. Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases would submit that it is not a case of non repayment of loan simpliciter. It is a case where the accused have submitted fudged Book of Accounts and fabricated documents and availed loan and cheated the bank and caused wrongful loss. On verification, the Book of Accounts submitted by the

petitioners' company did not match with the Audited and financial statement and the major portion of the purchases were found to be from their sister concern namely M/s.Premdurai Spinning Mills Pvt Ltd., and the sales invoices were found to be forged ones and not authentic. Further, the sales turnovers were inflated and there was misappropriation and diversion of funds to the tune of Rs.392.380 Crores as per Forensic Audit Report. Thereby, the accounts of the petitioners' company was classified as NPA on 31.03.2013 with an outstanding Rs.116.79 Crores. Thereafter, the account was declared as fraud and the fraud was reported to the Reserve Bank Of India on 05.03.2020 by the Bank vide FMR No.IOBK-20010041. He would submit that the case is at the initial stage of investigation and that there are prima facie materials to show that the petitioners' company along with unknown Officials of the Bank and others, had cheated the bank and caused wrongful loss by fabrication of documents and by producing fake and forged bills and that the Forensic Audit Report also shows that there has been several manipulations by the petitioners' company and it is not a simple case of cheating. It is a case where the petitioners entered into conspiracy with the officers of the Bank and by producing forged documents and by falsification of accounts have obtained loans to the tune of Rs.392.380 Crores and at this stage, this Court cannot interfere and quash the proceedings since, prima facie materials are made out against the petitioners. He would further submit that it is not a case registered Suo motu and the case has been registered based on the complaint given by the Chief Regional Manager of Indian Overseas Bank and he would seek for dismissal of the petition.

5. At this juncture, the learned Counsel for the petitioners would submit that the 1st petitioner and the company are engaged in genuine business, doing business for more than 15 years and they are dealing with the bank from the year 2001 and they are one of the leading exporters of textiles in Thiruppur and that there is no necessity for the petitioners to furnish any fudged accounts or fabricated documents and that the loan of the bank has been secured and no loss has been caused to the Bank by the petitioners. He would submit that the petitioners are prepared to appear before the respondent and co-operate with the investigation by producing documents to prove their bonafides.

6. Perusal of the F.I.R. Discloses that prima facie offence is made out against the petitioners. The correctness of the averments and the explanation of the petitioners can be decided only after investigation. Law is settled that when the complaint discloses prima facie allegations, the correctness or otherwise can be decided after investigation and not otherwise and it would be unsafe to exercise the discretion under Section

482 Cr.P.C. to interdict the investigation and quash the same at the initial stage.

7.In view the above submissions made by the learned Special Public Prosecutor that the case is at the initial stage and a huge amount is involved in this case, this Court is not inclined to quash the proceedings at this stage.

8. However, if the petitioners produce any documents to show their bonafides, the same shall be considered by the respondent during investigation subject to the genuinity of the documents.

9. This Criminal Original Petition stands dismissed accordingly. Consecutively, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police
Central Bureau of Investigation
Economic Offences Branch
Rajaji Bhavan, Chennai-90

2. The Public Prosecutor,
High Court of Madras,
Chennai.

3. Mrs.Saraswathi,
Chief Regional Manager,
Indian Overseas Bank,
Regional Office,
No.11/952, Cross Cut Road,
Gandhipuram,
Coimbatore - 641 012 .

+1cc to Mr.R.Prabhakaran, Advocate Sr.19801 [17/04/2021]

CRL.O.P.No.5704 of 2021 and
Crl.M.P.No.3671 of 2021

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srg 26/03/2021