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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2021

PRONOUNCED ON : 24.09.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.16189 of 2021
and Crl.M.P.No.8802 of 2021

Ms.Poonam Anand .. Petitioner / 4th Accused
Vs.

State represented by
The Superintendent of Police
CBI, Anti-Corruption Branch
'A' Wing, 3rd Floor, Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006. .. 1st Respondent/Complainant

Bank of India
Rep.by its Zonal Manager-Chennai Zone
Mr.Subrata Kumar Roy
"Star House", II Floor, 30 (Old No.17)
Errabalu Street, Chennai - 600 001.
.. 2nd respondent / De-facto complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No.RC0322021A007 of 2021 dated 04.05.2021 on the file of the 1st respondent and quash the same in so far as the petitioner is concerned.

For Petitioner .. Mr.R.Palaniyandavan
For Mr.R.Revanth Kumar

For Respondent .. Mr.K.Srinivasan
Spl. Public Prosecutor for CBI Cases

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., to quash the First Information Report in Crime No.RC0322021A0007 dated 04.05.2021 registered by the Superintendent of Police, CBI, Anti-Corruption Branch, Chennai under Sections 120B, 420 IPC and under Sections 13(2) read with 13(1)(d) of PC Act, 1988 by the named 4th accused.



2.The FIR was registered on the basis of a complaint dated 04.01.2021 given by the Zonal Manager of Bank of India, Usman Road Branch, T.Nagar, Chennai. In the complaint it had been alleged that A1, Hallmark Infrastructure Pvt. Ltd., had availed loan against property of Rs.2.00 Crores and Project Term Loan of Rs.10.00 Crores for development of 56 premium residential apartments at Mahendra World City, Chengalpattu Taluk, Kanchipuram District and also further loan against property of Rs.2.94 Crores.

3.It had been further stated in the complaint that A1 and its directors who had named as A2 to A5 had diverted and misappropriated the funds received on the sale of the flats. It was very specifically stated that an internal investigation conducted by the bank revealed that 46 flats out of 56 flats had already been sold and out of that, 34 flats were sold without obtaining No Objection Certificate from the bank. It was also stated that the disbursed amount and the sale proceeds were not utilized for the purpose for which loans were sanctioned and that the funds were diverted for various purpose.

4.It was also alleged that A1 / Company had not routed the sale proceeds of sale of the flats into the Escrow Account maintained by the bank as per the terms of sanction and had also operated the Escrow Account through Internet Banking which was against the extant guidelines. It was also stated that the accused and other public servants had hatched criminal conspiracy to cheat the Bank of India, Usman Road Branch, T.Nagar, Chennai by availing loan and diverting the disbursed amount and the sale proceeds for other purposes than for which they were sanctioned. It was stated that the Book Outstanding was Rs.12.52 Crores which was claimed to be wrongful loss to the bank and corresponding wrongful gain for the accused.

5.On the basis of the said complaint, a FIR was registered by the respondent / the Superintendent of Police, CBI, Anti-Corruption Branch, Chennai under Sections 120B, 420 IPC and under Sections 13(2) read with 13(1)(d) of PC Act, 1988.

6.The same is now sought to be quashed by the 4th accused.

7.It is the contention of the petitioner / A4 was that she was appointed as Professional Director of A1 on 23.06.2015, whereas, the loans were sanctioned in the year 2013. It was also pointed out that the FIR does not attribute any specific role / over tact against her. There was also no averment that she was in-charge of day to day activities of A1. She claimed that she was not in-charge of the affairs / decisions of A1. She further stated that merely because a person is appointed as director it would not automatically make such person as an accused in the



absence of specific allegations of a specific role in the alleged offence. She also stated that the bank had approached the Debt Recovery Tribunal at Chennai and also NCLT Chennai by filing petitions. She also stated that the bank and A1 are also engaged in settlement discussions. In view of the above reasons, she urged that the FIR should be quashed against her.

8. Heard argument advanced by Mr.R.Palaniyandavan, learned counsel appearing on behalf of Mr.R.Revanth Kumar, learned counsel for the petitioner and Mr.K.Srinivasan, learned Special Public Prosecutor for CBI.

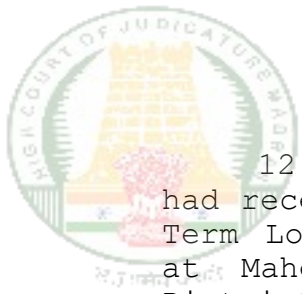
9. Mr.R.Palaniyandavan, learned counsel after taking the Court through the averments which had been reduced above stated that the petitioner would squarely come under the 1st and 2nd clauses as mentioned in the judgment reported in 1992 SCC Cr1 426, State of Haryana & others Vs. Bhajanlal & others . In that case, the Hon'ble Supreme Court had identified the following cases in which FIR / complaint can be quashed. Since the learned counsel stated that the petitioner would fall under the 1st and 2nd clauses, they are reduced below:-

"102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2). Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code."

10. The learned counsel stated that if the allegations in the FIR are taken at their face value and also accepted they do not constitute any offence or make out a case against the present petitioner. The learned counsel also stated that the FIR does not disclose a cognizable offence justifying an investigation by the respondent.

11. In the background of the above arguments put forth by the learned counsel for the petitioner, the FIR will now have to be re-examined.



12. In the FIR, it had been very specifically stated that A1 had received sanction for loan against property and also Project Term Loan for development of 56 premium residential apartments at Mahendra World City, Chengalpet Taluk in Kanchipuram District on 26.12.2013. Subsequently, 46 flats had been sold and out of them, 34 flats had been sold without obtaining NOC from the bank. It was also alleged that the disbursed loan amounts and also the sale proceeds were not utilized for the purpose of which they were sanctioned and the funds were diverted for various purposes.

13. I hold these are allegations which will have to be further probed and investigated. It will have to be examined whether the flats which were said to have been sold without obtaining NOC were sold after the petitioner herein became a Professional Director and during the period when she continued to be a Professional Director of the company. It has also to be examined whether the sale proceeds from the sale of the flats flowed in any manner, even in a trickle, to the advantage of the petitioner herein. It has to be investigated whether the loans which had been sanctioned were diverted for other purposes. To conduct an investigation on the above aspects and also on any other incidental aspects, the role of each one of the directors who had been mentioned, namely, A2 to A5 will have to be necessarily investigated by the Investigating Agency.

14. The allegations in the FIR certainly give rise to commission of cognizable offences. Diversion of loan amount obtained from a Public Bank would in effect mean diversion of public money. Utilization of sanctioned amount for purposes other than for what it was sanctioned, would indicate utilization of public money to the detriment of the bank directly and the public cause indirectly. Selling of flats without obtaining NOC from the bank would also indicate an intention to divert the sale proceeds or to screen the sale proceeds from scrutiny by the bank.

15. No doubt the petitioner had become a director only in the year 2015. It has to be examined whether any of the above transactions took place after the petitioner became a Professional Director of A1. Those details can be gathered only during the course of investigation.

16. It had been repeatedly held that FIR is not an encyclopaedia. It can only contain necessary ingredients to establish the commission of a cognizable offence. In the present FIR there are more than sufficient allegations that public money had been sanctioned as loan to A1 and that public money had been diverted for other purposes and returns from the investment of such public money by way of building flats and



17. The learned counsel for the petitioner was put a specific question during the course of arguments as to whether the petitioner herein had executed any of the sale deeds mentioned, but there was no direct answer offered. These informations will surface only during the course of investigation.

19. The role of the petitioner will come to light only when further probe is done and documents are collected and statements are recorded from the witnesses. The sale consideration from and out of each one of the sale deeds and the transactions through which it flowed will have to be determined. The accounts to which the sale proceeds were credited will have to be determined. The reasons why the sale deeds were executed without obtaining NOC from the bank will again have to be investigated. The reasons why the Escrow Account was operated online will have to be investigated. The nature of transactions conducted will have to be investigated. The reasons why the sale proceeds were not routed into the Escrow Account maintained by the bank will have to be investigated. The flow of sanctioned loan amount from the date when they were sanctioned till the date of their utilization will have to be found out. The flow of the sale proceeds out of the sale of flats till the date they were actually parked in various accounts and not in the Escrow Account are facts which have to be investigated. The role of the petitioner if any in any of the above will have to be screened and scrutinized. I hold that the Investigating Officer must be given a free hand to examine all these aspects.

"28. It is thus settled that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before



embarking to scrutinise the complaint/FIR/charge-sheet in deciding whether the case is the rarest of rare case, to scuttle the prosecution at its inception."

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21. In (2021) 5 SCC 795 [Skoda Auto Volkswagen (India) Vs. State of Uttar Pradesh and Others], the Hon'ble Supreme Court had held as follows:-

"40. It is needless to point out that ever since the decision of the Privy Council in King Emperor v. Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : AIR 1945 PC 18] , the law is well settled that the courts would not thwart any investigation. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the court will not permit an investigation to go on.

41. As cautioned by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint.

42. In S.M. Datta v. State of Gujarat [S.M. Datta v. State of Gujarat, (2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201], this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In S.M. Datta [S.M. Datta v. State of Gujarat, (2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201] , this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate



in two specific spheres of activities and one ought not to tread over the other sphere. "

22. In Neeharika Infrastructure Pvt. Ltd., V. State of Maharashtra and others reported in 2021 SCC OnLine 305, the Hon'ble Supreme Court had given guidelines to the High Courts regarding the circumstances in entertaining quash petitions in exercise of power under Section 482 Cr.P.C., they are as follows:-

"23.i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process



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should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur Vs. State of Punjab (AIR 1960 SC 866) and State of Haryana Vs. Bhajan Lal, (1992 Supp. (1) SCC 335), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit



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the investigating agency/police to investigate the allegations in the FIR;

xvi)

xvii)

xviii)

[Emphasis Supplied]

23.It is seen that the Hon'ble Supreme Court had held that Courts should not thwart any investigation into a cognizable offence and power of quashing should be exercised sparingly and with circumspection. It had also been held that the court cannot embark upon an enquiry as to the reliability of the allegations and that criminal proceedings should not be scuttled at the initial stage. It had also been held that the quashing of a complaint / FIR should be an exception rather than an ordinary rule. It had also been stated that extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims and caprice. It had been further held that the FIR is not an encyclopaedia which must disclose all facts and details relating to the offence reported. It had also been stated that the Court should not go into the merits of the allegations in the FIR. It had been very specifically stated that the police must be permitted to complete the investigation.

24.I therefore, hold that that the petitioner herein has not made out any ground to interfere at this stage with the investigation in FIR in Crime No.RC0322021A0007 dated 04.05.2021 registered by the 1st respondent.

25.With the above observations, the present Criminal Original Petitions is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

Smv



To

1.The Superintendent of Police
CBI, Anti-Corruption Branch
'A' Wing, 3rd Floor, Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006.

2.The Zonal Manager-Chennai Zone,
The Bank of India
Mr.Subrata Kumar Roy
"Star House", II Floor, 30 (Old No.17)
Errabalu Street, Chennai - 600 001.

+1cc to Mr.G.Rajakumar, Advocate, S.R.No. 49687

Crl.O.P.No.16189 of 2021

VSN II (CO)
GN(13/10/2021)