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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRL.O.P.NO.21771 OF 2021
AND
CRL.M.P.NO.13897 OF 2021

1.S.K.Mohammed Farook
2.M.Shakila Banu
3.M.Sheik Mohammed ... Petitioners

Vs.

State through,
The Inspector of Police,
CCB, Coimbatore.
Cr.No.44 of 2021.
... Respondent

Prayer:

Criminal Original Petition has been filed under Section 439 (1)(b) of the Code of Criminal Procedure, to modify the order dated 08.11.2021 in Crl.MP.No.4399 of 2021 on the file of Principal District and Sessions Judge, Coimbatore by the condition requiring the deposit of Rs.3 crores in favour of the complainant bank.

For Petitioner : Mr.B.Kumar Senior Counsel for Mr.J.Senthilkumar

For Respondent : Mr.A.Gokulakrishnan Additional Public Prosecutor

For Intervenor : Mr.John Sathyan

O R D E R

This Criminal Original Petition has been filed to modify the condition imposed by the learned Principal District and Sessions Judge, Coimbatore, in Crl.M.P.No.4399 of 2021 dated 08.11.2021.

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2. The learned counsel for the petitioner submitted that A3 namely M/s.K.S.K.Cold storage is a firm having the facilities of cold storage and traders used to store their stocks in the cold storage of the firm viz.M/s.K.S.K.Cold storage and the petitioners 1 and 2 approached the Tamil Nadu Mercantile Bank, Dr.Nanjappa Road Branch, Coimbatore and the bank has granted loan facility to A1, namely M/s.SKF Traders for Rs.6 Crores and to A2 namely M/s.Udhayam Potatoes for Rs.3 Crores by way of cash credit against valuable security. He further submitted that in the complaint, it is alleged that the 1st and 2nd accused had borrowed Rs.9 Crores in total during March 2019. The 1st and 2nd accused firm has a Cold storage facility and it has a huge air-conditioned godown which should be below 15 decree celsius. It is said that the goods were also hypothecated. The complainant further submitted that the goods have been removed without the knowledge of the bank, and Hypothecation does not involve this concept. It is in the nature of floating shares only. Be that as it may. The petitioners had furnished 2.51 acres of land which is situated in Annur Main Road, Coimbatore District, as security. The Cold storage building had been constructed in an extent of 15,350.89 Sqft. It has a huge air conditioned units. According to the correct current market value of the property, it will be valued around Rs.10 Crores as per the estimation of the certified valuers. The Tamil Nadu Mercantile Bank has given a complaint alleging offences Under Sections 120B, 409, 420, 465, 468 and 471 IPC. The Sessions Court, while granting Anticipatory Bail, has noted that the petitioners had given valuable security. Nevertheless, it has directed the accused to furnish further security of Rs.3 Crores. The petitioners submitted that the direction to furnish further security in sum of Rs.3 Crores, is too onerous and the petitioners have no wherewithal to make such a huge security. He further submitted that there cannot be any intention to cheat, because valuable security has been given for the due re-payment of the loan. The Bank has also filed OA.871 of 2021 before the Debts Recovery Tribunal, Coimbatore, wherein they have prayed for a certificate in the form of decree. They have also attached the properties. The petitioners are not an accused and the lower Court, while granting anticipatory bail to the petitioners, imposed condition (iv) that the petitioners shall furnish security for a sum of Rs.3.0 crores jointly before the learned Judicial Magistrate No.XII, Coimbatore.

3. The learned Additional Public Prosecutor appearing for the respondent submitted that the accused persons availed loan by way of hypothecation of goods/stocks. But, after availing the loan, the accused persons, without the knowledge and permission of the de-facto complainant Bank, had sold the goods which were

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stocked. Further, the accused persons did not repay any amount towards the borrowed amount. They purposely failed to submit the books of accounts with an intention to cheat the de-facto complainant. They obtained loan by way of submitting false Auditor's report. In this case, investigation is not yet completed. Total amount payable by the accused persons with interest, is Rs.10,92,43,783/-.

4. The de-facto complainant Bank, raised objection stating that they have already gave the particulars as to the under valuation of the property. Apart from that, they executed the settlement deed on 18.12.2020 in favour of M.Shakila Banu, who was one of the accused persons. Even after that, they are creating many more documents without paying due to the Bank.

5 .Considering the above facts, the lower Court while granting anticipatory bail, by imposed the 4th condition in the order to furnish security for a sum of Rs.3.0 crores jointly before the learned Judicial Magistrate No.XII, Coimbatore.

6. Furthermore, the Bank has sanctioned loan as if valuable assert worth more than Rs.20 crores. But now, the investigation reveals that, with an intention to defeat and defraud the complainant, the petitioners submitted the properties suppressing the real value of the same. Based upon that, A1 availed loan of Rs.6.0 Crores, and A2 availed loan of Rs.2.0 Crores and further enhanced loan of Rs.9 Crores. Now, the amount payable with accrued interest is more than Rs.10 Crores. The 3rd petitioner is their son and he is a proprietor of A8 M/s.K.S.K.Cold storage and the petitioners submitted that most of the stocks were destroyed as per contention of Bank.

7. In fact, the accused persons also have not submitted stock statement, book debts, Annual Auditor's report, and more particularly the loan amount was also not utilized for their business purpose. Instead of that, they transferred the said amount to the other accused persons.

8. Considering all the above facts, the trial Court rightly directed to furnish security for a sum of Rs.3.0 crores, 4th condition in the order. Hence, the facts of the case needs certain lawfull security to save the interest of the Bank which is also run by the public money. In order to safeguard the public interest, the order passed by the learned trial Judge is

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justifiable one. Hence this Court finds no irregularity in the impugned order or merit in this petition.

9. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

drl/rri

To

1. The Principal District and Sessions Judge, Coimbatore

2. The Inspector of Police, CCB, Coimbatore.

3. The Public Prosecutor, Madras High Court.

4. The Judicial Magistrate No.XII, Coimbatore.

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