BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.02.2021

Pronounced on : 05 .03.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.O.P(MD).No. 2466 of 2021 and
Crl.M.P(MD).No. 1291 of 2021

1. M/s. S.A.S. And Company,
rep. by its Partners,
S. Mustafa Nazar @ S.M. Nazar
No.60-61, Swamy Sannathi Street,
Thenkasi – 627 811.

2. Shahul Hameed Rowther an Sons
rep. by its Partners
S. Sheikh Mansur
No.60-61, Swamy Sannathi Street,
Thenkasi – 627 811.

3.S. Mustafa Nazar @ S.M. Nazar
S/o. Shir Shahul Hamed Rowther,
R/o. No.23, Sikander Mehtar Street,
Tenkasi.

4.M.Jasmine
5.S.Sheikh Mansur
6.S.A.S. Masoodammal
7.S.Abdul Kadar @ S.A. Kadar : Petitioners / Accused No 1 to 7/Petitioners

Vs.

1.Central Bureau of Investigation,
Economic Offence Wing,
Chennai.
(Crime No. 3 of 2011)

2.The Branch Manager,
State Bank of India,
Tenkasi Branch,
Tirunelveli District. : Respondents/Respondents

PRAYER:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to Crl.M.P.No. 733 of 2020 in C.C.No.8 of 2011 and to set aside the order passed by the learned II Additional District Judge for CBI Cases, Madurai, dated 11.11.2020 and to pass an order to send for the records relating to loan account statements of M/s. SAS and Co., vide loan account number 725439035 and M/s. Shahul Hameed Rowther and Sons Co., vide loan Account No. 725441409 of Tenkasi Branch, Tenkasi District.

For petitioner : Mr. C. M. Arumugam
For R1 : Mrs.L. Victoria Gowri
Additional Solicitor General of India

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., challenging the order passed in Crl.M.P.No.733 of 2020 in C.C.No.8 of 2011, dated 11.11.2020 passed by the learned II Additional District Judge for CBI Cases, Madurai dismissing the application filed under Section 91 Cr.P.C.,

2. The petitioners, who are the accused Nos.1 to 7 and the accused Nos. 8 to 12 are facing trial in C.C.No.8 of 2011 for the offences under Sections 120(B) r/w. 471 r/w. 468, 420 IPC and Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 on the file of the II Additional District Court for CBI Cases, Madurai.

3. The case of the petitioners is that the properties belonged to the accused Nos. 5 and 8 were offered as security for the financial assistance availed by the accused Nos. 1 and 2 firms, that the accused Nos. 5 and 8 had lodged complaints before the Central Crime Branch, Chennai against the accused Nos. 9 and 10 for the alleged fabrication of records and for other offences, that the Bank after coming to know about the alleged commission of offences they have initiated the criminal prosecution and SARFAESI proceedings against the accused A1 to A12, that before the initiation of criminal proceedings the properties belonging to the accused Nos. 5 and 8 were auctioned and the amounts were adjusted towards the loans availed by the accused Nos. 1 and 2 firms, that the accused Nos. 5 and 8 have already remitted the entire amount as full and final settlement, that though the prosecution witness PW.1 has admitted in his evidence about the repayment of the loan, the Bank authorities have failed to furnish any proof or certificate for the realization of the total dues, that the petitioners are advised to prove the particular fact categorically about the payment of total dues and that therefore, they were constrained to file the above application under Section 91 Cr.P.C., to send for the records from the second respondent / Third Party / State Bank of India, Thenkasi Branch pertaining to the loan accounts availed by the accused Nos. 1 and 2 firms and to let in evidence based on the Account Statements of both the loan accounts.

4. It is evident from the impugned order that the first respondent Central Bureau of Investigation has filed a counter statement referring some case laws and stating that the case is not one for simple loan transaction, that it is a case involving criminal conspiracy, forgery and fabrication of the document for the purpose of cheating the Bank. The learned trial Judge, upon

perusing the materials and on hearing both sides, has passed the impugned order on 11.11.2020 dismissing the petition. The petitioners / accused Nos. 1 to 7, aggrieved by the said order, have laid the above Criminal Original Petition, invoking the jurisdiction of this Court under Section 482 Cr.P.C.,

5. Before entering into further discussion, it is pertinent to note that the learned trial Judge had taken the final report filed in the year 2011 as C.C.No. 8 of 2011, that the trial of the case has already been completed, that the prosecution side arguments have already been advanced and that the case is pending for the arguments of the defence side. The petitioners in their main petition itself have admitted that the case is posted for arguments after the conclusion of the witness examination on both sides. It is pertinent to mention that when the above case is pending for the defence side arguments, the above petition under Section 91 Cr.P.C., came to be filed to send for some documents from the Third party / Bank.

6. As already pointed out, the only point or aspect that is attempted to canvass through the documents sought to be sent for is that the repayment of loan by the accused Nos. 5 and 8 which were due by the accused Nos. A1 and A2 firms. The petitioners have admitted that during the trial, prosecution witness PW.1 had specifically admitted the repayment of the loan amounts due to the Bank. The trial Court, in its order, reproduced the portion of the evidence of PW.1 and the same is extracted hereunder for better appreciation;

During the cross examination, PW.1 would say that :

> "இந்த வழக்கு நிலுவையில் இருக்கும் போதே, இரண்டு வங்கிக் கணக்குக் கடன் தொகைகளும் முழுவதும் செலுத்தப்பட்டு, வங்கிக் கடன் நேர் செய்யப்பட்டுள்ளது என்றால் சரிதான்."

7. According to the petitioners, the 5th accused while giving evidence as DW.1 has specifically ascertained the factum of payment of total loan dues payable to the Bank. It is pertinent to note that DW.1 was not cross examined by the prosecution with the stand that the loan amounts were not settled and the same are still due to the Bank. It is settled law that an admission made in the Court of law is valid and relevant piece of evidence and since the same originates either orally or in written form from the person against whom it is sought to be produced is the best possible form of evidence. Moreover, an admission if clearly and unequivocally made, is the best evidence against the party making it and it is a substantial piece of evidence and can be relied upon by proving the veracity of the facts incorporated therein.

8. In the case on hand, the complainant Bank official as PW.1 has categorically admitted the repayment of loan amount. As

rightly contended by the learned Assistant Solicitor General of India, when the prosecution side witness as PW.1 had categorically admitted the factum of repayment of loans and when the evidence of DW.1 regarding the repayment of entire loan due to the Bank was not at all challenged or disputed by the prosecution during the cross examination of the DW.1, this Court is also at loss to understand as to why the petitioners are still insisting to prove the said factum. As very rightly observed by the trial Court, the relief sought for by the petitioner is a luxurious one.

9. It is pertinent to mention that the action initiated against the petitioners / accused is not a simple case for recovery of money. But, on the other hand, serious charges of criminal conspiracy, forgery and fabrication of records are levelled. As rightly contended by the learned Assistant Solicitor General of India, the factum of proving the repayment of loan due to the Bank, by itself does not advance the case of the defence any further. As rightly contended by the respondent side, in case of conviction, repayment of entire loan amount can be canvassed during the enquiry under Section 248(2) Cr.P.C., for the punishment to be imposed. But, I am of the considered view that the repayment of entire loan amount, in the case of forgery and fabrication of records, cannot be considered as a mitigating circumstance. Whatever it is, the trial Court is to decide at the relevant point of time. It is pertinent to mention that PW.1 was examined before the trial Court on 21.08.2018 and now the case has reached the stage of arguments. But, the petitioners have not offered any reason or explanation as to why the above application was not filed earlier and for the delay in filing the same.

10. On considering the entire and circumstances, this Court is of the view that the petitioners have filed the above application as a last attempt to delay and protract the proceedings further. Hence, this Court decides that the impugned order of the trial Court in dismissing the application cannot be found fault with and this Court is entire agreement with the decision. Consequently, this Court decides that the petition is devoid of merits and is liable to be dismissed.

11. In the result, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. II Additional District Judge for CBI Cases, Madurai.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.Central Bureau of Investigation,
Economic Offence Wing,
Chennai.

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