IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2022
DELIVERED ON : 28.04.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

CRL.R.C.No.102 of 2022

G.Billy Graham ... Petitioner / Complainant

Versus

Inspector of Police,
Central Crime Branch,
Vepery, Chennai. ... Respondent

PRAYER : Criminal Revision Petition filed under Section 397 r/w.401 of the Code of Criminal Procedure, 1973 praying to allow the Criminal Revision Case by setting aside the impugned order of Crl.M.P.No.9473 of 2021 in CNR No.TNCH0F-012674-2021 dated 16.09.2021 and direct the learned CCB and CBCID Metropolitan Magistrate, Egmore to pass orders directing the respondent-Police to register an FIR on the basis of the complaint dated 23.10.2020 lodged by the petitioner.

For Petitioner : Mr.P.Wilson, Senior Counsel
for M/s.P.Wilson Associates

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

O R D E R

The present Criminal Revision Case has been filed seeking to set aside the impugned order made in Crl.M.P.No.9473/2021 in CNR No.TNCH0F-012674-2021 dated 16.09.2021 and to direct the respondent/ Police to register an FIR on the basis of the complaint dated 23.10.2020 lodged by the petitioner.

2. The brief facts of the case is that the petitioner is a business man. He owned a Plot measuring an extent of 5300 sq.ft. bearing Plot No.3236 at 'A' block, Anna Nagar East and he constructed a house in the said Plot to the value of Rs.12 crores. During the month of August, 2006, one Thirumoorthy (A1), who is his boyhood friend was introduced one Sankarama Subramanian (A2), who was an officer in the Union Bank of India

saying that the said Sankarama Subramanian was doing a business as 'VeeU Associates Private Limited'. Further, A1-Thirumoorthy represented to the petitioner that the company run by A2-Sankarama Subramanian had entered into a contract with the State Government for printing the Voters ID Cards and the said contract will be over by March or April, 2007 and for completion of the said work, he requested Rs.1 crore as hand loan and assured to repay the said amount by September, 2007. On 06.08.2006, A1 came to the petitioner’s house along with A2 and A3, who is one of the Directors of VeeU Associates Private Limited and represented that they have already deposited the title deeds of properties belonging to A2 and A3 and 9 others of the company. For raising additional loan of Rs.1 crore, they requested the petitioner’s title deed and further represented that the Indian Bank, Mylapore had come forward to take over the entire loan of Rs.2.3 crores along with 11 collateral properties for which, the Indian Bank, Mylapore Branch insisted additional security by creating mortgage by deposit of title deeds for grant of additional loan of Rs.1 crore.

2.1. Believing the said assurance, the petitioner had handed over his title deed pertaining to the house property at Plot No.3236. The Bank printed forms were handed over to the petitioner and the petitioner also signed in the printed form. His wife also signed in the said papers, believing that the said document was given only as a security for Rs.1 crore. After six months as agreed the accused did not release this petitioner’s document and cheated the petitioner. Thereafter, it was came to know that accused Nos.1 to 3 in collusion with the Branch Manager of the Indian Bank, Mylapore Branch cheated the petitioner by releasing the 9 item of the properties, which belonged to A1 to A3, after withholding the petitioner’s document. The other two properties, which were also originally secured assets, one property was sold while the petitioner protested through letter dated 04.08.2010 and the said amount was adjusted to the loan amount. Actually, at that time, the petitioner was not having any knowledge about the same. While at that time another property was also brought for sale. The guarantor made a legal fight, which went up to the Hon’ble Supreme Court, wherein the Hon’ble Supreme Court had directed him to pay a sum of Rs.1 crore and therefore the accused have disposed the goods of worth about Rs.1.3 crores, which had been hypothecated to the Indian Bank Manager in utter violation of the rules and regulation of the Indian Bank, Mylapore Branch.

2.2. The property of one of the guarantors, namely, B.Ravishankar was not at all originally released from the Union Bank of India to the Indian Bank. In such circumstances, the claim of the Indian Bank, Mylapore Branch that the original title deeds of the property belonging to the guarantor

B.Ravishankar is lying with them as a collateral security, is false. They have cheated this petitioner. In this regard, he lodged a complaint on 23.10.2020 before the Commissioner of Police, Greater Chennai Police, Vepery, Chennai. But the respondent/ Police did not take any action and hence, the petitioner filed a petition in Crl.M.P.No.9473 of 2021 before the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai. After assigning with the case number, by order dated 16.09.2021, the complaint lodged by the petitioner under Section 156(3) of Cr.P.C. was dismissed. Challenging the same, the petitioner is before this Court.

3. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner would submit that during the relevant point of time, the petitioner without getting any benefit for the sake of boyhood friendship has deposited his title deed (as of now, the value of the deed is Rs.12 crores) for the additional loan of Rs.1 crore, whereas, the accused cheated him by keeping the said property as collateral security for the earlier loan of Rs.2.25 crores as well, apart from the additional loan amount of Rs.1 crore. In this regard, he filed a complaint before the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai, wherein, the learned Metropolitan Magistrate without considering the nature of the documents relied on by the petitioner, filed in support of the complaint and also not considering the fact that the petitioner was neither a partner nor an associate in the business run by the accused, concluded the issue that there is no prima facie case made out for registering the F.I.R., which is erroneous and also the same is perverse. With the above said submission, the learned counsel also prayed to remit this matter back to the trial Court for filing an affidavit of the petitioner, which now necessary as per the recent decision of our Hon'ble Supreme Court.

4. Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Criminal Side) has filed a counter affidavit stating that the petitioner and the Accused A1 to A3 had entered into a Memorandum of Understanding. Later, the petitioner has mortgaged his title deed with the Indian Bank, Mylapore Branch as collateral security for raising loan by the accused. Therefore, the issue involved in this case is purely civil in nature. Apart from that, the petitioner herein has not produced any supporting documents to show that the accused persons had mortgaged the petitioner's documents only and availed credit facility for their company. Further, the petitioner has not shown a relevant document to show that the accused after retaining the document given by the petitioner, received their documents from the Bank as alleged. Further, the petitioner has filed a complaint with huge delay and therefore, the same is affected due to laches.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. Now, on considering the submissions made on either side with relevant records, the petitoner had produced the copy of the Memorandum of Understanding dated 14.12.2006 made between the petitioner and the accused in support of his case, stating that the said document is a prima facie evidence that the petitioner had handed over the title deed only for the collateral security. Now on going through the said document, it is true that the petitioner gave his residential property as a security by way of mortgage by depositing the title deed and also gave personal guarantee to Indian Bank, Mylapore Branch for the additional credit facility of Rs.1 crore. In this regard, there was a condition in the said document, which reads as follows:

> "The Party of the Second Part will take sufficient care in protecting the property of the Party of the First Part and shall release the same after the liquidation of the Bank dues on or before 30.09.2007."

7. Accordingly, all the accused herein gave an undertaking for protecting the property owned by the petitioner. Thereafter, in the letter of undertaking dated 16.04.2009, the second accused/Sankarama Subramanian gave undertaking that they assure that they shall liquidate their loan in Indian Bank, Mylapore Branch and release the residential property documents of Mr.G.Billy Graham (revision petitioner/complainant) and Mrs.Annie Beulah, on or before 1st April, 2010 without fail. Therefore, the endorsement made in the above referred due document is a clinching evidence to show that the petitioner had entrusted his valuable security to the accused for the purpose of getting loan from the Indian Bank. Now the issue is, due to the reason that the accused had not made arrangement for returning the documents relates to the petitioner, the petitioner had initiated action against the said property. Therefore, the said act committed by the petitioner is within the ingredients under Section 406 I.P.C. However, being the reason that the present complaint has been preferred by the petitioner after a long gap, whether it is maintainable or not is a matter to be decided either during the time of investigation or trial. However, the learned counsel appearing for the petitioner sought the relief of remitting back this matter to the trial Court after setting aside the impugned order is only for the purpose of filing an affidavit by the petitioner. Of course, now the Law has been changed that along with the application filed under Section 156(3) Cr.P.C. the complainant must enclose the copy of the affidavit sworn by him. Therefore, the submission made by the learned counsel appearing

for the petitioner is having merit and therefore, the impugned order passed by the learned Metropolitan Magistrate, CCB and CBCID Court, Egmore dated 16.09.2021 is set aside and the matter is remitted back to the learned Metropolitan Magistrate, CCB and CBCID Court, Egmore, Chennai for fresh disposal, after receipt of the additional typed set of papers filed by the petitioner and also after the receipt of affidavit filed by the petitioner.

8. The learned Metropolitan Magistrate, CCB and CBCID Court, Egmore is directed to pass an order without being influenced by the observations made above.

9. With the above observations and direction, this Criminal Revision Case is disposed of.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Metropolitan Magistrate,
   CCB and CBCID Court,
   Egmore, Chennai.

2. The Inspector of Police,
   Central Crime Branch,
   Vepery, Chennai.

3. The Public Prosecutor
   High Court, Madras - 104.

+1cc to Mr.P.Wilson, Advocate, S.R.No.30813

Crl.R.C.No.102 of 2022

PA[co]
NSK 09/05/2022