IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.248 of 2022

N.Juliet Fancy
Rep. by her Power of Attorney
Nelson .. Petitioner

Versus

1. The Assistant Commissioner of Police,
   Central Crime Branch, EDF-II
   Greater Chennai Police, Vepary, Chennai.

2. The Inspector of Police,
   Central Crime Branch,
   Team – IV, EDF – II, Vepary, Chennai. .. Respondents

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to call for records and set aside the order dated 07.01.2022 passed in Crl.M.P.No.23943 of 2021 passed by the learned Metropolitan Magistrate for exclusive trial of CCB Cases (relating to cheating cases in Chennai), and CBCID Metro Cases, Chennai.

For Petitioner : Mr.A.Ashwinkumar

For Respondents : Mr.S.Vinoth Kumar
Government Advocate
(Criminal Side)

ORDER

The revision is filed aggrieved by the order of the learned CCB CBCID Metropolitan Magistrate, Egmore, Chennai, dated 07.01.2022 in Crl.M.P.No.23943 of 2021, whereby, the petition filed by the petitioner to refer her complaint dated 25.03.2021 for investigation by the second respondent under Section 156(3) of Cr.P.C, is dismissed.

2 The learned counsel appearing for the petitioner would submit that initially on the said complaint, the second respondent refused to register a FIR and closed the complaint. After following procedures under Section 154 Cr.P.C., the petition to refer the complaint has been filed. The learned Magistrate after considering the averments in detail, had concluded that just because the Bank has initiated SARFAESI proceedings, the complaint cannot be filed and also held that no offence is made out in the said complaint.

3 Assailing the said order, the learned counsel for the petitioner/complainant would submit that the specific case is that with an intention to cheat the petitioner, when she was to sell her properties for her balance outstanding of Rs.57.00 lakhs, the proposed accused namely Bharanidharan, in the guise of helping them, paid the said money of Rs.57.00 lakhs, but, however, made them to stand as guarantor for a huge loan of Rs.8.00 Crores by promising to make her as a part of his business by converting his business into Corporate entity and thereafter did not do it and cheated them. Apart from that, even the money obtained was a loan by way of cash credit only for a particular business purpose, but, the money was siphoned to Bharanitharan's other companies and entities and thereby defrauded the petitioner as the petitioner's property worth about Rs.8.00 Crores was mortgaged for the said loan. According to the learned counsel, these allegations would definitely make out an offence under Section 417, 420 of IPC besides 406 of IPC. Since the said Bharanitharan had violated the solemn undertaking before the Bank to utilise the money for the particular purpose and therefore prayed that this Court to allow her prayer.

4 Per contra, the learned Government Advocate (Crl.Side) would submit that the petitioner had with eyes wide open voluntarily agreed to be a guarantor for the loan. Therefore, in the absence of even any written agreement, when the petitioner has voluntarily stood as guarantor for the loan, the Bank is entitled to initiate SARFAESI proceedings and hence now belatedly, the petitioner cannot complain. As far as her complaint regarding siphoning of the money is concerned, she is not even part of the business and neither the Bank has given any complaint for non utilisation of the money for the purpose thereof. Therefore, he would submit that the trial Court rightly rejected the prayer of the petitioner observing that there is no *prima facie* case.

6 I have considered the rival submissions made by both the counsel and perused the materials on record.

7 A careful reading of the complaint would reveal that the petitioner had made averments in the complaint that when they were about to sell the properties to settle their dues, with an intention to cheat the petitioner, the proposed accused namely Bharanitharan approached her and paid the money and lead them into being a Guarantor for the loan. If such an allegation is made against Bharanitharan and when he had intention to cheat the petitioner, then *prima facie* the offence of cheating is made out. This apart the petitioner has brought to the notice that the amounts have been siphoned to Bharanitharan's other companies and entities from time to time and hence the petitioner entitled to bring such a complaint before the investigating authority by setting the law into motion. Therefore, I am of the view that *prima facie* that the complaint discloses cognizable offences and hence the criminal revision is allowed on the following terms:

1. The order dated 07.01.2022 passed in Crl.M.P.No.23943 of 2021 passed by the learned Metropolitan Magistrate for exclusive trial of CCB Cases (relating to cheating cases in Chennai), and CBCID Metro Cases, Chennai, is set aside.
2. The complaint of the petitioner dated 23.03.2021 is directed to be forwarded to the second respondent to register a case and investigate into the matter and the second respondent shall file a final report in accordance with law.

16.06.2022

Index : yes/no
Speaking/Non-speaking order
cgi

D.BHARATHA CHAKRAVARTHY, J.,

cgi

To

1. The Metropolitan Magistrate for exclusive trial of CCB Cases (relating to cheating cases in Chennai) , and CBCID Metro Cases, Chennai.

2. The Public Prosecutor, High Court of Madras.

3. The Assistant Commissioner of Police, Central Crime Branch, EDF-II Greater Chennai Police, Vepary, Chennai.

4. The Inspector of Police, Central Crime Branch, **Team – IV, EDF – II, Vepary, Chennai.**

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