IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.527 of 2022
and Crl.M.P.No.5354 of 2022

R.Selvaraj ... Petitioner /Petitioner/ Defacto Complainant

versus

State rep. by:-
The Inspector of Police,
Bank Fraud Investigation Wing,
Central Crime Branch - Team XXXI,
Vepery, Chennai - 600 007. … Respondent/Respondent/ Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records and to set aside the order dated 11.03.2022 passed in Crl.M.P.No.11808 of 2020 in C.C.No.9168 of 2019 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.Sunder Mohan
for Mr.J.Antony Jesus

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

O R D E R

By consent, this matter is taken up for final disposal at the stage of admission itself.

2. The present Criminal Revision Case has been filed, praying to set aside the order dated 11.03.2022 passed in Crl.M.P.No.11808 of 2020 in C.C.No.9168 of 2019 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai and

to allow the petition by impleading the two more accused in the main case.

3.The case of the petitioner is that, he had obtained a loan for Rs.1.50 Crores from Kotak Mahindra Bank Limited on 29.07.2006 under Loan Account No.SA-118003 for purchasing a property. In March 2007, he decided to settle the loan account and the bank gave a letter on 22.03.2007 stating that a sum of Rs.1.70 Crores was payable towards the full and final settlement of the account. Accordingly, the petitioner paid a sum of Rs.1.70 Crores directly to the bank, without verifying the correctness of the account.

4.Subsequently, the petitioner asked the bank to furnish the statement of accounts. In this regard, on 01.08.2011, the petitioner sent a letter requesting for the statement of accounts for the above said loan. On 18.08.2011, the bank furnished an incomplete statement of accounts, which did not reflect the payment of Rs.1.70 Crores made by the petitioner. After seeing the same, the petitioner sent another letter on 12.01.2012, followed by two letters dated 31.01.2012 and 21.02.2012 asking for the statement of accounts. Since the bank refused to furnish the statement of accounts, the petitioner approached the Banking Ombudsman on 29.03.2012, praying for compensation, the correct statement of accounts and refund of excess amount collected. The said application filed by the petitioner was dismissed on 02.04.2012 on the ground that the complaint was time barred.

5.Thereafter, the petitioner approached this Court by way of filing a Writ Petition in W.P.No.21836 of 2012, challenging the said order of Banking Ombudsman. The bank took a strange stand that out of Rs.1.70 Crores, a sum of Rs.1,61,59,627/- alone was adjusted towards the outstanding EMI, principal balance, interest including penal charges. Later, on 27.12.2012, the bank deposited Rs.14,30,509/- in the petitioner's account. However, there was no information to the petitioner about the said deposit. The act of the bank and its officials amounted to misappropriation, cheating and falsification of accounts.

6.Hence, in view of the same, the petitioner lodged a complaint before the Inspector of Police on 11.02.2013. Since the police officials did not registered a case, the petitioner approached this Court in Crl.O.P.No.6547 of 2013. In view of the order passed by this Court, F.I.R. has been registered in Crime No.560 of 2015 on 25.06.2015.

7.Later, all the accused filed a quash petition in Crl.O.P.No.23639 of 2015 and the same was dismissed by this Court on 07.04.2016. However, after completing the investigation, the respondent police filed a final report stating that the issue is civil in nature.

8.Challenging the same, the petitioner has filed a protest petition in Crl.M.P.No.173 of 2017 before the Court concerned and Criminal Original Petition in Crl.O.P.No.1776 of 2017 has been filed before this Court for conducting the further investigation. Both the petitions are ordered in favour of the petitioner and only thereafter, the respondent police filed a final report as against some of the accused, i.e. Sainath and Uday Kotak. In this time also, the petitioner filed a protest petition in Crl.M.P.No.11808 of 2020, praying to include all the accused in the charge sheet and the same has been dismissed by the learned Chief Metropolitan Magistrate, Egmore, by order dated 11.03.2022. Challenging the same, the petitioner is before this Court with the present Criminal Revision Case.

9.The first and foremost contention raised by the learned counsel for the petitioner is that, the conversation between the main accused and the petitioner are all recorded in the Compact Disc and the petitioner is willing to produce the same before the respondent police for investigation along with other vital evidence. But the respondent police, instead of investigating the content of the Compact Disc, filed the final report, after deleting those two accused. Therefore, it would necessary to direct the police officials to conduct further investigation by verifying the Compact Disc and other documents, which are all having by the petitioner.

10. In this regard, on going through a copy of the counter affidavit filed before the trial Court, in para no.9, the respondent police categorically held that, if the petitioner provides a Compact Disc, if the Court ordered, further investigation would be conducted. Therefore, the said averments would show that the respondent police is ready to conduct the investigation after receiving the Compact Disc.

11. Today, when the matter is taken up for admission, the learned Government Advocate (Crl. Side) appearing for the respondent police also conceded that, if the petitioner is ready to produce the Compact Disc, the respondent police is ready to conduct the investigation.

12. Accordingly, the said submissions made by the learned counsel appearing on either side would reveal the fact that, if a positive order is passed in this petition, the respondent police is ready to conduct investigation, based upon the evidence produced by the petitioner. Furthermore, it is a clear case that the officials of the bank deposited a sum of Rs.14,30,509/- after receipt of the letter by the petitioner, it would necessary to find out the truth and also necessary to find out the real culprit, who are all involved in the alleged offence.

13. Resultantly, this Criminal Revision Case is allowed and the order dated 11.03.2022 passed in Crl.M.P.No.11808 of 2020 in C.C.No.9168 of 2019 by the learned Chief Metropolitan Magistrate, Egmore, Chennai, is set aside. Further, the said investigation shall be monitored by a superior officer not less than in the rank of an Assistant Commissioner of Police, attached to the Central Crime Branch, Chennai. Consequently, connected Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

sri
To
1.The Chief Metropolitan Magistrate,
Egmore, Chennai.

2.The Assistant Commissioner of Police,
Central Crime Branch, Chennai.

3.The Inspector of Police,
Bank Fraud Investigation Wing,
Central Crime Branch - Team XXXI,
Vepery, Chennai - 600 007.

4.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.Antony Jesus, Advocate Sr.27875

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srg 11/05/2022