IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.13373 OF 2020
AND
CRL.M.P.NO.5192 OF 2020

1.G.R.Suresh
2.Manish Sarath Huddar
3.Amaresh
4.Murugan
5.Santhosh Kuttan
6.Selvakumar Joseph ...Petitioners/ Accused

-Vs-

1. State of Tamil Nadu
The Sub Inspector of Police,
Central Crime Branch,
Bank Fraud Team,
Egmore, Chennai – 600 008.

2. Sathis Kohlapure
The General Manager,
Standard Chartered bank,
19, Rajaji Salai,
Chennai-600 001. ... Respondents

Prayer:

Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in CC.No.2507 of 2017 on the file of the Chief Metropolitan Magistrate, Egmore, in so far it concerns the petitioners and quash the same.

For Petitioners: Mr.K.P.Anantha Krishna for
Mr.M.S.Seshadri, Aishwarya S.Nathan

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 : No appearance

ORDER

This Criminal Original Petition has been filed, to quash the proceedings in CC.No.2507 of 2017, pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai.

2. Heard both sides and perused the materials available on record.

3.1. The case of the respondent is that the de-facto complainant lodged a complaint before the Commissioner of Police, Chennai, and the same was forwarded to the 1st respondent police stating that the complainant is Standard Chartered Bank (SCB), a Company incorporated in England by Royal Charter and having its principle office at London and also having branches at Chennai and Mumbai in India, represented by the authorized representative of the de-facto complainant. The de-facto complainant engaged in the business of providing financial facilities and supply chain finance (SCF) facilities to its prospective customers. The Directors of the Productive Manufacturing Solution Pvt. Ltd., (PMS) namely Ananth Varadarajan/A1 and A.K.Kumar/A2 opened a supply chain finance account in SCB A/c.No.22205312000 in the year 2005 in the capacity of PMS beings dealer of Sandvit Asia Pvt. Ltd., (Anchor Company) which is a manufacturer and supplier of cutting tools. The said account was opened under SCF facility recommended by the Anchor Company. Based on the invoices produced by the dealer, the bank will remit the amount in favour of the dealer and further the said SCF Account has no cheque book facility. The PMS did not maintain the said account as per rules and norms of the Bank and the SCF facility had to be withdrawn and closed in September 2007.

3.2. In the meantime, the Directors (A1 and A2) of PMS opened a Current Account No.42705193019 with SCB at Chennai Branch, without overdraft facility. The PMS can operate the said account with zero balance and if the PMS deposited any amount it can remit the amount from the current account, otherwise the PMS cannot remit any amount beyond its balance or deposited amount. While that being so, the PMS issued number of cheques in favour of it's client VSA Associates, drawn on SCB at Chennai Branch without sufficient balance in the account.

4. The details of cheques issued by PMS in favour VSA Associates and which were subsequently deposited by VSA Associates for clearing at Chennai is as follows;-

Sl.Nos.	Date	Cheque Nos.	Favouring	Amount
1.	05.10.2007	950751	VSA Associates	500,00
2.	05.11.2007	950755	VSA Associates	500,00
3.	15.11.2007	950756	VSA Associates	300,00
4.	20.11.2007	950757	VSA Associates	500,00
5.	20.11.2007	950759	VSA Associates	500,00
6.	22.11.2007	950760	VSA Associates	200,00
7.	22.11.2007	950761	VSA Associates	500,00
8.	28.11.2007	950762	VSA Associates	1,000,000
9.	28.11.2007	950763	VSA Associates	55,000
10.	29.11.2007	950765	VSA Associates	8,34,699
11.	30.11.2007	950764	VSA Associates	1,000,000
12.	30.11.2007	950766	VSA Associates	9,42,000
13.	04.12.2007	950767	VSA Associates	1,500,00
14.	05.12.2007	950768	VSA Associates	1,000,00
15.	05.12.2007	950769	VSA Associates	1,500,000
16.	10.12.2007	950770	VSA Associates	1,400,000
17.	10.12.2007	950771	VSA Associates	1,000,000
18.	10.12.2007	950772	VSA Associates	1,400,000
19.	15.12.2007	950773	VSA Associates	1,500,000
20.	15.12.2007	950774	VSA Associates	1,500,000
21.	20.12.2007	950775	VSA Associates	3,000,000
22.	20.12.2007	950776	VSA Associates	3,200,000

5. Further, the VSA Associates maintained its account with Canara Bank at Pallavaram Branch and deposited for clearing all the above mentioned cheques issued by the PMS at Chennai branch. However, the following cheques namely Cheque Nos.950768, 950769, 950775 and 950776 were realised from Current Ac.No.42705193019 with SCB, Chennai Branch without sufficient balance in the said account. The PMS with fraudulent intention kept on depositing and encashing the aforesaid cheques without maintaining sufficient balance in the said account and unlawfully enriched to the extent of Rs.1,51,31,699/- (Rupees One Crore Fifty One Lakhs Thirty One Thousand Six Hundred and Ninety Nine only) at the wrongful loss caused to SCB. Even though the PMS was aware that its act of withdrawing the money on its aforesaid current account after the SCF was withdrawn without maintaining sufficient balance and it kept on withdrawing on numerous

occasions. Further, with the malafide intention the said PMS cheated and defrauded the SCB to the tune of Rs.1,51,31,699/- (Rupees One Crore Fifty One Lakhs Thirty One Thousand Six Hundred and Ninety Nine only).

6. Further, the case of the respondent is that the first accused with the fraudulent intention kept on depositing and encashing the aforesaid cheques without maintaining sufficient balance in the said Current Account and unlawfully enriched to the extent of Rs.1,51,31,699/- (Rupees One Crore Fifty One Lakhs Thirty One Thousand Six Hundred and Ninety Nine only) at the wrongful loss caused to SCB/2nd respondent.

7. The learned counsel for the petitioner submitted that the 2nd respondent Bank followed standard Inward Clearing Process while dealing with the current account tagged to the Corporate Banking Code when the occurrence happened.

The following occurrences are extracted hereunder;-

i) When the Clearing Unit receives the cheques, they are required to perform technical verification such as signature verification, date of cheque, amount mentioned in figures and words etc.,
ii) in case of any technical errors that appears on the face of the cheques, the Clearing Unit of the defacto complainant/2nd respondent Bank is required to notify the Relationship Manager (handling the account on which such cheque is drawn) of such technical errors;
iii) Upon receipt of such notification as aforesaid, the Relationship Manager is required to revert to the Clearing Unit with his objection/comments, if any, as per the defined clearing cut off time i.e. 1300 Hours.
iv) Apart from reverting to the Clearing Unit with its objection/comments to the technical errors flagged by them, it is the duty of the Relationship Manager to check the Excess Reports auto-generated by the defacto complainant/2nd respondent Bank system for entries, if any, showing insufficiency of funds in the account on which the cheque is drawn. This Excess Report which is auto generated is prepared by the Portfolio Control Team of the defacto complainant/2nd respondent Bank and it is their responsibility to intimate the Relationship Manager handling the account on which the cheque is drawn about insufficiency of funds via fax/emails.
v) Upon finding entries showing insufficiency of funds in the account on which the cheque is drawn, the

Relationship Manager has to notify the Clearing Unit of its negative response as regards the clearance of the cheque within stipulated cut off time, i.e. 13.00 Hours i.e. by completing the 'inward clearing cheque return' schedule.

vi) In the event the Relationship Manager reverts with technical errors within stipulated cut off time, i.e. 13.00 Hours, as aforesaid, or notifies its negative response to the clearing unit within stipulated cut off time, i.e.13.00 Hours, the Clearing Unit of the defacto complainant/2nd respondent Bank is obliged to return/dishonour the cheque.

vii) However, in the event no such objection is received from the Relationship Manager within stipulated cut off time, i.e. 13.00 Hours, or in the even the cheque received for clearance is free of technical objections, or in the event the Relationship Manager does not notify its negative response to the Clearing Unit within stipulated cut off time, i.e. 13.00 Hours, the Clearing Unit of the defacto complainant/2nd respondent Bank is obliged to clear/honour the cheque. The Clearing Unit is an Operations Unit whose work is to implement the Inward Clearing Process laid down by defactor complainant/2nd respondent Bank and they do not have any authority to return or honor any cheque on its own for fund related issues.

8. The learned counsel for the petitioner further submitted that in accordance with the above procedure laid down for clearance of cheques drawn on an account tagged to the Corporate Banking Code, examined the cheques for technical errors and processed it, as per the procedure. Being unaware of the said Current Account, mistakenly tagged the 2nd petitioner herein. Upon receipt of E-mails, he did revert to the Clearing Unit should check with Portfolio Manager of Supply Chain Unit. Therefore, the 2nd petitioner has no authorization to offer any confirmation or objection as if not allotted to the account. He further submitted that the question raised by the 1st respondent while investigating about the excess. When the 1st respondent raised questions for which the 2nd respondent answered for that question that all the 18 cheques were systematically passed for encashment, how the Bank did came to know the mischief. For which the 2nd respondent answered that the Bank identified its situation of over drawing in December 2007 through excess reports and on 19th December 2007 account HOLD was placed after realizing that this account is not being tracked by anyone and is erroneously tagged to one Manish Huddar. Thereafter, immediately an Account Hold was put to return and stop payment for any further cheques presented. Post this hold on the account

two cheques totalling to INR 62 Lakhs were returned on 20th December 2007. Therefore, the petitioners are only employees and they are only responsible for any incident occurred during clearing the cheques in favour of the other accused persons. This condition cannot be accepted since the petitioners are employees of the 2nd respondent herein who cleared cheques which were presented for collection without sufficient balance in the Current Account and unlawfully enriched to the tune of Rs.1,51,31,699/- (Rupees One Crore Fifty One Lakhs Thirty One Thousand Six Hundred and Ninety Nine only) it causes wrongful loss to the 2nd respondent and it is a public money.

9. In the light of the above, it is clear that all the accused have unlawfully enriched to the tune of Rs.1,51,31,699/- (Rupees One Crore Fifty One Lakhs Thirty One Thousand Six Hundred and Ninety Nine only). That apart, the grounds raised by the petitioner are mixed question of facts and it cannot be considered in the quash petition.

10. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

> " 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.
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> 13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

11. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in Crl.A.No.1572 of 2019 dated

17.10.2019 in the case of Central Bureau of Invstigation Vs. Arvind Khanna, wherein, it has been held as follows:

> "19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.
>
> 20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

12. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in Crl.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

> "9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.
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> ....
>
> 13. A look at the complaint filed by the

> appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage...................."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

13. In view of the above, this Court is not inclined to quash the proceedings in C.C.No.2507 of 2017, pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai. However, The petitioner is at liberty to raise all the grounds before the trial Court.

14. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Inspector of Police,
   Central Crime Branch,
   Bank Fraud Team,
   Egmore, Chennai - 600 008.

2. The Chief Metropolitan Magistrate,
   Egmore, Chennai.

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.M.S.Seshadri, Advocate, S.R.No.38335

Crl.O.P.No.13373 of 2020

GPL(CO)
PM/15/07/2022