IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.09.2022

DELIVERED ON : 12.10.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.17902 of 2022
and
Crl.M.P.No.11570 of 2022

A.James Walter ... Petitioner/A-4

Vs.

1.The Superintendent of Police,
Central Bureau of Investigation,
Economic Offence Wing,
A-Wing, 3rd Floor, Rajaji Bhavan,
Besant Nagar, Chennai – 600 090.

2.The Deputy General Manager,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Buildings, 32, Red Cross Road,
Egmore, Chennai – 600 008. ... Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C, prayed to call for records relating to the impugned FIR No.RC0692022E0003 on the file of the Principal Sessions Judge, Chennai dated 20.01.2022 and quash the same insofar as it relates to the petitioner.

For Petitioner : Mr.Nithyaesh Natraj
for M/s.Sri Law Associates

For Respondent-1 : Mr.K.Srinivasan
Special Public Prosecutor (CBI cases)

ORDER

The petitioner/A4 in Crime No.RC0692022E0003 dated 20.01.2022 has filed this quash petition.

2. The case against the petitioner is that the above case came to be registered on the complaint given by one S.Ravichandran, Deputy General Manager (DGM), State Bank of India, Stressed Assets Management Branch (SAMB), Chennai. The complaint is that A1-company, M/s.Oceanic Tropical Fruits Private Limited and its Directors, namely, A2/A.Joseph Raj, A3/Vimala Joseph and A4/James Walter/petitioner had conspired among themselves with unknown public servants and others and availed many credit facilities totalling to the tune of Rs.274.33 crores from State Bank of India, ICICI Bank and Central Bank of India. With State Bank of India (erstwhile

State Bank of Travancore) to the tune of Rs.178.45 Crore was availed for the purpose of business under consortium arrangements. Due to non payment of the dues to these banks, all the above three banks have declared this account as Non-Performing Asset (NPA) account viz., SBI declared this account as NPA on 26.11.2013 with the outstanding of Rs.162.79 crore. Further, pursuant to the criminal conspiracy, the directors of A1 company diverted the loan funds, falsified/fabricated books of accounts, mis-utilised the borrowed funds, the receivables of A1 company were diverted to their known companies by submitting various fake vouchers and transactions, which were routed through Axis bank, Indian Bank, Lakshmi Vilas Bank, Ratnakar Bank Limited, without the consent of consortium banks and thereby, the above accused persons cheated and caused wrongful loss to the tune of Rs.217.16 crore to the consortium banks. Further, on receipt of the complaint and on perusal of the materials produced, *prima-facie* it was found that the Directors/ A2 to A4 of A-1 Company criminally conspired with unknown public servants and others have committed offence punishable under Sections 120-B r/w 420, 467, 468, 471 and 477-A IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act. Hence, a case came to be registered. Against the same, the present quash petition has been filed.

3. The contention of the petitioner is that as per the complaint it is alleged that M/s.Oceanic Tropical Fruits Private Limited/A1 along with its Directors A2 to A4 had conspired with public servants and committed the offence by availing credit facilities. Thereafter for non payment of the dues and for diverting of the loan funds using falsified/fabricated documents and the funds were diverted by using fake vouchers and transactions, which were routed through some other banks without the consent of the consortium banks. The petitioner has been arrayed as Accused No.4 at the behest of Central Bank of India, since the petitioner had stood as a personal guarantor. The petitioner has not given any guarantee to any of the accused in the above case, which is confirmed by the search report dated 24.01.2022 obtained from the Ministry of Corporate Affairs by S.Harikrishnan, Practising Company

Secretary. The petitioner is not at all connected with the A1 company since its incorporation. During the impugned period, the petitioner was a Director in Object-Frontier Software Private Limited and also played the additional role as Chief Executive Officer. The petitioner was taking care of Software Business solutions only and not involved in any other activities, since the petitioner was expertise in the Information Technology Enabled service. Further, submitted that earlier an F.I.R. in Crime No.RC0692021E0001 dated 20.01.2021 was registered by the first respondent based on a complaint received from Chief Regional Manager, I.O.B., Chennai, wherein, it is alleged that A1 - M/s.Oceanic Edibles International Limited (OEIL) and its Directors (A2 to A4) have availed many credit facilities from I.O.B. and other consortium banks. In this F.I.R. the transactions pertaining to the impugned F.I.R. have already been recorded and investigation is proceeding. In such circumstances, the present F.I.R. is not maintainable. Further submits that the petitioner is neither a Director nor an employee of M/s.Oceanic Tropical Fruits Private Limited/A1 company. The search was conducted for the period from 11.09.2007 to till 24.01.2022. It confirms that the petitioner is not a Director to A1 company. The complaint proceeds on the premise that the petitioner is a Director. Further, in view of the same, continuation of investigation pursuant to the F.I.R. against the petitioner is based on assumption and presumption, which amounts to abuse of process of law. Hence, the impugned F.I.R. is liable to be quashed based on the dictum of the Hon'ble Apex Court in the case of ***State of Haryana and others vs. Bhajanlal and others*** reported in ***1992 SCC Crl 426*** and hence, prayed for quashing of the F.I.R.

4. The first respondent filed counter affidavit. Learned Special Public Prosecutor appearing for the first respondent submitted that on the complaint of Deputy General Manager, State Bank of India, a criminal case in Crime No.RC0692022E0003 was registered on 20.01.2022 against A1-M/s.Oceanic Tropical Fruits Private Limited and its Directors A2/Joseb Raj Arokiasamy, A3-Vimalla Joseb, A4-Arockiasamy James Walter and

unknown public servants and private persons under Sections 120-B r/w 420, 467, 468, 471 and 477-A IPC and Section 13(2) r/w 13(1) (d) of PC Act. In the complaint it is seen that several crores of rupees have been misappropriated, cheated by the accused therein not only of the complainant Bank also in ICICI, Central Bank of India, IOB and other banks in the name of A1 company and its group. The Forensic Audit Report confirms that many accounting entries were not traceable in the bank ledger thereby *prima-facie* disclosing the fact that the company/management had been duping the banks with false stock statement, P & L account intentionally to defraud the bank. Many of the accounting entries in the subsequent financial statements were without supporting documents, agreements, records etc., which clearly indicates that falsification/fabrication of books of accounts have been carried out. Further, it is seen that A1-company also availed loan from Ratnakar Bank Limited without the knowledge of the lenders and diverted funds to repay this loan, which were rooted through Axis Bank, Lakshmi Vilas Bank, Indian Bank without the consent of the consortium banks. Thus establishing diversion and siphoning of funds. Many accounting entries were not traceable in the Bank ledger of A1-company. It is submitted that another related case in Crime No.RC06920210001 was registered by CBI, EOB, Chennai on 20.01.2021 against M/s.Oceanic Edibles International Limited and its Directors. The petitioner herein is one of the Directors of the company. The related transactions of the company have to be investigated. Further, the related company has projected that its statements have been lost due to the flooding in the year 2015, which turn to be false. The complicity of the accused have to be gone in detail. Further submitted that investigation in this case is in progress and a decision regarding filing of final report before the Trial Court will be taken based on the evidence gathered during investigation. The search report referred by the petitioner only mention that the petitioner was not a Director or guarantor. The petitioner is yet to be examined by CBI and it is for the petitioner to produce any document during such examination to substantiate his claim. Further submitted that the Hon'ble Apex Court vide order dated 02.08.2022 in ***Crl.A.No.1044 of 2022*** pertaining to ***Siddharth***

Mukesh Bhandari vs. State of Gujarat and another reiterating the earlier decision of the Apex Court in ***Crl.A.No.330 of 2021*** pertaining to ***M/s.Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others*** and observed that investigation cannot be stifled or throttled except in rarest of rare cases. The present case does not fall under rarest of rare cases for the reasons, viz. (i) the contents of FIR disclosed commission of cognizable offences; (ii) The accused in this case caused wrongful loss to the consortium of banks to the tune of Rs.250.65 crores; (iii) The name of the petitioner is mentioned as a conspirator in the complaint. Accordingly, his name arrayed as A4 in the F.I.R.; (iv) The investigation has not been completed and it may be premature to arrive at a conclusion at this point of time either in favour of the petitioner or otherwise. The mere contention of the petitioner that he is not a Director, by itself, cannot absolve the criminal liability of the petitioner. The evidence gathered during investigation has to be weighed before arriving at a conclusion. Since the investigation is in progress and not concluded, it is premature to arrive at a conclusion at this time. The investigation is on a complaint given by the Deputy General Manager of Public Sector Bank, who has got nothing personal against the petitioner. The petitioner is yet to be examined. The petitioner is given liberty to furnish any materials in support of his claim during such examination and hence, strongly opposes this petition.

5. Considering the submissions and on a perusal of a material it is found that the petitioner's primary contention is that he is not a Director. He is shown as a Director in the above case. Apart from being shown as a Director, he is also projected as a conspirator. It is too early to decide in favour or otherwise against the petitioner. It is for the investigating officer while collecting materials and evidences, to consider the contention of the petitioner. In the case of *M/s.Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others,* the Apex Court had given clear guidance that only in a rarest of rare cases there can be any indulgence. In this case, the complaint has been lodged by a Public servant, namely, Deputy General

Manager of nationalised bank. Prior to it, the bank had also conducted a Forensic Audit by availing the services of M/s.Ernst and Young. The bank had produced several materials and documents, which have to be examined and statement of the relevant witnesses to be recorded. The process of investigation cannot be interfered at this stage. It is for the investigating officer to consider the petitioner's contention. The petitioner is at liberty to produce documents and give his explanation on the allegation made against him, if he so desires.

6. In view of the above, this Court is not inclined to interfere with the process of investigation. Accordingly, this Criminal Original Petition is dismissed.

12.10.2022

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Index: Yes/No
Internet : Yes/No

M.NIRMAL KUMAR, J.

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To

1.The Principal Sessions Judge,
Chennai.

2.The Superintendent of Police,
Central Bureau of Investigation,
Economic Offence Wing,
A-Wing, 3rd Floor, Rajaji Bhavan,
Besant Nagar, Chennai – 600 090.

3. The Public Prosecutor,
High Court, Madras

Pre-delivery order in
Crl.O.P.No.17902 of 2022

12.10.2022