IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **24.11.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CRL.O.P NOS.19635, 20172 AND 25598 OF 2021
AND CRL.MP.NOS.10719, 10986 AND 14178 OF 2021

CRL.OP.NO.19635/2021

K.M.Maari Selvam ... Petitioner/ 2nd accused

Vs.

1. The State represented by its
Inspector of Police,
Bank Fraud Investigation Wing Team 31,
Central Crime Branch,
Vepery, Chennai - 600 007. ... 1st respondent/ complainant

2. State Bank of India
Rep. by AGM Mr.A.Murugan
SBI RACPC Branch,
Sathees Paradise, 1st Floor,
No.388, Velachery Main Road,
Selaiyur, Chennai 600 073. ... 2nd Respondent/ de facto complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the FIR in Crime No.45 of 2021, dated 24.04.2021, on the file of the Inspector of Police, Central Crime Branch II, Chennai.

CRL.OP.NO.20172/2021

K.M.Maari Selvam ... Petitioner/ 1st accused

Vs.

1. The State represented by its
   Inspector of Police,
   Central Crime Branch - II,
   Vepery, Chennai 600 007. ... 1st respondent/complainant

2. State Bank of India
   Rep. by AGM Mr.A.Murugan
   SBI RACPC Branch,
   Sathees Paradise, 1st Floor, No.388,
   Velachery Main Road,
   Selaiyur, Chennai 600 073. ... 2nd Respondent/ de facto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the FIR in Crime No.54 of 2021 dated 05.05.2021, on the file of the Inspector of Police, Central Crime Branch II, Chennai.

CRL.OP.NO.25598/2021

K.M.Maari Selvam ... Petitioner/ 2nd accused

Vs.

1. The State represented by its
   Inspector of Police,
   Central Crime Branch II,
   Vepery, Chennai 600 007. ... 1st respondent/complainant

2. State Bank of India
Rep. by AGM Mr.A.Murugan
SBI RACPC Branch,
Sathees Paradise, 1st Floor, No.388,
Velachery Main Road,
Selaiyur, Chennai 600 073. ... 2nd Respondent/ de facto complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the FIR in Crime No.56 of 2021 dated 12.05.2021, on the file of the Inspector of Police, Central Crime Branch II, Chennai.

In all cases,

For Petitioner	:	Mr.M.Madhuprakash
For Respondent-1	:	Mr. A.Damodaran Additional Public Prosecutor
For Respondent-2	:	Mr.J.Pothiraj

COMMON ORDER

These Criminal original petitions have been preferred to quash the First Information Reports in Crime Nos.45/2021, 54/2021 and 56/2021 respectively, dated 24.04.2021, 05.05.2021 and 12.05.2021 respectively, on the file of the first respondent police.

2. The petitioner has been arrayed as a second accused in Crl.O.P.Nos.19635 of 2021 and 25598 of 2021 and he is the first accused in Crl.O.P.No. 20172 of 2021.

3. The case of the prosecution is that on the complaint given by the second respondent / *defacto* complainant on the allegation that the petitioner along with other accused had conspired together and fabricated the documents for availing house loan from the State Bank of India. The petitioner is the builder of a project called 'Sastha Apartment'. The third accused is said to be the owner of the site, on which the apartment was constructed.

3.1. It is alleged by the *de facto* complainant that the petitioner has played an active role in creating false documents on behalf of the purchasers and managed to get huge loans disbursed to the petitioner directly; and hence, he is the beneficiary in the criminal activity committed by all the three accused. It is further alleged that when the borrowers failed to repay the loan installments to the bank, the bank authorities went in-person to verify the status of the borrowers and came to know that the borrowers did not have the capability to meet out the loan availed for purchase of the flats. It is further submitted that as per the construction agreement, the project was not carried out and the income tax returns and the salary slips of the respective borrowers submitted during the processing of the loan applications were also concocted one.

4. The learned counsel for the petitioner submitted that there is no *prima facie* materials available as against the petitioner to implead him as an accused in this case; so for as this petitioner is concerned, he is only a builder and with whoever come forward to purchase his flats, he used to enter into a construction agreement and the land owner would execute a sale deed in respect of the undivided share (UDS) of the site. It is the bank authorities who have to verify the records produced by the applicant before disbursing the loan amount; there is a reason to implicate this petitioner, who is only a builder and who has no overtact in the allegations made in the complaint.

5. The learned Additional Public Prosecutor for the first respondent and the learned counsel for the second respondent / *defacto* complainant submitted that even though it is the responsibility of the bank officials to scrutinize the records before disbursing the loan amount, the active role played by the petitioner who is a builder in getting the loan disbursed to the borrowers that cannot be denied. Since the investigation is at the initial stage, lot of facts have to be unearthed and hence, the investigation should be allowed to go on.

6.The defacto complainant who is the banker has got the primary duty to scrutinize the records, visit the site and then disburse the loan only thereafter. It is alleged that certain documents like income tax returns, salary slips of the borrowers have been forged or concocted for the purpose of getting loan sanctioned and it is seen that the loan has been disbursed in one go and not at stages corresponding to the stage of the construction. Such sanction order and disbursal of loan could not be possible without the participation of the insiders of the bank. It is also learnt that some of the officers, who is in-charge of the affairs involved in this case has also been arrested and their confession has also been recorded.

7. The learned counsel for the petitioner submitted that the loans will be disbursed in stages only for those Constructions which are in progress; so far as this petitioner is concerned, the apartment is a completed project and hence, the loan has been sanctioned in one go. He further submitted that the petitioner has built so many houses and his purchasers have availed loans from the bank and in those cases, there was no issues.

8. Though it might be true that the petitioner does not have any involvement and there cannot be any materials available on record to implicate him in this case, such clean chit can not be given at the threshold of the case. Whether the builder has got any overtact in preparing false documents for the purpose of getting loan sanctioned in order to sell away his flats, can be found out only after a through investigation. Only the result of the investigation can reveal whether this petitioner is an unlawful beneficiary due to the concocted documents.

9. It is learnt that the first respondent police have spotted some officers of the bank involved in the offence. Whenever a case is registered based on the complaint, the normal course would be to allow the Investigating Agency to investigate the case. Only in cases, where there is no *prima facie* material available, even to make out a case, the powers of this Court can be invoked to quash the proceedings at the threshold stage.

10. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court held in ***STATE OF HARYANA VS. BHANJANLAL [1992 SUPP (1) SCC 335].***

> *"The following categories can be stated by way of illustration wherein the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:*
>
> *(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act

(under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. Hence, it is too early to pre-close the investigation as against the petitioner, the avenues for this petitioner to workout his remedy is not closed, because in the event of filing of charge sheet, there is no material to substantiate the allegation against him and he can seek the very same remedy at that point of time. Despite the complaint was given on 05.05.2021 and the case was also registered on the same day, so far the investigation has not been concluded. As rightly pointed out by the petitioner, if the officers of the bank alone is responsible for the alleged mismanagement, the petitioner should not suffer by keeping this case pending against him for long. Hence I feel it is appropriate to direct the first respondent police to complete the investigation in a specific time frame.

With the above stated reasons, these Criminal Original Petitions stand **dismissed.** The first respondent police is directed to complete the investigation within a period of four weeks from the date of receipt of coy of this order and file a final report. Consequently, connected miscellaneous petitions are closed.

24.11.2022

Internet : Yes / No
Index : Yes / No
Speaking Order : Yes / No
jrs

R.N.MANJULA, J.

jrs

To

1. The Inspector of Police,
   Bank Fraud Investigation Wing Team 31,
   Central Crime Branch,
   Vepery, Chennai 600 007.

2. A.Murugan,AGM
   State Bank of India
   SBI RACPC Branch,
   Sathees Paradise, 1st Floor, No.388,
   Velachery Main Road,
   Selaiyur, Chennai 600 073.

3. The Public Prosecutor,
   Madras High Court.

CRL.O.P NOS.19635, 20172 AND 25598 OF 2021

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