**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-3093-2019
Reserved on: 21.07.2022
Date of Decision: 27.07.2022**

TANUJ SHARMA ....PETITIONER

Versus

STATE OF PUNJAB AND ANOTHER ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Ms. Puja Chopra, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab

Mr. Tajender Joshi, Advocate for the complainant.

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SURESHWAR THAKUR, J. (ORAL)

1. The instant petition has been filed for seeking quashing of FIR No.0047 of 02.03.2017, registered at Police Station Division No.5, District Police Commissionerate Ludhiana, constituting therein offences, under Sections 419, 420, 465, 467, 468, 471, 120-B of IPC (Annexure P-2) along with all the consequent and subsequent proceedings, arising therefrom, qua the petitioner.

2. The present petitioner was serving as Credit Manager with IDBI Bank, Pakhowal Road Branch, Ludhiana from August 2005 to February 2006. He became relieved in the above capacity, on 01.03.2006.

3. However, during the phase of his serving as a Manager, in the bank (supra), he had sanctioned a loan of Rs.14,90,000/- to one, Harjinder Kaur, and, to one, Satpal Singh, in respect of land/plot, measuring 295 sq. yards, located in the area of village Phulewal, Tehsil and District Ludhiana. However, it was subsequently detected that though, the registered deed of

conveyance, as, became executed in respect of the petition mortgaged land, but yet the vendor thereof inasmuch as, one, Harpreet Singh rather became impersonated, and/or, his signatures, as, vendor on the registered deed of conveyance, were forged, and, fabricated.

4. In consequence, the effect thereof was that the equitable mortgage, as made, and/or, the factum of the petition land, as, became mortgaged with the bank (supra), by the borrower (supra), essentially for ensuring the realizations of mortgaged money, to bank (supra), upon occurrence of apposite defaults of payments of loan installment payments, rather through attachments, and, sale of the mortgaged plot/land, rather becomes frustrated, and/or, the above recourse(s) becoming unamenable for adoption by the bank concerned. Therefore, the petition FIR became registered at Police Station Division No.5, District Police Commissionerate Ludhiana, and, thereins became constituted offences under Sections 419, 420, 465, 467, 468, 471, 120-B of IPC.

5. Though the name of the petitioner, does not figure, in the petition FIR, but his inculpation became rested, upon the hereinafter extracted echoings, as occur in the Staff Accountability Committee Report of the bank (supra), and, therefore, his name became added, as, an accused in the report, filed by the police officer, before the learned Court concerned.

""IDBI Bank Limited
Investigation report of Committee against the Fraud Report No.(1213SRA025)

Name of the Borrower	Mr. Satpal Singh s/o Mr. Ganpat Rai & Ms. Harjinder Kaur w/o Mr. Satpal Singh
Date of Incident	November 19, 2005
Date of Detection	September 20, 2012
Date of Reporting to HO	September 27, 2012
Type of Fraud	Cheating and Forgery

Name of the Borrower	Mr. Satpal Singh s/o Mr. Ganpat Rai & Ms. Harjinder Kaur w/o Mr. Satpal Singh
Amount involved	Rs.23,53,241/- as on September 20, 2012

1 to 11	XX	XX XX XXX
12.	Principal Outstanding	Rs.12,94,375/- as on date
13.	Documents furnished/ under custody	Original file available at RAC and the following documents are available. 1. Original Fard Jamabandi for the year 1992-93, 1997-1998 and 2002-03. 2. Original NEC. 3. Original sale deed bearing no.18369 dt. 22/11/2005 in favour of Ms. Harjinder Kaur. 4. Sale agreement Favouring Ms. Harjinder Kaur
14.	Detail of Case	This is case of plot purchase; the customer had applied for loan of Rs.20.0 lakh for plot purchase on October 21, 2005. The applicant was proprietor of M/s Malwa Engineering for last 12 years. The firm was into manufacturing of nuts and bolts, ball bearings etc. He was having banking relationship with Central Bank of India and maintained a current account. The case was sanctioned on November 07, 2005 for an amount of Rs.14.90 lakh. Disbursement memo dt. 17/11/2005 for Rs.14.90 lakh is signed by Ms. Jyoti Sood, Operations Manager EIN – 101309 and Mr. Tanuj Sharma, EIN – 102030. The loan repayment was erratic and the payments were not forthcoming. The loan was declared NPA on October 01, 2008.
15.	Procedural Lapse observed during Sanction, Disbursement or further follow-up	The personal discussion sheet signed by Mr. Tanuj Sharma states that Satpal Singh is the proprietor of M/s Malwa Engineering for last 11 years however the FI report submitted by S Sood & company dated November 5, 2005 states that Mr. Satpal Sngh is proprietor in the above company from last 5 months (Earlier he was proprietor in Malwa Industries for 10 years). Further he states that applicant has also taken PL of Rs.1 lacs from ICICI Bank and has applied for PL in HDFC Bank. No credit opinion/track record was obtained. CIBIL report was not obtained in the file. Balance sheet of Malwa Engineering available for last three years has been signed by Mr. Satpal Singh as Proprietor. RCU report on ITR of Satpal Singh was negative. However Mr. Tanuj Sharma Credit Manager has informed having verified the ITRs from Income tax department "personally" and advised Ms. Jyoti Sood to disburse the file. Query was raised by Mr. Vineet Miglani on the reason of sudden increase in sales of the firm along with other queries. Mr. Tanuj Sharma has justified the sales stating business stability for last 11 years and further explains the additional product lines of auto parts started from the same premises from the same proprietor. However, the perusal of the list of debtor in the balance sheet of the firm for FY 2005 shows all the customers as cycle manufacturers. It seems that either Mr. Tanuj Sharma was being guided by the proprietor for wrongful gains or he was hand in gloves with the proprietor for the loan facility.
16.	Procedural Lapses observed of Third Party Entity like Advocate, Valuer or other outsourced agency/ executive	NA

17.	Details of fresh Legal opinion obtained if any	NA
18.	Title Search Report Pl indicate whether clear report was given or any specific observations were indicated	Clear Title report was given.
19.	FIR lodged with Police/CBI	FIR yet to be lodged by the bank
20.	Recovery Action taken	Demand Notice has been issued on 21.10.2009. DM permission was received on 17/09/2010 Earlier customer was contactable. SARFAESI action was initiated & Demand Notice issued on 21/02/2009. Cases were handed over to enforcement agency RB investigation & enforcement. DM permission received on 17.09.2010 but not further action was taken by agency.
21.	Deficiency in professional services	The Technical report submitted by Shri Harinder S. Boparai (Boparai Architects & Engineers) has given a sketchy report and has not alerted the officials to verify the plot numbers before appraising the case. Legal Report given by Shri Sherry Sandhu, Advocates (S.N. Gupta & Co. (R.E.) does not trace the ownership of the seller in the property; it just states that the property has been owned by the owner for more than 13 years. He has not stated the boundaries of the property. The Document verification report, given by agency CA Sanjay K. Chopra & Co. has given a positive report, on the documents submitted by the borrower, however verification of all the documents viz balance sheet, ITR, Bank statement done in September 2012 by Rajiv Bagga & Co shows 'negative' which clearly indicates that the documents submitted at the time of loan sanction were forged and the agency was directly/indirectly involved in the alleged fraud.
22.	Reasons for delay in reporting, if any	Nil
23.	Action Proposed (recovery/ legal action proposed)	1. FIR to be lodged against the applicant and co-applicant. 2. Civil Suit to be filed.
24.	Staff Accountability comments with reasons and names of officers and Third Party Entity	• The lapses observed during the process of sanction and disbursement as stated at Sl No.15; strongly indicates the staff involvement in perpetuating the fraud. The conviction with which the queries of sanctioning authority were addressed and the increase in the sanction amount without any documentary approval confirms the nexus. In our view the following officer's involved in the disbursement need to be further probed. *The involvement of the above mentioned officer is also seen in similar fraud cases.* Mr. Tanuj Sharma (EIN – 102030) • The role of technical agency M/s Shri Harinder S. Boparai (Boparai Architects & Engineers) is also doubtful and we should de-panel the valuer and write to Institution of Valuers regarding his alleged involvement in the series of fraud committed in similar cases. • The role of document verification agency CA Sanjay K. Chopra & Co is suspicious and their involvement in the fraud cannot be ruled out.

6. The present petitioner would become saved, from inculpation only when he had, no knowledge in respect of the fakeness of the sale deed,

on anvil whereof, the mortgage money became released, as a loan, to the borrower (supra). The present petitioner was the sanctioning authority, and, his knowledge qua the above becomes the *mens-rea,* and, unless he had intentionally, and, willfully departed from the relevant norms, and, guidelines appertaining to sanctioning(s) of loans, and/or if he had evidently despite holding knowledge about the prime incriminatory fact, appertaining to the fakeness of the registered deed of conveyance, rather sanctioned, the loan, thereupon he could become construeable to be along with other accused concerned, sharing a penally inculpable *mens-rea*.

7. In determining the above facet, a reading of the reply furnished to the petition, on behalf of the respondent No.1, makes disclosures qua it being *in tandem,* with the above extracted echoings, as, carried in the Staff Accountability Committee Report. However any dependence, upon, the report of the Staff Accountability Committee Report, for determining the veracity qua drawings of inculpatory action, against the present petitioner, would not be completely appropriate as, rather the echoings therein rather fall outside the contours of the otherwise *bonafide* act, of the petitioner, to sanction loans to the borrowers concerned, as, for reasons hereinafter, he had at the relevant phase, no knowledge about the prime incriminatory fact (supra), nor also he shared any penally inculpable *mens-rea* with the borrowers concerned.

8. The reason for assigning bonafides to the present petitioner, in his sanctioning the loans, to the borrowers concerned, ensues from the factum that, he had relied, upon the report of the evaluators concerned, and, also had relied, upon the registered deed of conveyance, as became

appended with the loan documents concerned, besides had relied, upon the signatured notings, as made on the files by officers/officials subordinate to him. The above reliances, upon the signatured notings, as, made by the officers subordinate to him, on the relevant processed files by them, cannot obviously become construed to be with an active malafide, as, thereupon, the officers/officials subordinate to the present petitioner, would despite, as echoed in the report (supra), making purported willful departures from the rules appertaining to the examinations, and, ascertainments qua the veracity of the document(s) concerned, hence would impermissibly become saved from inculpation.

9. Moreover, the office mechanism appertaining to the sanctioning of loan is required to undergo all the requisite bureaucratic processes, which rather become manned, by officers/officials hence subordinate to the sanctioning authority. Since they are also required to be acting with the most dedicated responsibility, therefore, the sanctioning authority, cannot be presumed to yet disbelieving them, unless their signatured notings on the files concerned, are alleged, and, are also proven to be forged, and, fabricated. Since the above attribution(s) are not made, thereupon the present petitioner, cannot be presumed to sharing any penally inculpable *mens-rea* with the accused concerned.

10. In the above act of belief, and, reliance being meted by the sanctioning authority, to the signatured notings, as made on the loan file concerned, by his officers/officials subordinate to him, obviously the sanctioning authority is to be construed, to be acting bonafidely, and, not malafidely, unless of-course evidence surges forth, in personification qua

despite, at the relevant phase, rather the sanctioning authority holding knowledge, about the fakeness of the sale deed, in respect whereof mortgage loan become accorded, his not bearing in mind the above acquired knowledge qua the prima incriminatory fact.

11. In the above regard, there exist no evidence, but the above extracted echoings, are, yet made against the petitioner by the Staff Accountability Committee Report, however, the above echoings are completely infirm, and, do not constrain this Court, to impute any credence thereto. The reason (supra) becomes comprised in the factum that, the above echoings, do not relate to the apposite fakeness appertaining to the prima incriminatory fact nor relate to knowledge in respect thereof being acquired, at the relevant phase by the petitioner, but when they relate only to the commercial stability of the business of the borrowers' firm. Therefore, the above extracted echoings, are infirm, as the loan was sanctioned not against the stock in trade, of the borrowing firm, but was sanctioned against the property mentioned in the alleged disputed sale deed. Consequently, when realizations of the mortgaged money was to be made from the mortgaged property, of the borrowers, which however has been precluded, through fakeness, of the registered deed of conveyance, thereupon echoings in report (supra), as appertaining to the stability of business, of the borrowing firm rather not being ensured to be verified by the petitioner, hence do not hold any consequence.

12. If so, the above made inculpatory echoings, are not sufficient to coax this Court, to conclude that there was any departure, at the relevant time, vis-a-vis the apposite norms nor it can be said that the present

petitioner held any knowledge, about the fakeness of the sale deed, in respect of property mentioned therein, the mortgage loan was accorded to the borrowers.

13. Moreover, it never became encumbered, upon the sanctioning authority, to verify the correctness of the sale deed, through his visiting the real owner of the estate concerned, and, obviously when hence he had no knowledge about the fakeness of the sale deed concerned, and, nor when it became incumbent upon the petitioner, to visit the Halqa Patwari concerned, for the relevant purpose. In sequel, and, reiteratedly when he had no knowledge, at the relevant phase, about the fakeness of the sale deed concerned, thereupon rather he had bonafidely acted, upon the signatured notings, as made by officers/officials subordinate to him, in his sanctioning the loan, thereupon, he is saved from inculpation.

14. Moreover, even if there is an echoing, in the apposite report qua his personally advising Ms. Jyoti Sood to disburse the loan, yet when there is no statement of the above, to support the above factum, thereupon the above echoing made in the apposite report against the petitioner, cannot be relied upon, for making any incrimination against him. Significantly, when the above did not in quick promptitude to the disbursement of loan, which occurred in the year 2005, made any report in that regard.

15. There is merit in the petition, and, the same is allowed. The petition FIR, along with all the consequent, and, subsequent proceedings arising therefrom qua the petitioner are quashed, and, set aside.

(SURESHWAR THAKUR)
JUDGE

27.07.2022
Ithlesh

Whether speaking/reasoned	:	**Yes/No**
Whether reportable	:	**Yes/No**