IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.4027, 5350 & 6002 of 2021
and Crl.M.P.Nos.2470, 2472, 3433, 3435, 3924, 3925 & 7471 of 2021

S.Sudhir Khanna
Ex-Executive Vice President,
Ex-Divisional Business Head,
M/s.Kotak Mahindra Bank Limited,
Saral Auto Loans,
No.21, Infiniti Park Zone 2,
4th Floor, Opp. Western Express Highway,
Gereral A.K.Vaidya Marg,
Malad (East),
Mumbai – 400 097. ...Petitioner in Crl.O.P. No.4027 of 2021

J.Narayanan
Ex-Manager,
M/s.Kotak Mahindra Bank Limited,
Saral Auto Loans,
Chennai Branch,
No.3, II Line Beach,
Parrys Corner,
Chennai – 600 001. ...Petitioner in Crl.O.P. No.5350 of 2021

P.Ezhilarasan
Ex-Vice President – Southern Recovery Head,
M/s.Kotak Mahindra Bank Limited,
Saral Auto Loans,
No.3, II Line Beach,
Parrys Corner,
Chennai – 600 001. ...Petitioner in Crl.O.P. No.6002 of 2021

Vs.

1. The State represented by
   The Inspector of Police,
   Bank Fraud Prevention Wing,
   Central Crime Branch,
   Vepery, Chennai – 600 007.

2. R.Selvaraj ... Respondents in all Crl.O.Ps.

Common Prayer: Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure, to call for all the records relating to final report dated 10.09.2019 in C.C.No.9168 of 2019 and the additional final report dated 04.07.2023, pending on the file of the Chief Metropolitan Magistrate Court at Egmore, filed by the first respondent/police herein and quash the same so far as the petitioner concern. *(Prayer amended as per order dated 18.10.2023 made in Crl.M.P.Nos.16758 to 16760 of 2023 in Crl.O.P.Nos.4027, 5350 & 6002 of 2021)*

In all Crl.O.Ps.

For Petitioner : Mr.R.John Sathyan, Senior Counsel
For Mr.E.K.Kumaresan

For Respondents
For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)
For R2 : Mr.A.Nagarajan
For Mr.J.Antony Jesus

COMMON ORDER

All these petitions have been filed to quash the entire proceedings, including the additional final report dated 04.07.2023, in

C.C.No.9168 of 2018 on the file of the learned Chief Judicial Magistrate, Egmore, Chennai, thereby taken cognizance for the offences under Sections 409 & 477-A r/w 34 of IPC, as against the petitioners.

2. The petitioner in all the criminal original petitions are arrayed as A2, A4 & A5 in the above said case. Therefore, this Court is inclined to pass common order.

3. The case of the prosecution is that the defacto complainant was running transport business in the name and style of Perinba Vilas Travels in Chennai. He had availed various loans from the Kotak Mahindra Bank Limited, Chennai. On 29.07.2006, he availed a sum of Rs.1.50 crore as loan against property by mortgaging a property situated at No.36, C.I.T.Nagar, 1st Main Road, Chennai. During the month of March, 2007, the defacto complainant preferred to pre-close the said loan and informed the same to the banker. By the letter dated 22.03.2007, the bank informed that a sum of Rs.1.70 crores was due towards full and final settlement of the said loan account. Accordingly, he had paid the entire amount. After receipt of the entire amount, the bank released the documents which were mortgaged by the defacto complainant by the

released deed dated 29.03.2007 and also sent closure report dated 11.04.2007. Thereafter, the auditor of the defacto complainant identified that the bank had collected excess amount. Therefore, the defacto complainant sought for statement of account in respect of his bank loan. However, the bank failed to send any report. After obtaining the statement of account by paying a sum of Rs.400/- as charge and he found that it did not reflect the amount of Rs.1.70 crore paid by the defacto complainant but the end of the statement has shown as "0".

4. Therefore, the defacto complainant approached the bank Ombudsman on 26.03.2012 and lodged complaint. Further, it was rejected stating that the complaint itself not maintainable, and it is barred by limitation under Section 9(3)(f) of the Banking Ombudsman Scheme. Therefore, the defacto complainant filed writ petition before this Court in W.P.No.21836 of 2012, challenging the order of the Bank Ombudsman, Reserve Bank of India, Chennai. While pending the writ petition, the banker convened a meeting and admitted that they collected excess amount and deposited a sum of Rs.14,30,509/- to the defacto complainant.

5. Therefore, the defacto complainant sought for explanation, but no reply from the banker. Therefore, he lodged complaint before B-1 North Beach Police Station. However, the said complaint was not taken on file as such, the defacto complainant was constrained to file direction petition before this Court in Crl.O.P.6547 of 2013. He also filed another miscellaneous petition in W.M.P.No.01 of 2014 in W.P.No.21836 of 2014, for taking appropriate action as against the bankers.

6. In the mean while, in the direction petition filed by the petitioner, this Court by an order dated 18.11.2014, directed to register a case on his complaint. Accordingly, FIR was registered in Crime No.560 of 2015 for the offence under Section 409 of IPC on the file of the B-1 North Beach Police Station, on 25.06.2015. However, after investigation it was closed as civil in nature. Hence the defacto complainant filed protest petition in Crl.M.P.No.173 of 2007 on the file of the VII Metropolitan Magistrate, Gorge Town, Chennai and there was direction to the Assistant Commissioner of Police to register a case, complete the investigation and filed final report.

7. Thereafter, the defacto complainant filed transfer petition before this Court in Crl.O.P.No.1776 of 2017 and this Court transferred the case to the file of the first respondent police. Accordingly, the first respondent re-registered the FIR in Crime No.91 of 2018 on 12.03.2018. Though there was totally seven accused, the first respondent filed final report as against accused 2 to 5 and the same has been taken cognizance in C.C.No.9168 of 2019 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai.

8. Therefore, once again the defacto complainant filed protest petition in Crl.M.P.No.11808 of 2020 as against the final report and the trial Court dismissed the said petition by an order dated 11.03.2022. Aggrieved by the same, the defacto complainant preferred a revision petition before this Court in Crl.R.C.No.527 of 2022 and this Court ordered to conduct further investigation. Accordingly, additional final report has been filed under Section 173(8) of Cr.P.C., as against the petitioners. Hence, the petitioners approached this Court by way of the present petitions to quash the entire proceedings.

9. The learned Senior Counsel appearing for the petitioner in all petitions submitted that the petitioners are no way connected with the allegations as alleged by the defacto complainant. After receipt of the representation from the defacto complainant, the first accused bank verified with the operation department and found that excess amount was paid by the defacto complainant and it was duly repaid to him. However, the second respondent lodged complaint before the Bank Ombudsman. In fact the Ombudsman of the Reserve Bank of India rightly rejected the complaint and only on the directions issued by this Court, this case has been registered.

9.1. He further submitted that in fact, earlier the FIR has been closed as civil in nature. Therefore, no ingredients available to attract the offence under Sections 409 & 477-A r/w 34 of IPC. Therefore, the complaint has been maliciously initiated with ulterior motive that too in the absence of the element of dishonesty to constitute cheating and conspiracy. There is no evidence to show that the petitioners are dishonestly or fradulently misappropriated and there is no entrustment of money on their possession or under their control as public servants.

9.2. Further to attract the offence under Section 406 of IPC, there is absolutely no evidence that the petitioners had misappropriated any amount. The offence under Section 34 of IPC does not make out *prima facie* case against the petitioners that the actual participation of more than one person for commission of criminal act was done in furtherance of common intention at a prior concept. Therefore, there is no evidence to attract the offence under Section 34 of IPC.

10. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

11. Admittedly, as directed by this Court in the direction petition as well as the revision case, the first respondent filed final report and the same has been taken cognizance. Further the accused persons had collected excess amount from the defacto complainant. After auditor's report, it was found that the bankers had collected excess amount. However, the bankers refused to furnish the statement of account. After obtaining the bank statement, it revealed that it shows zero balance. Therefore, the statement of account is not a true one.

12. On perusal of documents and the statement of witnesses revealed that each and every account closure contains the approval letter from the officers concerned depends upon the quantum of the excess amount collected. It also contains excess amount, approval for adjusting the excess amounts will be bound and kept separately in private storage which is controlled by the accused. The bank always has two sets of closure statement viz., customer copy and the accounts copy. In the customer copy, the excess amount will not be reflected and it will be shown as zero. Whereas in the accounts copy, it will reflect as excess amount and the same were siphoned off by the bank with knowledge and approval of the officers concerned and cheated the innocent customers for illegal gain.

13. Further, in order to make wrongful and illegal gain the modus operandi followed by the bank is that excess amount will be collected from the customers and two types of closure statement will be generated i.e., customer copy and accounts copy of the bank. The excess amount illegally collected from the customer will be shown as profit, income, penal charges etc., with the approval of the respective officials for their illegal gain. Such malpractices were approved by the officials at

various high levels. Ultimately, the bank is the beneficiary which deploys its low lever officers to indulge in illegal activities.

14. Insofar the case of the defacto complainant is concerned, the first accused bank has collected excess amount of Rs.14,30,509.56 without giving any information to him. As per the documents, the excess amount which was collected from the defacto complainant, was booked as profit and the same refunded to him on 27.12.2023. Therefore, admittedly, excess amount was collected from the defacto complainant. Hence the charges under Section 409 & 477-A r/w 34 of IPC, are clearly attracted as against the petitioners.

15. 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.,*** wherein it is held 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.

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.

16. 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 Investigation Vs. Arvind Khanna,*** 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."

17. Further the Hon'ble Supreme Court of India also held in the order dated ***02.12.2019*** passed 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.

....

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..................."

18. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No.9168 of 2018 on the file of the learned Chief Judicial Magistrate, Egmore, Chennai. However, considering the facts and circumstances, the personal appearance of the petitioners alone is dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

19. Accordingly, all the Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

17.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

rts

To

1. The Chief Judicial Magistrate,
   Egmore, Chennai,

2. The Inspector of Police,
   Bank Fraud Prevention Wing,
   Central Crime Branch,
   Vepery, Chennai – 600 007.

3. The Public Prosecutor,
   Madras High Court,
   Chennai.

G.K.ILANTHIRAIYAN. J,

rts

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