IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :04.08.2023

Pronounced on :16.08.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.798 and 808 of 2023
&
Crl.M.P.Nos.6217 and 6167 of 2023

Crl.R.C.No.798 of 2023:
R.Murugesan .. Petitioner/18th Accused

/versus/

The State Rep.by
The Inspector of Police,
CBI/ACB/Chennai. .. Respondent/Complainant

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order dated 20.01.2023 passed in Crl.M.P.No.5508 of 2021 in C.C.No.1 of 2021 on the file of the XI Additional Special judge for CBI Cases, Chennai and to set aside the same.

For Petitioner :Mr.N.Chandrasekaran, Senior Counsel for M/s Shabana
For Respondent :Mr.K.Srinivasan Special Public Prosecutor for (CBI)

Crl.R.C.No.808 of 2023:-

M.Raja .. Petitioner/17th accused

/versus/

The State Rep.by
The Inspector of Police,
CBI/ACB/Chennai. .. Respondent/Complainant

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order dated 20.01.2023 passed in Crl.M.P.No.5506 of 2021 in C.C.No.1 of 2021 on the file of the XI Additional Special judge for CBI Cases, Chennai and to set aside the same.

For Petitioner :Mr.N.Chandrasekaran, Senior Counsel for M/s Shabana

For Respondent :Mr.K.Srinivasan
Special Public Prosecutor for (CBI)

COMMON ORDER

These two revision cases directed against the common order passed by the trial Court in the petitions to discharge are before me for consideration.

2. The petitioners are arrayed as A17 and A18 in C.C.No.1 of 2021 in a case investigated by CBI. The Final Report is filed against 18 accused. As per the Final Report, the first accused A.Saravanan in connivance with the bank officials of Indian Bank, Vadapalani Branch, Chennai, obtained loan for Rs.2 crores each in the name of fictitious firms:

(1)M/s Samaya Mineral & Ceramic

(2)M/s Krishna Steel Trading Co.

(3)M/s Balaji Enterprises

(4)M/s Nisaraja PVC & Steel

(5)M/s Yuvanesh Enterprise and

(6)M/s RSP Steel Traders

3. The forged documents produced were accepted by the Chief Manager, without conducting pre sanction inspection. The said loans were not repaid and defaulted.

4. In case of M/s Samaya Minerals & Ceramics, the loan of Rs.200 crores availed. Only a sum of Rs.22 lakhs paid and thereby committed offence under 120B r/w 409 and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

5. Similar *modus operandi* adopted by the first accused Saravanan, who floated a fictitious firm by name M/s Nisaraja PVC and Steels for which, the bank officials in collusion with Saravanan, sanctioned loan of Rs.2 crores. The loan amount was used for the personal need of A1. The property already subject matter of the SARFAESI proceedings was shown as collateral security for the loan.

6. M.Raja (A17), the petitioner in Crl.R.C.No.808 of 2023 was Chief Manager of Indian Bank, Vadapalani Branch between 10.05.2014 and 20.06.2017. During his tenure, the Chief Manager has sanctioned OCC loans for the following firms:

(1)M/s Samaya Minerals & Ceramics(Rs.200 lakhs limit)

(2)M/s Krishna Steel Trading (Rs.120 lakhs limit)

(3)M/s Sri Balaji Traders(Rs.200 lakhs limit)

(4)M/s Nisaraja PVC & Steel(Rs.200 lakhs limit)

7. A18 [R.Murugesan] the petitioner in Crl.R.C.No.798 of 2023 while serving as Chief Manager, Indian bank, Vadapalani Branch, between 27.06.2017 and 13.10.2017, had sanctioned OCC loan to the following two firms namely, M/s RSP Steel Traders (Rs.100 lakhs limit) and M/s Yuvanesh Enterprises (Rs.200 lakhs limit). Contending that as a Chief Manager, he has done his duty and sanctioned the loan only after taking proper security and after verifying the legal opinion of the Panel Advocate and the valuation certificate of the Chartered Valuer and the property taken as collateral security was obtained for the loan

sanctioned and the value of the collateral security is over and above the loan sanctioned. The documents such as Aadhar Card, Pan Card, business documents and other required documents as per the Banking Rules were obtained before verifying the documents and after verifying the documents, sanctioned the loan. As a Manager they have misconducted in the process of sanctioning the loan. They cannot be any criminal prosecution for discharging the duty. All the accused filed the discharge petitions on one ground or another. Particularly emphasising the fact that the loan due and payable to the bank was well secured by immovable property and also the bank has initiated proceedings for recovery of the loan based on the security furnished.

8. While the prosecution case is that by sanctioning the loan on false documents, Raja (A17) has caused pecuniary loss of Rs.989.86 lakhs. Murugan (A18) has caused pecuniary loss of Rs.375.13 lakhs to the bank. Whereas the specific case of the petitioners is that, there is no dishonest intention for disbursement of the loan. The loan sanctioned based on the legal opinion given by the Panel Advocate and the Valuer. The loan is well secured by creating equitable

mortgage. The material collected by the prosecution does not make out the case for dishonestly or corrupt motive or abuse of position by the public servant namely, Bank Manager in the case of advancing the loan.

9. Contrarily, the case of the prosecution is that the loans were sanctioned without receiving the KYC documents and pre-loan sanction not conducted. They sanctioned loan to the firms existing only on paper. Had they discharged their duty properly, they could have not sanctioned the loans to these firms which are defaulted. The statements of the bank officials disclose the dishonest intention of the petitioners by sanctioning the loan to six fictitious companies. Wilful omission to adhere the banking rules and guidelines demonstrates their role in the crime.

10. Heard the learned counsels and perused the records.

11. The learned Senior Counsel appearing for the petitioners vehemently argued that the Bank Managers who have sanctioned the loan had exercised their

duty diligently and there is no material to infer any abuse of position. Relying upon the judgments of the Hon'ble Supreme Court in *M.Narayana Namiar v. State of Kerala reported in [AIR 1963 SC 1116] and S.P.Bhatnagar and another v. The State of Maharashtra reported in [AIR 1979 SCC 826]*, the learned Senior Counsel submitted that conjecture or suspension cannot take the place of legal proof.

12. However, on perusing the records, this Court finds that M.Raja (A17), Chief Manager of Indian Bank, who sanctioned loan for four defaulters had over looked several important facts required for sanctioning the loan. In the case of sanctioning loan to M/s Samaya Minerals & Ceramics, the loan application without date and photos of the applicant cannot be accepted. The credit worthiness of the partners not verified. The PAN card of the firm and TIN/VAT/GST certificate for M/s Samaya Minerals & Ceramics not obtained to ensure their real existence. The property already mortgaged with Repco Bank has been taken as collateral security. Loan amount sanctioned by A1 used to redeem the mortgage. The appraisal note for sanctioning loan is undated and unsigned. A17 failed to

monitor the end use of the fund and allowed the borrower to divert the funds. In case of M/s Krishna Steels Trading Company similarly undated application without photograph of one of the partners obtained and loan sanctioned without collecting the PAN card, TIN/VAT/GST certificate. No pre-sanction inspection and stock verification done. The end use of the fund not monitored leading to diversion of the fund. In the case of M/s Sri Balaji Traders same violation vis-a-viz M/s Samaya Mineral &Ceramics.

13. In sofar as A18, sanctioned the loan to the firms namely, (1) M/s Yuvanesh Enterprise and (2) M/s RSP Steel Traders. Loan was sanctioned to M/s RSP Steel Traders without collecting information about the firm. The detail of the proprietor R.Sampath alone collected. The loan was sanctioned under "Trade Well Scheme" for which M/s RSP Steel Traders is not eligible. Likewise, for M/s Yuvanesh Enterprise, PAN card in the name of the partnership firm not obtained. The details of TIN/VAT/GST certificate not collected from the borrower. Forged stock and book debt statement produced in the name of S.V.C.Chokkalingam, Chartered Accountant who had given statement that the certificate in his name is a

forged document and he has not verified the authenticity of the stock and book debts statements, without conducting pre sanction inspection and obtaining quotations for the equipment loan was sanctioned.

14. These materials which *prima faciely* indicate that the sanction of loan to these six firms were not done in the ordinary course following the Rules and Regulations of the bank but in violation of the Rules and Regulations of the Bank and by abusing the position. Therefore, the petitioners are not entitled for discharge as prayed. The trial Court has rightly considered the materials available and dismissed the discharge petitions. There is no merits in these revision cases which warrants to reverse of the trial Court order. Hence, these Criminal Revision Case are dismissed. Consequently, connected Miscellaneous Petitions are closed.

16.08.2023

Index:yes/no
speaking order/non speaking order
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To:

1.XI Additional Special Judge for CBI Cases, Chennai

2.The Inspector of Police, CBI/ACB/Chennai.

3.The Special Public Prosecutor for CBI, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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Delivery Common Order made in
Crl.R.C.Nos.798 and 808 of 2023
and
Crl.M.P.No.6217 and 6167 of 2023

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