IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM:

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

CRL.O.P.Nos.9760 of 2019 & 20888 of 2017
and
Crl.M.P.Nos.12419 of 2017 & 5084 of 2019

Crl.O.P.No.9760 of 2019;-

K.Raghavan ... Petitioner

Vs.

1. The State rep. by its
The Inspector of Police,
XII Team, Central Crime Branch,
Chennai City Police,
Egmore,
Chennai-600 008.

2. Indian Bank,
Royapettah Branch,
No.69, Royapettah High Road,
Chennai-600 014. ... Respondents

PRAYER in Crl.O.P.No.9760 of 2019: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records of C.C.No.2838 of 2017 on the file of the Special Court for CCB/CBCID Cases/Metropolitan Magistrate Court, Egmore, Chennai (formerly C.C.No.9510 of 2010 on the file of XI Metropolitan Magistrate Court, Saidapet, Chennai) and quash the same.

Crl.O.P.No.20888 of 2017;-

K.Arumugam ... Petitioner

Vs.

1.The State of TamilNadu Represented by
The Sub Inspector of Police,
Central Crime Branch,
Banking Fraud Division - 12th Wing,
Egmore, Chennai-600 008.

2. K.Natarajan

3. R.Senkoda Chettiar

4. K.Ragavan ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to the proceedings in C.C.No.2838 of 2017 on the file of the Special Court for C.C.B. and CBCID Metro Cases, Egmore at Allikulam, Chennai and quash the same.

(In Crl.O.P.No.9760 of 2019)

For Petitioner : Mr.S.M.Muralidharan

For R1 : Mr.L.Baskaran,
Government Advocate (Crl.Side)

For R2 : No appearance

(In Crl.O.P.No.20888 of 2017)

For Petitioner : Mrs.Thenmozhi Shivaperumal

For R1 : Mr.L.Baskaran,
Government Advocate (Crl.Side)

For R2 & R3 : No appearance
For R4 : Mr.S.M.Muralidharan

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.No.2838 of 2017 on the file of the Special Court for CCB/CBCID Cases/Metropolitan Magistrate Court, Egmore, Chennai (formerly C.C.No.9510 of 2010 on the file of XI Metropolitan Magistrate Court, Saidapet, Chennai) for the offences under Sections 420 and 120(b) of IPC r/w.34 of IPC.

2. The case of the prosecution is that 1st and 2nd accused are the partners of the partnership firm i.e., M/s.Chennai Tyres. They approached the 2nd respondent in Crl.O.P.No.20888 of 2017 for loan to the tune of Rs.20,00,000/-The partnership firm deposited the title deed in respect of the property owned by the 1st accused as Collateral Security. On perusal of the title deed, they also obtained legal opinion and sanction and availed Cash Credit

facility to the tune of Rs.20,00,000/-. The said facility released on 16.06.2004 in favour of the partnership firm. They committed fault and the 1st accused filed Insolvency Petition in I.P.No.36 of 1998 before the 2nd Additional Sub Court, Erode in the year 1998. Thereafter, they committed default of repayment of the loan. Therefore, the complainant verified the documents and found that already the property was mortgaged for Collateral Security while availing Over Draft Credit Facility already in mortgage in favour of the Karur Vaysya Bank, Tiruppur. The property already sold to one Palanisamy Chettiar as early as on 23.02.1998 by way of two registered sale deeds vide document No.470 and 471 of 1998. Thereafter, the said property was mortgaged with Karur Vaysya Bank, Tiruppur. Thereafter, it was redeemed. Once again, the said property was mortgaged to the Defacto complainant's bank and availed Over Draft Cash Credit Facility. Hence the complainant.

3. In view of the said complaint the first respondent registered FIR in Cr.No.64 of 2009 for the offences punishable under sections 420, 120(b) of IPC r/w.34 of IPC. On completion of investigation, the first respondent filed final report and the same has been taken cognizance by the trial court in C.C.No.2838 of 2017. There are totally three accused, in which these petitioners are arrayed as Accused No. 2 and 3.

4. The learned counsel for the petitioner in Crl.OP.No.20888/2017 submitted that the petitioner was one of the partner of M/s.Chennai Tyres. Subsequently, on 10.10.2004 he resigned his partnership and dissolved the partnership and also executed a deed of dissolution of partnership. The subject property was owned by the first accused. He himself executed the sale deed in favour of one Palanisamy Chettiyar in the year 1998. Thereafter, the said property was mortgaged by the first accused with the Karur Vaysya Bank, Tiruppur. Therefore, these petitioners are nothing to do with the said mortgage with Karur Vaysya Bank, Tiruppur. Subsequently, in the name of the partnership firm, the first accused alone availed the Cash Credit Facility by mortgaging the property which was originally belonged to the first accused. These petitioners are no way connected with the said property. They never suppressed any fact since the first accused alone approached the defacto-complainant and availed such cash credit facility to the tune of Rs.20,00,000/-.

5. In fact, the first accused in his communication dated 29.4.2005, he admitted his liability and he undertakes to repay the loan amount. Therefore, no offence is made out as against the petitioner. The learned counsel for the petitioner in Crl.O.P.No.9760/2019 submitted that the petitioner is arrayed as 3rd accused. He was the manager of the Defacto-complainant's bank. He

sanctioned the Cash Credit Facility in favour of M/s.Chennai Tyres only on the opinion given by the panel advocate and he also relied upon the opinion given by its Panel Advocate. The Panel Advocate opined that he verified the encumbrance certificate for the period from 01.01.1970 to 12.11.2002 to the effect that a mortgage was created in favour of Union Bank of India vide Document No.3687 of 2002. The encumbrance certificate for the period subsequent on 12.11.2002 till date of creation of Equitable Mortgage with Indian Bank may be obtained and verified to ensure that the property continues to be free of encumbrance. That apart, from the above mortgage there are no other encumbrance for the said period. Hence, only on the basis of legal opinion, the petitioner sanctioned the cash credit facility in favour of M/s.Chennai Tyres. The petitioner has nothing to do with the offence committed by other accused persons.

6. The learned Government Advocate(crl.side) submitted that there are totally three accused, in which these petitioners are arrayed as Accused 2 and 3. At the time of availing Cash Credit Facility, the 2nd accused is also one of the partner. The said Cash Credit Facility was availed by M/s.Chennai Tyres and this partnership firm is consisting of two partners i.e., 1st and 2nd Accused. The property stands in the name of 1st accused and it was mortgaged as

Collateral Security for the Over Draft Cash Credit Facility. Time of availing such cash credit facility is in the month of March 2004 but the said cash credit facility was released only on 16.06.2004. The second accused/petitioner in Crl.OP.20888/2017 was very much acted as partner of M/s.Chennai tyres. He had resigned from his partnership only on 10.10.2004. Therefore, he is also held liable for the offences punishable under section 420 r/w.34 if IPC. Insofar as the third accused is concerned, he was the Manager at the time of sanctioning such cash credit facility in favour of the M/s.Chennai tyres.

7. During the investigation, encumbrance certificate was obtained and it is clear that the first accused had executed sale deed in favour of one Palanisamy Chettiyar even in the year 1998 vide document No.470 and 471 of 1998. Therefore, the 3rd accused acted in favour of the 1st and 2nd accused and conspired together, sanctioned the over draft cash credit facility to the tune of Rs.20,00,000/-. That apart, grounds raised in these petitions can be considered only before the Trial Court during Trial.

8. Admittedly, the 2nd accused was one of the partner in M/s.Chennai Tyres and availed Over Draft Cash Credit Facility to the tune of Rs.20,00,000/.

The partnership firm consisting of two partners namely 1st and 2nd accused, such facility was sought for during the month of March 2005 and it was availed on 16.06.2004 by the partnership firm. The property belonged to one of the partner i.e., the 1st accused and it was given Collateral Security and mortgaged in favour of Defacto-Complainant. The partnership firm committed default and they are liable to pay the balance outstanding to the tune of Rs.24.44 lakhs as on 30.06.2008. Therefore, the 3rd respondent verified that the document which was deposited as Collateral Security and found that the said property already mortgaged with Union Bank of India and therefore redeemed after repayment of the loan. Thereafter, the said property was sold out in favour of one Palanisamy Chettiar by registered sale deed dated 23.02.1998 vide document No.470 471/1998 who is examined as L.W.5 by the 1st respondent. Suppressing the said fact, the partnership firm consisting 1st and 2nd Accused approached the 3rd respondent for availing cash credit facility to the tune of Rs.20,00,000/-. The accused and the 3rd respondent colluded together with common intention to obtain legal opinion as if there was no encumbrance in respect of the property which was offered for Collateral Security and released Cash Credit Facility to the tune of Rs.20,00,000/- On perusal of the encumbrance certificate from 01.01.1987 to 22.01.2006, it is clear that the subject property was already sold out to one Palanisamy

Chettiyar. Therefore, in order to cheat the 3rd respondent in Crl.OP.20888 of 2017, all the accused persons conspired together and availed the Cash Credit Facility to the tune of Rs.20,00,000/- by mortgaging the property which was already sold out as collateral security. Therefore, at the very inception of seeking Cash Credit Facility, they had dishonest intention to cheat the 3rd respondent. The first accused by his letter dated 29.04.2005 sent to the 3rd respondent stating that he undertakes to pay the entire amount. That apart, the said letter was dated only on 29.04.2005, whereas FIR was registered only in the year 2008. As on 30.06.2008 the balance due amount is Rs.24.44 lakhs. Further, the 2nd accused specifically contended that the petitioners never involved in the loan transaction as alleged by the prosecution. The 2nd accused had resigned from the partnership only on 10.10.2004. Therefore, there are clinching materials as against the petitioners to attract the offences under section 420 r/w.Sec.34 of IPC. Hence, this petition is liable to be dismissed.

9. However, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners shall be present before the Court below at the time of furnishing of copies, framing of charges, questioning under Section 313 Cr.P.C., and at the time of passing judgment.

10. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

09.11.2023

Index : Yes / No
Speaking / Non Speaking order
gvn

To

1. The Special Court for CCB/CBCID Cases/
   Metropolitan Magistrate Court, Egmore, Chennai.

2. The Inspector of Police,
   XII Team, Central Crime Branch,
   Chennai City Police,
   Egmore,
   Chennai-600 008.

3. The Sub Inspector of Police,
   Central Crime Branch,
   Banking Fraud Division - 12th Wing,
   Egmore, Chennai-600 008.

4. Indian Bank,
   Royapettah Branch,
   No.69, Royapettah High Road,
   Chennai-600 014.

5. The Public Prosecutor,
   High Court, Madras.

G.K.ILANTHIRAIYAN, J.
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