IN THE HIGH COURT OF JUDICATURE AT MADURAI

Reserved on : 22.11.2022

Pronounced on : 14.07.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.11454 of 2020

Mr. N. Ramamoorthy, ... Petitioner

Vs.

1.The Inspector of Police,
The Central Bureau of Investigation
Banking Security and Frauds (BS&F) Division,
No. 36, Bellary Road, 2nd Floor, CBI Complex,
Bangalore – 560 032. ... Respondent

2.Piyush Bokaria
3.Piyush Bokaria Hindu Undivided Family,
4.Prashanti Bokaria
5.Prashanti Bokaria Hindu Undivided Family,
6.Prabin Bokaria
7.Prabin Bokaria Hindu Undivided Family,
8.Umed Singh Bokaria HUF,

*(R 2 to R8 impleaded vide order
of this Court dated 22.11.2022.)

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to issue a direction to the respondent to Register the complaint of the Petitioner dated 06.07.2020.

For Petitioner : Mr. Vaibhav R. Venkatesh

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor, for CBI Cases

For Respondents (R2 to R8) : Mr.Arun Saravanan,

ORDER

This Criminal Original Petition has been filed seeking a direction to the first respondent police to register the complaint filed by the Petitioner, dated 06.07.2020.

2. The gist of the case is that the petitioner induced by the fact that Yes Bank is a Bank regulated by the RBI and was accredited ++AA Credit rating by two agencies, invested his hard earned money to the tune of Rs.10,57,747/- in the Additional Tier 1 Bonds of Yes Bank Ltd., though Yes Bank Limited was not authorised to sell AT 1 Bonds to retail investors like the petitioner, however, the Bank sold the same, thereby, cheated the complainant. Therefore, the complainant made a complaint, dated 06.07.2020, to the first respondent / CBI, through email, to register the complaint, as he aggrieved the fraud committed by the Yes Bank Ltd. Since, it was not acted upon, the present petition has been filed for the aforesaid relief.

3. Mr. Vaibhav R. Venkatesh, the learned counsel appearing for the petitioner would submit that the petitioner invested a major part of his savings in bonds of Yes Bank Ltd, as he was told it is a product akin to Fixed Deposit offering slightly better rate of interest at 9.8% with safety features of a Fixed Deposit with interest payment at annual intervals. While the Petitioner was investing, he was told it is a very safe investment as it is invested by a very large bank and bond carrying a very strong credit rating of AA+ (very high safety) from two independent credit rating agencies. The petitioner had invested Rs. 10,57,747/- on 21.08.2018 through a broker namely 'Sprism Investments Services Pvt. Ltd' and transferred the amount through RTGS to the bank account of Sprism Investment Services Pvt. Ltd., viz., HDFC Bank, KH Road, Bangalore, bearing Account No. 12062320000495. The Petitioner's ID was bearing No. 21148555 and the DP ID was IN301313. He was informed that there would be a maturity/call option, which would be exercised by the bank on 23.12.2021 and till such time, he would be paid interest year after year. The petitioner was specifically lured by the fact that Yes Bank is a bank regulated by RBI and that two credit ratings were also disclosed by Yes Bank to Stock Exchanges and to the public at large. The petitioner was also given an excel sheet, which spoke about the expected cash flow. Considering all these factors and considering the

fact that the bank is regulated by RBI and that his investments are completely secure, the Petitioner acted on the inducement offered, invested his hard earned money. The details of Yes Bank AT-1 bonds being safe investments was sent to the Petitioner by Mrs.Mamta Prasad of Sprism Investments vide email, dated 16.08.2018.

4. It is further submitted that the in month of March 2020, he was shocked by the news reports about the massive scam at Yes Bank and that the promoter of Yes Bank namely, Mr.Rana Kapoor had indulged in massive fraud, cheating the Bank and the public at large, to the tune of Rs.40,000 crores. Thereafter, moratorium was imposed by the Central Government under Section 45(2) of Banking Regulation Act, 1949, on 05.03.2020. The information memorandum issued by Yes Bank clearly had a provision that these bonds cannot be issued to retail investors. The said clause is specifically stated in Paragraph 5.18 of the Information Memorandum, wherein at Serial No.8, it has been specifically stated that resident individual investors are not eligible to participate in the offer. It also states that this being a private placement issue, the eligible investors, who addressed to this communication directly, are only eligible to apply. Despite this, the AT-1 bonds were sold to the petitioner, as a result of which, insurmountable hardships occasioned to the retail individuals, who have invested their life savings in Yes Bank.

5. The petitioner states that there is a violation of RBI Circular No.DVR No.BP.BC.1/21.06.2015/2015-16, dated 01.07.2015, which mandates that the instrument cannot be sold to retail investors unless and until there is a declaration issued by Retail investors understanding the feature and risks of the investments and also that the information memorandum and all the public material and other communication with the investor should very clearly state in bold letters with font size 14 above as to how the perpetual debt instruments is different from Fixed Deposits. Finally, the same should be backed by a Board Resolution of Yes Bank, permitting of sale of these instruments to individual retail investors. None of these criteria were followed while selling this instrument to the petitioner. The petitioner was not made aware of any of these regulations and he was made to believe that his investments were safe and thereby cheating and defrauding the innocents public, including the petitioner. When the primary offer document prohibits participation of the retail investors, it is incomprehensible as to how these instruments are being sold in the secondary market. The investors education procedures, as mandated by RBI in respect of issuance of these instruments such as specific sign off by the investors having understood the nature of the instruments, and that AT-1 instruments is not equivalent to Fixed deposits, not carried out in the secondary market,

thereby, defeating the very spirit of the RBI instructions on the risk and nature of the investments. This instrument was sold to the petitioner and his savings took away from him without disclosing risks involved in the instruments. Yes Bank and its associate brokers are guilty of fraud for not having made any disclosures in the secondary market, as mandated by the RBI.

6. It is further submitted that it is shocking as how Yes Bank has played a calculated fraud and misled even the regulators as the gross NPA's of Yes Bank had increased by Rs.28,416/- Crores and provisions by Rs.22,997/- crores in just one quarter i.e., from 30.09.2019 to 31.12.2019. The petitioner trusted the Bank, its projections, annual reports, which all showed that it was an entity and was in sound financial health. The nexus between Administrator of Yes Bank Ltd and the key managerial personnel and other officials of Yes Bank Ltd can be unearthed only after detail investigation by any specialised investigation agencies. Considering the monstrosity of the offence and the manner in which lakhs of unit holders have suffered due to the writing off the Additional Tier 1 Bonds of Yes Bank Ltd, the imminent circumstances of the present case, warrants that the complaint must be registered by the Respondent. The CBI though has registered FIR, the proceeding is in respect of 3700 crores deal between YES Bank and DHFL. The present

issue has not been looked at by CBI. Unless and until the first respondent proceeds against the accused in accordance with law, not only the petitioner, but thousands of innocent investors, many of whom are senior citizens, will not be in a position to get justice. Hence, the learned counsel prays for registration of the case by the respondent.

7. Mr.K.Srinivasan, the learned Special Public Prosecutor, for CBI cases would submit that the Complainant Ramamoorthy preferred a Complaint, dated 05.07.2020, against Yes Bank Ltd. & Others to the CBI, Banking Securities & Frauds Branch, Bangalore (for short 'BS&FB) through his email, dated 07.07.2020. The 'Yes Bank Limited' and its officials hatched a criminal conspiracy amongst themselves and various other brokers and in pursuance thereof induced several gullible investors, including the complainant, to invest in the Additional Tier-1 Bonds of M/s Yes Bank Ltd. The said investments were written off by the Administrator of Yes Bank, appointed by the RBI, after the fraud committed by Yes Bank Ltd came to light. The said act led to various gullible investors, who invested in the said Additional Tier 1 Bonds of Yes Bank Ltd, to lose their hard-earned savings. The complainant being induced by the fact that Yes Bank is a Bank regulated by the RBI and was accredited ++AA Credit rating by two agencies, invested an amount of Rs.10,57,747/-, as on 21.08.2018. The Yes Bank Limited was not

authorised to sell AT 1 Bonds to retail investors like the Petitioner/complainant, however, the Bank sold the same thereby, cheated the Petitioner/complainant. Based on the said allegations, the Petitioner/complainant sought for the Respondent/CBI to register the complainant and commence investigation.

8. The petitioner and respondents 2 to 8 claimed that they have invested in the said AT 1 Bonds issued by the Yes Bank and have been cheated similar to the complainant. The accusation by the petitioner and respondents 2 to 8 that CBI had not taken a proactive role in the matter is unfounded. The Reserve Bank of India is the Regulator in respect of Banks and the accusations made by the petitioner and respondents 2 to 8 against CBI are unwarranted and devoid of any merit. After the receipt of the original Complaint from the complainant through email, the same was processed and since the matter was pertaining to Yes Bank, and a case against Yes Bank is under investigation in CBI, ACB, Mumbai Branch, the complaint was accordingly forwarded to CBI (ACB), Mumbai. After analysis, Mumbai Branch returned the same to BS&FB. Bangalore, on 16.09.2020, on the ground that the matter pertaining to the issue of AT-1 Bonds by the Yes Bank is sub-judice, as number of petitions in this regard are pending before this Court and the High Court of Mumbai and also in view of the fact that the matter being investigated by CBI, ACB, Mumbai, is different from that in the complaint.

9. It is further submitted that BS&FB, Bangalore, is a specialised branch of the CBI, which was created for the purpose of investigation of cases involving the amount of Rs.25 crores and above. In the present case on hand, the alleged fraud is to the tune of Rs.10,57,747/- and the amount invested by the present Petitioner and respondents 2 to 8 is also to the tune of Rs.1. crore and as such BS&FB, Bangalore, has no jurisdiction to register a case in the present matter. It is further submitted that as per the Master Circular issued by the RBI, the jurisdiction of BS&FB, Bangalore, is invoked when the fraud amount exceeds Rs.25 crores and when the fraud is in relation to a Public Sector Bank, the present complaint by a private person against the private bank, falls within the Jurisdiction of the State Police. The RBI has mandated that in cases of frauds involving Rs.10,000/- and above and related to Private Sector/Foreign Banks and fraud committed by Staff, the report should be made to the Local Police/State Police. Furthermore, in instances wherein the fraud amount is more than 0.1 million and above and committed by outsiders/with connivance of bank officials, then also the matter is to be reported to the State Police. The present case falls squarely with in the jurisdiction of the jurisdictional State Police, and that the complainant ought to have approached the jurisdictional state police to file the above complaint, which shall be investigated into accordingly.

10. It is further submitted that the CBI, BS&FB, Bangalore Branch, is currently undertaking investigation in numerous cases of bank fraud. Furthermore, the BS&FB, Bangalore, is facing shortage of staff. The instant matter does not fall under the realm of bank cases, the main allegation being only alleged cheating by the bank on the complainant, who invested amount in AT-1 Bonds issued by the Yes Bank. The cases/matters pertaining to the issue of AT-1 Bonds by the Yes Bank are subjudice before this Court in view of various petitions filed in the matter. The matter pertaining to the issue of AT- 1 Bonds is also sub-judice before the High Court of Bombay and the High Court of Bombay vide, it's Order, dated 16.03.2020, in Writ Petition(L)No.850 of 2020, filed by Axis Trustee Service Limited, against Union of India and others ordered that "Any action taken by the Respondents, in the meantime, shall be subject to further orders passed by this Court". After receipt of the original complaint, the BS&FB, Bangalore branch forwarded the same to CBI, ACB, Mumbai Branch. Meanwhile the CBI, ACB, Mumbai Branch has since examined the original complaint and returned the same to BS&FB, Bangalore on 16.09.2020, on the ground that the matter pertaining to the issue of AT-I Bonds by the Yes Bank is sub-judice, as a number of petitions in this regard are pending before this Court and to the Hon'ble High Court of Mumbai, and also in view of the fact that the

matter being investigated by CBI, ACB, Mumbai. The petitioner/respondents 2 to 8 ought to have approached the jurisdictional State Police to file the complaint and the instant petition being devoid of merit, is liable to be rejected in the interest of justice. In support of his contention, the learned counsel relied upon a Division Bench Judgment of this Court in Piyush Bokaria Vs. Reserve Bank of India in W.P.No.12586 of 2020. The relevant portion of the judgment reads as follows:-

> "32. The nature of A1 Tier Bonds did make an offer which made the petitioners mentally rich, but that was subject to a financial adventurous journey that was subject to risks and hazards that were attached with the nature of the transaction itself. Their desire to be possessed of speculative wealth was circumscribed and hedged by lawful limitations that were not unknown to them or to commercial transactions of this nature. Any tinkering with the impugned circular on a liberal note may be not only against the present cause, but may have adverse impacts otherwise."

11. I have heard the submissions made by the learned counsel for the petitioner, learned counsel for the first respondent and the counsel for the impleading respondents and perused the materials available on record.

12. The sum and substance of the case of the petitioner and the impleading respondents is that they the investors, made their hard earned money in Additional Tier 1 bonds of M/s.Yes Bank Ltd, The 'Yes Bank Limited' and its officials hatched a criminal conspiracy amongst themselves and various other brokers and in pursuance thereof induced several gullible investors, to invest in the Additional Tier-1 Bonds of M/s Yes Bank Ltd. The petitioner induced by the fact that Yes Bank is a Bank regulated by the RBI and was accredited ++AA Credit rating by two agencies, invested an amount of Rs.10,57,747/-, on 21.08.2018. The Yes Bank Limited was not authorised to sell AT 1 Bonds to retail investors like the petitioner/complainant, and the respondents 2 to 8 however, the Bank sold the same thereby, cheated them. Based on the said allegations, the investors, are before this Court sought a direction to first Respondent/CBI to register the complainant and commence investigation.

13. According to the 1st respondent, the Reserve Bank of India is the Regulator in respect of Banks and the accusations made by the investors against CBI are unwarranted and devoid of any merit. After the receipt of the original complaint from the petitioner through email, the same was processed and since the matter was pertaining to Yes Bank,

and a case against Yes Bank is under investigation by CBI, ACB, Mumbai Branch, the complaint was accordingly forwarded to CBI (ACB), Mumbai. After analysis, Mumbai Branch returned the same to BS&FB. Bangalore, on 16.09.2020, on the ground that the matter pertaining to the issue of AT-1 Bonds by the Yes Bank is sub-judice, as number of petitions in this regard, are pending before this Court and the High Court of Mumbai. Further, the RBI has mandated that in cases of frauds involving Rs.10,000/- and above and related to Private Sector/Foreign Banks and fraud committed by Staff, the report should be made to the Local Police/State Police. Furthermore, in instances wherein the fraud amount is more than 0.1 million and above and committed by outsiders/with connivance of bank officials, then also, the matter is to be reported to the State Police. The present case falls squarely in the jurisdiction of the jurisdictional State Police, and that the petitioner and respondents 2 to 8 ought to have approached the jurisdictional State Police to file the complaint.

14. It is seen that the petitioner and respondents 2 to 8 investors having accepted the terms and conditions, invested in the Additional Tier 1 Bonds of Yes Bank Ltd, now they cannot turnaround and take a different stand that the Yes Bank Ltd not authorised to sell AT 1 Bonds to retail investors, thereby, cheated the investors. It is further seen that

there are similar issues are pending before the CBI, Mumbai. The petitioner and respondents 2 to 8 investors are at liberty to approach the Central Bureau of Investigation, Mumbai, and lodge a complaint, if so advised.

15. In the result, this Criminal Original Petition stands dismissed.

14.07.2023

Index : Yes/No
Internet : Yes / No
mpk

To

1.The Inspector of Police,
The Central Bureau of Investigation
Banking Security and Frauds (BS&F) Division,
No. 36, Bellary Road, 2nd Floor, CBI Complex,
Bangalore – 560 032.

2.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

VV2/MPK

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