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Crl.O.P.No.9488 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

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THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.9488 of 2023
and Crl.M.P.Nos.6208 & 6209 of 2023

Govindharaj

... Petitioner

Vs.

1.The Inspector of Police,
Central Crime Branch,
Bank Fraud Investigating Wing,
Veperi, Chennai.

2.Alponsrajesh

... Respondents

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the proceedings in C.C.No.11936 of 2022 on the file of the Special Court for CCB & CBCID, Egmore, Chennai, and quash the same.

For Petitioner : M/s.R.Anburaj
For Respondents : S.Santhosh (For R1)
Government Advocate (Crl side)



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ORDER

This Criminal Original Petition has been filed to call for the records relating to the proceedings in C.C.No.11936 of 2022 on the file of the Special Court for CCB & CBCID, Egmore, Chennai, and quash the same.

2.It is the submission of the learned counsel for the petitioner that petitioner is third accused in C.C.No.11936 of 2022 pending on the file of CCB & CBCID (Metro), Egmore, Chennai. He further submitted that petitioner is charged with the allegations that the loan borrowed by the first accused is housing loan and that was paid to the petitioner, again transferred to the account of first accused and her husband/second accused. It is further contended in the final report that petitioner in connivance and in conspiracy with other accused cheated the bank. However, it is his further submission that the amounts said to have been paid by the petitioner to the accounts of A1, A2 and A5 do not relate to the loan transaction. It is an independent and separate loan transaction, wherein, the amounts had been paid into accounts of A1 and A2. Therefore, this petition is filed for quashing.

3.In response, the learned Government Advocate (Criminal side)



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submitted that there are documentary evidence and oral account of witnesses to show that the housing loan amount paid to the petitioner, at the behest of first accused was transferred to the account of A1, A2 and A5. Thus, petitioner facilitated to cheat the bank in respect of the loan amount paid to the first accused. First accused had never repaid the amount resulting in bank suffering loss and initiation of SARFAESI proceedings. Thus, he prayed for dismissal of this petition.

4.Considered the rival submissions and perused the records.

5.It is seen from the First Information Report allegations that first accused requested the second respondent/defacto-complainant for housing loan for the purchase of a flat in Flat No.S2, 2nd Floor in Door No.47/53, Plot No.15 part, Bharathi Street, Saligramam, Chennai-600 042. First accused was given housing loan of Rs.49.12 lakhs on 30.10.2018 for the purchase of the flat. She produced income tax returns and certificate issued by Chartered Accountant in support of her loan application. The entire loan amount was disbursed through demand draft for Rs.6.31 lakhs in favour of petitioner and a sum of Rs.42,80,000/- was disbursed in the name of M/s.Maharaja Builder, represented



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by its sole proprietor S.Govindaraj/petitioner. After availing loan, the first accused was irregular in payment of monthly installments. Therefore, the loan account was classified as Non-Performing-Asset. The proceedings under SARFAESI Act was initiated. The Bank officials found that tenant named Palani is residing in the flat financed by the Bank and he was paying rent to S.Govindaraj, petitioner herein. When the Bank officials met petitioner, he informed the Bank Officials that he would settle the outstanding dues of the Bank. On suspicion and on the analysis of Bank accounts of P.Miraclin Dories/first accused, it was ascertained that she received a sum of Rs.36,00,000/- from 08.11.2018 to 04.12.2018 from one G.Thenmozhi, wife of petitioner. She had also received another sum of Rs.35,000/- from G.Thenmozhi on 20.02.2019. These amounts have been transferred from the account of P.Miraclin Dories to her group accounts like Lux Studio, CJ groups and other bank accounts and individuals on different dates. Thus, the accused had cheated the Bank. It was also found that the income tax returns and certificates issued by the Chartered Accountant are fabricated documents. In such circumstances, First Information Report was registered on the complaint given by second respondent. On the basis of investigation, final report was filed against accused for the offences under Sections 120 B, 420, 465, 467, 468, 471 r/w 34 I.P.C.



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Specific charge against the petitioner is that he credited the DD given for a sum of Rs.6,31,640/- and Rs.42,80,360/- to the account of his wife and then transferred the sum of Rs.39,00,000/- to the account of A1 and A2 and transferred the sum of Rs.2,00,000/- to the account of A5 and as such, he is also part of this conspiracy in cheating the Bank. Witnesses have been examined and they gave statements supporting the account of the defacto-complainant. Therefore, from the consideration of the materials produced, this Court is of the considered view that there are enough materials available to presume that the petitioner committed the offences as alleged in the final report. Necessary charges are to be framed and trial has to be conducted. In this view of the matter, this Court finds there is no merits in the prayer for quashing of proceedings in C.C.No.11936 of 2022 on the file of the Special Court for CCB & CBCID, Egmore, Chennai.

6. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

28.04.2023

Index: Yes/No

Speaking/Non speaking order

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G.CHANDRASEKHARAN.J.,

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To:-

- 1.The Inspector of Police,
Central Crime Branch,
Bank Fraud Investigating Wing,
Veperi, Chennai.
- 2.The Public Prosecutor,
High Court of Madras.

Crl.O.P.No.9488 of 2023
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