



Crl.O.P.No.12251 of 2023
and
Crl.M.P.No.7461 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.08.2023

Pronounced on :16.08.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.12251 of 2023

and

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N.Srikumar
No.6

.. Petitioner/Accused

/versus/

1.The Central Bureau of Investigation,
Represented by its Sub Inspector of Police,
Economic Offences Branch,
A-Wing, 3rd Floor,Rajaji Bhavan,
Besant Nagar, Chennai 600 090.

.. Respondent No.1/
Complainant

2.Indian Overseas Bank,
Represented by its Chief Regional Manager,
Regional Office,
Gandhipuram,
Coimbatore 641 012.

.. Respondent No.2/
Defacto complainant



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Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records of the proceedings in C.C.No.2541 of 2022 on the file of the Chief Judicial Magistrate, Coimbatore and quash the same as illegal and without jurisdiction.

For Petitioner :Mr.Sharath Chandran for
Mr.V.B.Gowtham Thalak

For Respondents :Mr.K.Srinivasan
Special Public Prosecutor for CBI.

ORDER

The petition herein is a Government Registered Valuer. He is arraigned as A-6 in the criminal case C.C.No.2541 of 2022 on the file of the Chief Judicial Magistrate, Coimbatore, arising from the complaint investigated by CBI in connection with cheating the Indian Overseas Bank, Fairland Branch, Salem to a tune of Rs.62.20 crores.

2. On the complaint lodged by the Chief Regional Manager of Indian Overseas Bank, Regional Office, Gandhipuram, Coimbatore, case was registered in



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RC.8(E)/2021/CBI/EOB/Chennai against M/s Subhashri Bio Energies Pvt. Ltd.
and its 5 Directors by name S.Durairaj, D.Malliga, D.Salai Sivaprakasam, Nalla
Govindasamy and G.Sarswathy and other unknown persons.

3. On completion of investigation, Final Report filed against the company, its 5 Directors and the petitioner, who gave the valuation report for the property given to the bank as primary security. Two of the company Directors namely, Nalla Govindasamy and his wife G. Saraswathy shown as accused in FIR were not sent for trial and their names were shown in column II of the Final Report.

4. As per the Final report, the first accused Company during the year 2004 had given a project proposal to generate power from poultry litters and the waste after generating power to be used as organic manure, a value added products (Bio power and Bio manure). The scheme being sponsored by Ministry of Non-Conventional Energy Sources (MNES) and the project found to be viable, the Indian Overseas Bank, Fairland Branch sanctioned to the first accused company



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the Cash Credit Facilities of term loan, CCL, Supply Bill Purchase Limit and Short Term Loan. The loan was secured with immovable property creating equitable mortgage. Based on the performance and request, the loan limit was extended from time to time. On 27/05/2008, the cash credit was enhanced from Rs.8.42 crores to Rs.17.80 crores for bio power and bio manure division. Additional securities **(a)** the land measuring 17.38 ½ acres of agricultural land of D.Malliga (A-3) at Kumarapalayam and **(b)** land measuring 5.18 acres held by D.Salai Sivaprakasam (A-4) were given as security. This petitioner, as approved valuer of the lending Bank has given the valuation report dated 05/01/2008 stating the value of the property at Kumarapalayam in the name of D.Malliga (A-3) is totally worth Rs.52 lakhs and the land in the name of D.Salai Sivaprakasam (A-4) is worth Rs.12.00 lakhs per acre.

5. Time and again, the sanction limit was extended after getting fresh valuation report. The last such enhancement of loan limit was in the year 2014 when the Bank sanctioned Short Term Loan (with WC) for Rs.7.50 crores. The last valuation report from the petitioner for the properties given as security was on



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19/05/2014. With this, the renewed limit enhanced to Rs.57.50 crores as on 23/10/2014.

6. The loan account secured through equitable mortgage of the properties offered by the borrowing company supported by the valuation certificate given by valuers became NPA and the matter was reported to RBI on 12/12/2019. By the time, the money due and payable to the Bank was Rs.62.20 crores. The funds were dishonestly diverted and misappropriated. The Investigation has also found that the petitioner as the valuer, involved in the valuation of the properties mortgaged by A-1, M/s Subhashri Bio Energies Pvt Ltd to Indian Overseas Bank for the enhancement of loan in the year 2014, had given valuation certificate with inflated value to facilitate the borrowing Company and its Directors. This has induced the Bank to enhance the loan. The property which really worth Rs.8.5 lakhs to Rs.15 lakhs rupees overvalued by the petitioner and estimated as Rs.40 lakhs per acre. The valuation certificates given by the other valuers for the property and adjoining land as well as the valuation report of this petitioner given for the same land in the year 2011 were taken for comparison to



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arrive at prima facie conclusion that the valuation report of this petitioner given in the year 2014 is intentionally inflated to aid the other co-accused to obtain wrongful gain.

7. Mr.Sharath Chandra, the learned counsel representing for the petitioner submitted that, this petitioner was not a named accused in the FIR given by the Chief Manager of IOB. His name included in the final report as if he along with the others conspired to cheat and commit criminal breach of trust. First of all, as a professional valuer, the opinion given by the petitioner is based on the market value prevailing in and around the said land. The valuation report of one R.Nagarajan, dated 23/05/2014 obtained by the Bank and relied by the prosecution as document Nos: 383 to 388 for the very same properties is higher than the valuation given by the petitioner. While the petitioner in his valuation report dated 19/05/2014 has estimated the fair market price of the 6 pieces of land is about Rs.40 lakhs per acre. Whereas Mr.R.Nagarajan in his valuation report has estimated the property worth Rs.42,000/- per acre. The valuation of R.Nagarajan is part of the prosecution documents. The said Nagarajan is not arraigned as accused.



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8. The Bank was not deceived by the valuation report of the petitioner in any manner. The Bank had option before it to accept the valuation given by the petitioner or to reject it or to accept the counter valuation report given by Nagarajan. No dishonest intention to cheat the bank could be made out from the 6 valuation reports given by this petitioner. The defacto complainant Ms.Vijaya had in her statement given to the police during investigation has ruled out conspiracy between the valuer and the borrower. There is no contrary evidence of the same period for the same properties to show that the market value fixed by this petitioner on 19/05/2014 was exorbitant/unreasonable. The only opinion for the same property at the same point of time is the opinion of Nagarajan. His valuation is more than the value estimated by this petitioner.

9. The petitioner while assessing the market value of the property has fairly disclosed that the Government has fixed the guideline value as Rs.2,70,000/- per acre and had opined that the actual market value will be between Rs.45 lakhs and Rs.50 lakhs. The first valuation report given in the year 2011 is naturally less



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because the boom in the real estate after 2011 been taken note by the petitioner while giving valuation in the year 2014. The guideline value relied by the prosecution to charge the petitioner that he has given an inflated value for the property is unsustainable in law.

10. The guideline value fixed by the State is for the purpose of collecting revenue in the form of stamp duty. This may not be the true and actual market value of the land in many place. It all depends on the market condition and whether the Government revise the guideline value periodically. The land in same survey number, just few months prior to the valuation certificate given by this petitioner was sold and registered at Rs.200/- per sqft., Whereas the valuation given by the petitioner is about Rs.91/- per sq.ft only. The counter valuation given by R.Nagarajan is Rs.97/- per sq ft.

11. As a valuer, the petitioner has given his opinion based on the material collected during the course of inspection of the property. Bank has not entrusted with any property or he had no dominion over any property of the Bank



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in connection with the loan transaction. Hence, there is no ingredient to attract the offence under Section 409 IPC.

12. To buttress his argument, the learned counsel relied upon the judgment in *Harshad Sunderlal Maniar –vs- Special Land Acquisition Officer and others reported in [2002 SCC Online Bom 447]*, in which the Hon'ble Division Bench of Hon'ble Bombay High Court held that, “there is no gain saying that the valuation of immoveable properties is not an exact science and that determination of value is an inquiry relating to a subject abounding in uncertainties and involving more than ordinary guess work and it would be rather unfair to require an exact exposition of reasons, for conclusion arrived at and that valuation report and evidence of expert witness like, the appellant in land acquisition reference proceedings, is merely evidence of opinion as to the fair market value of the property under acquisition”.

13. The judgment of this Court in *B.Ganesh –vs- Superintendent of Police, Central bureau of Investigation, Economic Offences Wing reported in*



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[2017 SCC OnLine Mad 37923], following the Judgement of the Hon'ble Supreme Court rendered in ***CBI, Hyderabad –vs- K.Narayana Rao reported in [2012 (9) SCC 512]*** also relied for the above preposition.

14. The learned Counsel also relied upon the Judgment of the Hon'ble Supreme Court rendered in ***State of Orissa –vs- Debendra Nath Padhi reported in [2005(1) SCC 568]*** for the preposition that, 'hearing the submissions of the accused' not include calling for records not relied by the prosecution during pre trial stage. However, as exception, in exercise of power under Section 482 Cr.P.C or Article 226 of the Constitution of India, while hearing the submissions of the accused during pre trial stage, like, dealing discharge petitions or quash petition or petition for summoning or produce documents not relied by the prosecution, if the accused facing trial, have in his possession material of unimpeachable character of sterling quality, be allowed to produce documents but, he cannot be permitted to make roving or fishing enquiry.



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15. This judgement is relied by the learned Counsel for the petitioner, for this Court to look into the EC and few sale deeds in connection with properties in the neighbourhood during the relevant period. According to the learned counsel, these documents are unimpeachable and of sterling quality. According to him, they are the basis for the petitioner to give the valuation report in the year 2014 re-validating his earlier report of the year 2011.

16. The Learned Special Public Prosecutor for CBI submitted that, the contention of the petitioner is false and baseless. In May 2014, the Petitioner (A6) had done the valuation of 6 properties located at Munjanur Village, Unjanai Village & 67, Kumarapalayam (alias Goundampalayam) Village of Trichengode Taluk, R. Kumarapalayam Village of Rasipuram Taluk and the market value for all these properties was mentioned as Rs.40 lakh per acre. This valuation is about 4 times more than the valuation of these properties given by the Petitioner (A-6) in the valuation reports of June 2011 and no justification could be provided by the Petitioner (A-6) for this exorbitant or unreasonable jump of 4 times in the fair



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market value of these properties in a span of less than 3 years. Also, just about 8 months after these valuation reports were submitted to IOB, in January 2015, the Petitioner Shri.N.Srikumar (A-6) as a Panel Valuer of other bank SBI had valued the lands located at adjoining survey numbers of Kumarapalayam village at the rate of only about Rs. 10 Lakh per acre which is just 1/4" of the valuation he had given to lands located in that village in his valuation reports submitted to IOB. Moreover, during the course of next four years i.e. between 2015 and 2019, several other Valuers had done the valuation of properties located in the nearby survey numbers and they had mentioned in their report that the fair market value in these areas is only between 8.5 Lakh and Rs. 15 Lakh per acre. Hence, the fair market values mentioned by the Petitioner (A-6) in his valuation reports of 2014 are unreasonable and without any valid basis implying that the Petitioner had colluded with the other accused and cheated the bank.

17. Heard the counsels. Records perused.



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18. The petitioner is the valuer for the IOB, Fairlands Branch, Salem. He had been requested by the then Branch Manger to inspect the property, assess the present value, for loan (revaluation) purpose. Therefore, the petitioner has given his opinion about the value of the property with knowledge. The purpose for which his valuation report is going to be used by the Bank, which has sought his opinion well within the knowledge. The petitioner admits his valuation report given in the year 2014 is 4 times more than the value he assessed in the year 2011. His reasoning for such escalation of market value cannot be illusionary or imaginary. It should be based on some material. For that purpose, the learned counsel taking into aid the judgment of the Hon'ble Supreme Court rendered in *Debendra Nath Padhi case*, wants the Court to take into consideration the EC, sale deeds and the report of another valuer Nagarajan who has given his opinion regarding the value of the same property.

19. This Court to ensure that there should not be any miscarriage of justice, took note of the submissions and perused those documents to ascertain



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whether they are of sterling quality or unimpeachable. They are neither unimpeachable nor of sterling quality. This Court restrains itself to comment more about these documents and deliberate further to show why it is not, since it may influence the trial Court mind, if these documents are produced and placed before the trial Court for appreciation.

20. Except emphasising that the petitioner for the adjoining land during the same point of time had given his report valuing the property 1/4 less than what he has opined in this case.

21. Therefore, this Court find, the final report is not without basis or ingredient to frame charges and try the petitioner. To frame the appropriate charges is the function of the trial Court and this Court has no doubt that the trial Court will frame appropriate charges after hearing the accused, prosecution and considering the materials collected in the course of investigation and produced before it.



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22. Whether any of the offence mentioned in the final report should be translated into charges or not is for the trial Court to decide after hearing the submissions of the accused and the prosecution, considering the records of the case and documents submitted therewith.

23. With the above observations, the Criminal original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

16.08.2023

Index:yes/no

speaking order/non speaking order

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To:

1.The Chief Judicial Magistrate, Coimbatore.

2.The Sub Inspector of Police,The Central Bureau of Investigation,
Economic Offences Branch,A-Wing, 3rd Floor,Rajaji Bhavan,
Besant Nagar, Chennai 600 090.

3.The Chief Regional Manager,Indian Overseas Bank,
Regional Office, Gandhipuram,Coimbatore 641 012.

4.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Delivery Order made in
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