IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.08.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.16187 of 2022
and
Crl.M.P.Nos.9269 & 9271 of 2022

Anil Kumar Ojha .. Petitioner

-vs-

1.Inspector of Police,
Central Bureau Investigation,
BSFB, Bangalore,
Banking Securities Fraud Branch,
36, Bellary Road, Ganganagar,
Bangalore-560 032.

2.The Union Bank of India,
Formerly the Corporation Bank,
Represented by its Assistant General Manager,
12, Omes Road, P.B.No.113,
Kilpauk, Chennai-600 010. ..Respondents

PRAYER : Criminal Original Petition has been filed under section 482 of Criminal Procedure Code to call for the records in C.C.No.2453 of 2021 on the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai against the petitioner and quash the same.

For Petitioner	:	Mr.V.Karthik, Senior Counsel For Mr.Adithya Varadarajan
For R1	:	Mr.K.Srinivasan Special Public Prosecutor (CBI)
R2	:	Mr.S.Sethuraman

ORDER

Based on the complaint dated 31.08.2018 given by DGM, Corporation bank, Zonal office, CBI has probed into the matter and had filed final report on 11.03.2021.

2. The petitioner before this Court is the Promoter and Director of M/s.SLO Industries Limited. His company is arrayed as 1st accused and he in his personal capacity arrayed as 2nd accused. Final report is filed against 12 accused. The present Criminal Original Petition is filed under Section 482 of Cr.P.C., to quash the charge sheet, which has been taken on file by the trial Court in C.C.No.2453 of 2021.

3. The petition to quash is flagged on the fact that the petitioner who is the Promoter of the company been successfully running the company for several years. The corporation bank on 14.11.2014 relied its credential as CB-2, however, the very next day it was scaled down to CB-4, because the Promoter did not concede to the illegal demand of the Chairman-cum-Managing Director of Corporation bank. About his conduct, the petitioner have repeatedly making complaint to the authorities including PMO office. While so, the complaint with malice lodged through DGM, Corporation bank to pull down the petitioner's company for winding up.

4. The learned Senior counsel appearing for the petitioner submitted that the final report suffers bias investigation and suppression of material evidence to save the public servant namely the bank officials and the present final report is filed only in respect of the offence under Section 120 B r/w.420 IPC. If the Investigating Agency really satisfied that there was deception at the inception of availing loan and cheating the bank by causing unlawful loss, the final report is to be quashed on the sole ground that the said conclusion is based on the forensic audit conducted behind the back of the petitioner without giving an opportunity to the petitioner.

5. Further, the learned Senior Counsel also contended that the complaint given by the petitioner on 24.06.2015, 02.07.2015 & 12.04.2016 to PMO office totally been suppressed and ignored by the Investigating Officer. The company which was running successfully from 2003 to 2016 become NPA account due to the vindictive attitude of the Chief Managing Director, Corporation bank by reducing its credit rate from CB-2 to CB-4 overnight. The forensic report submitted by the forensic auditor M/s.Delloitte was with a rider that it should not be used in connection with the civil or criminal proceedings. Despite the rider, the report collected behind the back of the accused is relied to file the final report.

6. The learned Special Public Prosecutor (CBI) has filed a detailed statement of objection, wherein narrated the materials collected through investigation and objective satisfaction of the Investigating Officer for filing the final report. The content of the objection capsulized in paragraph 9 of the objection.

> *"The FIR was registered as the complaint lodged by erstwhile Corporation Bank disclosed cognizable offence. Investigation revealed that the accused/ petitioner has availed credit facilities fraudulently*

by submitting false and fabricated documents, financial statements. The petitioner has opened accommodative LCs, submitted fake invoices as genuine, without any underlying business transaction and thereby cheated the lender bank. The petitioner is also the Director of M/s. SLO Buildcon Pvt. Ltd., and M/s.Aran Steels Pvt. Ltd., to which the loan proceeds were diverted and used for other than sanctioned purposes such as purchase of properties, thereby causing wrongful loss to the bank and corresponding wrongful gain to themselves.

The petitioner purchased the property in the name Smt. Mamta Sharma wife of Shri. Arun Kumar Sharma (A-3) vide RSD no.710/2010 for Rs.75 lacs., and the payment was made from the Loan Account of SLO Industries Ltd. the registered sale deed is cited as LD-No-756 in the Charge sheet.

The petitioner also purchased the property in the name of M/s Aran Steels Private Limited through its Director Shri. Anil Kumar Ojha (A-2) vide RSD No.5273/2012 for Rs.4.00 Cr. and payment was made from the Loan Account SLO Industries Ltd. the *registered sale deed is cited as LD-No- 652 in the Charge sheet.*

The petitioner also purchased as many as 38 more properties in the name of SLO Industries Ltd. by diverting the funds from the Cash Credit account of SLO Industries Ltd maintained with Corporation Bank Kellys Branch, Chennai. The Registered Sale Deeds are at maintained from Serial No 1-40 in the Charge sheet. During the course of Investigation certified copies of the registered sale deeds were collected from the Sub-Registrar Office Neelangarai and Gummidipoondi, Chennai. Shri. Annantha Kumar T (PW- 73) Junior Assistant at SRO Neelangarai and Shri. C Senthil Kumar In charge, SRO Gummidipoondi, Chennai (PW-74) were examined to prove the certified copies of registered sale deeds which show the ownership of SLO Industries.

The Petitioner opened a Current Account Number - 000905027553 with ICICI Bank Nungambakkam Branch, Chennai in the name of SLO Industries Ltd. and fraudulently received an amount of

Rs.11,15,70,862/- from Sri Sai Enterprises/ Debtor of the company against the sanctioned terms. The statement of the Account of ICICI Bank is mentioned at (D- 728) charge sheet and Shri. Surendran J., Manager of ICICI Bank Nugambakkam Branch (PW-64) has been examined to prove the above transaction which proves diversion of funds.

Thus, Charge sheet has been filed against the Petitioner and others under sections u/s 120-B r/w 420 IPC and substantive offences thereof before the Hon'ble Additional Chief Metropolitan Magistrate Court, Egmore."

7. The learned Special Public Prosecutor (CBI) also submitted that the final report is not based on the forensic audit report submitted by M/s.Delloitte, but based on the independent investigation conducted by CBI.

8. This Court, after going through the documents relied by the prosecution filed along with final report and the nature of offence narrated, was of the view that without the active support and connivance of the bank officials, the alleged cheating would not have occurred, therefore, directed the learned

Special Public Prosecutor (CBI) to find out why certain area which ought to have investigated particularly, fabrication of false documents and using it as genuine not been probed and why the final report silent about the role of the bank officials, who allowed the 1st accused company to make false documents, then receiving it as genuine in the loan transaction.

9. In response, the learned Special Public Prosecutor (CBI) today, circulated a communication stating that already further investigation is carried on in this matter and out of 7 public servants, Section 17-A of P.C Act, permission been obtained for 3 public servants.

10. Since further investigation been taken up and from the statement made by the learned Special Public Prosecutor (CBI) some of the public servants also going to be arrayed as accused, this Court finds no any reason to entertain this Criminal Original Petition.

11. On completion of further investigation, the entire facts in this case will be placed for appreciation of the Court, then the petitioner will have the opportunity to defend.

12. Hence this Criminal Original Petition is disposed of with the following directions:

(i) The respondent police shall complete further investigation within a period of 6 months from today.

(ii) Section 17-A (b) sanction is not required, if the allegations not relatable with any recommendation or decision taken by the public servant in discharge of duty.

(iii) In the course of investigation, if the petitioner come forward to make any statement, same may be recorded in accordance with law.

Consequently, the connected Criminal Miscellaneous Petitions are closed.

02.08.2023

Internet : Yes/No
Index : Yes/No
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To,

1.The Additional Chief Metropolitan Magistrate Court, Egmore, Chennai.

2. The Inspector of Police, Central Bureau Investigation,
BSFB, Bangalore, Banking Securities Fraud Branch,
No.36, Bellary Road, Ganganagar, Bangalore-560 032.

3. The Assistant General Manager,
Union Bank of India, (Formerly the Corporation Bank),
No.12, Omes Road, P.B.No.113,
Kilpauk, Chennai-600 010.

4.The Pubic Prosecutor,
High Court of Madras, Chennai.

Dr.G.JAYACHANDRAN, J.

rpl

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