IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.01.2023
Pronounced on	14.02.2023

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.O.P.No.19703 of 2021
and
Crl.MP.No.10753 of 2021

Anish Jai ... Petitioner/Accused No.1

Vs.

1.The State rep.by
The Inspector of Police,
District Crime Branch,
Kancheepuram Police Station,
Kancheepuram. ...1st Respondent/Complainant

2.K.G.Selvaganesan
Manager,
HDFC Bank,
Bengaluru Highway Road,
Sriperumbudur,
Kancheepuram. ... 2nd Respondent/Defacto-Complainant

Prayer:- This Criminal Revision Petition filed under Section 482 of Cr.P.C., praying to call for records relating to the First Information Report No.13 of 2021, dated 14.05.2021, on the file of the 1st respondent Police Station, Viz., The District Crime Branch, Kancheepuram and quash the same.

For Petitioner : Mr.K.Shyam Srinivasan

For Respondent-1 : Mr.A.Gopinath,
Government Advocate (crl.side)
For Respondent-2 :C.Senapathi

ORDER

This Criminal Original Petition has been preferred to quash the the proceedings in FIR in Cr.No.13 of 2021 on the file of the first respondent police.

2.The petitioner is the first accused in the above complaint in FIR in Cr.No.13/2021 dated 14.05.21 registered for the offences under Sections 465, 468, 471 and 420 r/w 34 IPC.

3.The case of the prosecution is that the defacto complainant is the manager of the HDFC Bank, Sriperumbudur branch, Kanchipuram. He has given a complaint by stating that the petitioner is a customer of that branch and he is holding a bank account there for his company by name 'Yardstick Entertainment (P) Ltd.,'. A company by name 'The Alufit India Pvt Ltd' Bangalore has issued a cheque for Rs.3,90,00,000/- in favour of the petitioner's company and that has been transacted through the defacto complainant's bank and the amount has been credited in the petitioner's company account. Subsequently the petitioner had transferred a sum of Rs.3,40,00,000/- through RTGS to an another account in AXIS bank vide account No.920020064756414. The petitioner had also transferred another sum of Rs.10,00,000/- through RTGS to his another company by name 'ASCENTEC Info Solutions Indian Bank' in account No.6150256059. But it was found out later that the cheque was a dubious one and the original was with 'The Alufit India Pvt. Ltd' itself. Immediately thereafter the transactions were stopped by the bank authorities. The accounts at Indian Bank and AXIS bank were also blocked. Even before that the account was blocked and a sum of Rs.50,00,000/-from AXIS bank was transferred to the account No.38505500726 lying with ICICI bank, Velachery Branch. From the said bank a sum of Rs.22,00,000/- was transferred to the account at Syndicate Bank. It was informed to the petitioner that the cheque presented by him was a fake cheque. Based on this complaint, a case has been registered in Cr.No.13/2021 on the file of the first respondent police for the above said offences.

4.Heard the submissions made by either side learned counsel and perused the materials available on record.

5.The learned counsel for the petitioner submitted that the petitioner is one of the directors of M/S.Yardstick Entertainment (P) Ltd; the second and third accused are the imperia relationship manager and operation manager of the HDFC Bank, Sriperumbudur Branch; one Arjun Kumar is also a partner in the first accused company; due to Covid-19 the company was not able to generate profit and hence, he was searching for an investor for running the company; one investor by name M.Gowtham Ananth was introduced to the petitioner/first accused through another friend Saran @ Saranraj; the said Gowtham Ananth has expressed his willingness to buy the company of the petitioner for a total consideration of Rs.10 Crores; he also entered into a partnership agreement dated 11.05.2021 with the petitioner and out of Rs.10 Crores, it was agreed that Rs.5 Crores was used for buying out shares and further Rs.5 Crores will be used for running the company and the profit would be returned to Gowtham Ananth within a period of two years.

5.1.After agreeing to the said terms, Gowtham Ananth said he would make an advance payment of Rs.3,00,000/-; however, he did not pay any advance amount, the petitioner approached Gowtham Ananth and he had issued a cheque for Rs.10,00,000/- drawn from AXIS bank pertaining to his

TMG Enterprises Account No.920020064756414; when the cheque was presented by the petitioner, it was returned for the reason that the name of the recipient was not correct; when the same was informed to Gowtham Ananth, he assured that he would set right everything after he returned from his business tour; the petitioner did not want to proceed with the proposal which he had with Gowtham Ananth and informed it to him; immediately, Gowtham Ananth sent a photo copy of the cheque bearing No.006098 of 'The Alufit India Pvt. Ltd' for a sum of Rs.3,90,00,000/-.

5.2. It is stated that the cheque was received by Gowtham Ananth from one Ethiraj, so he endorsed the cheque in favour of the petitioner and it was sent for collection by Gowtham Ananth himself, the first petitioner did not receive the cheque physically nor had he presented it for collection with the bank; when the first petitioner spoke to the petitioners 2 and 3, they assured that they themselves would get the cheque from Gowtham Ananth and do the needful. By stating so, a copy of the cheque was sent through whataspp and even before the petitioner could reach the bank, the petitioners 2 and 3 had deposited the cheque and transferred the amount into the account of the petitioner's company; hence, the petitioner did not know that the cheque was a bogus one.

5.3.It is the second petitioner who credited a sum of Rs.3,40,00,000/- into the account of Gowtham Ananth, in the name of his company 'TMG Enterprises' company's account No.920020064756414 and that was done without the presence of the petitioner. Even the rest of the transaction was also not done by the petitioner. The petitioner received a call from the second respondent's bank and he was told that the cheque which was presented for collection was a bogus one and he came to know that the original cheque is in the custody of 'the Alufit India Pvt. Ltd'. The respondent bank demanded the petitioner to deposit the money back to the said account holder and subsequently the petitioner's account was also frozen; immediately, the petitioner went to the second respondent's bank and gave a cheque for Rs.10,00,000/- drawn from his 'ASCENTEC Info Solutions Indian Bank' for the purpose of transferring the same to 'The Alufit India Pvt. Ltd' itself; on the same day evening the second respondent bank had demanded the petitioner to sign the deposit challan to transfer Rs.3,90,00,000/- to the account of 'The Alufit India Pvt. Ltd'. The petitioner simply signed by confirming with the bankers that it should not create any adverse consequences against him.

5.4. When the matter was informed to Gowtham Anand, he assured that he would revert the amount back to the account of the petitioner. Gowtham Anand himself issued a letter to the Manager of the AXIS Bank for reverting a sum of Rs.3,40,00,000/- received from the petitioner's account. It was told by Gowtham Anand that the cheque was issued to him by name Ethiraj. The petitioner has got no knowledge about the fraud committed by anyone in this regard and the petitioner himself is a victim. Gowtham Anand who had issued the fake cheque has not been arrayed as an accused; instead the petitioner who is an innocent person, has been roped in this case; immediately after coming to know that the cheque was a bogus one, the petitioner co-operated with the bank officials. Since the petitioner did not commit any offence, the FIR should be quashed as against the petitioner.

6.The learned Government Advocate (crl.side) appearing for the first respondent submitted that the investigation is under progress; the petitioner had given a forged cheque for a sum of Rs. 3,90,00,000/- to the manager of HDFC Bank for enhancement; although, the manager had adviced the petitioner to produce cheque leaves for encashment; he had managed to send a copy of the cheque leaf thorough whatsappp; the petitioner made various transactions immediately after the cheque was encashed and that also casts suspicion on the conduct of the petitioner.

6.1.The learned Government Advocate (crl.side) appearing for the first respondent further submitted that the said Gowtham Anand has stated clearly that he received a forged cheque from his partner and gave it to the petitioner for encashment; he asked the petitioner to deduct a sum of Rs.50,00,000/- and transfer the balance of Rs.3,40,00,000/- to his main bank and that it was so done by the petitioner. The original cheque belongs to one Pankath keswani drawn infavour of the proprietor of ' the Alufit India Pvt Ltd'; since there is a conspiracy between the bank employees along with private persons like the petitioner to commit a bank fraud, more facts need to be unearthed. Due to the timely detection of the foul played by the accused, the subsequent transactions were stopped and the amount lying in the petitioner's account was blocked. At this stage itself, it cannot be presumed that the petitioner is innocent.

7. By using the image of a cheque, fake cheque has been created and with that various transactions were effected. The original cheque lies with its owner, 'Alufit India Pvt Ltd". The said cheque was not given to the Gowtham Anand directly. As per the statement of the petitioner, Gowtham Anand has issued the said cheque as received from his partner Ethiraj and he advised the petitioner to encash the cheque by deducting Rs.50,00,000/- for himself and send him back the remaining Rs.3,40,00,000/- to the account of company belonging to Gowtham Anand. Even before the petitioner had issued his cheque pertaining to his HDFC Bank account, the impugned cheque was encashed.

8. Subsequent transactions have been done through RTGS instantly and Gowtham Anand has also got Rs.3,40,00,000/- towards his account. The petitioner had taken Rs.50,00,000/- for himself by transferring the said sum to various accounts and once the fakeness of the cheque was detected, the petitioner gave a letter to the bank. There is no loss of money and swift action taken by the bank authorities had saved the money. But the occurrence would show that a fake cheque can be used to amass money in Crores. The original cheque remained under the custody of its rightful owner. Without the participation of the bank authorities who were incharge of the affairs of the bank at relevant point of time, the encashment through a fake cheque can not be materialised.

9.Though the petitioner claims that he is innocent only investigation can reveal whether he had also played an active role by being a partner in crime. After the completion of the investigation, if no material is available against this petitioner, he is at liberty to file a petition to quash the proceedings. At the threshold stage itself, the Court cannot make any presumption about the facts which is still under investigation. Since the fraud has been committed at a huge level and the subsequent transactions have been done so quickly after the cheque was encashed, various doubts about the conduct, circumstances, involvements of the persons need to be found out. Only if a detailed investigation is allowed to go, the real culprits behind this kind of transactions and their *modus operandi* can be unearthed.

10.Since the bogus cheque was issued to the petitioner and it was collected through the account of the petitioner, it is essential for the investigative agency to keep the petitioner also under suspicion. By invoking the powers of this Court under Sec. 482 Cr.PC, this Court cannot expect to conduct a roving enquiry or to conduct a mini trial at the threshold stage itself. It is a kind of a case in which the investigation ought to have been completed by this time.

11. In view of the sensitivity of the matter and the magnitude of the amount involved, I feel it is appropriate to direct the first respondent investigating agency to complete the investigation within a period of three months and file the final report. Since it is not a case which does not have any materials to make out a case against this petitioner at this stage. I am not convinced to quash the proceedings against the petitioner.

With the above direction this Criminal Original Petition is **disposed** of.

14.02.2023

Index : Yes/No
Internet : Yes/No
Speaking/ Non Speaking.
Netural: Yes /No
jrs

R.N.MANJULA, J.
jrs

To
1.The Inspector of Police,
District Crime Branch,
Kancheepuram Police Station,
Kancheepuram.

2.The Public Prosecutor,
High Court of Madras.

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