



WEB COPY



Crl.O.P.No.26530 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.26530 of 2022

Indirakumari

... Petitioner

Vs.

1.The State rep. by
The Sub-Inspector of Police,
Bank Fraud Wing, Central Crime Branch,
Vepery, Chennai – 600 007.

2.Mahendran
Chief Manager, Punjab National Bank,
Circle Sastra Centre, Chennai South,
PNB Towers, Royapettah,
Chennai – 600 114.

... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records culminating in C.C.No.2853 of 2022 as against the petitioner on the file of the Chief Metropolitan Magistrate Court at Egmore, Chennai and quash the same.

For Petitioner : Mr.N.Naren Gautam

For R1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For R2 : No appearance



Crl.O.P.No.26530 of 2022

ORDER

WEB COPY

The petitioner/A4 in C.C.No.2853 of 2022 facing trial for the offence under Sections 120(b), 420, 465, 467, 468 and 471 of IPC along with six others has filed this quash petition.

2.The gist of the case is that one Paranthaman had owned a property of 2775 sq.ft. at Old No.26, New No.81, Raju Street, Lakshmipuram, Vannanthurai, Thiruvanmiyur Village, Chennai-600 041. The petitioner/A4 is the Power of Attorney of the said Paranthaman. The petitioner's husband Balan [Late] and A2/Muralidharan are partners in M/s.Rare Realtors and they were promoting flats on joint venture basis. M/s.Rare Realtors had entered into an agreement with the said Parandhaman for joint development of the said property in which stilt plus two floors, each floor with three units totally six units to be constructed. A2 to A4 in this case had jointly constructed and sold the property to the purchasers and thereafter, there is no UDS left. A2 retained 161 sq.ft. of UDS for lumber room. A2 taking advantage of the same in collusion with A3 and A4 conspired with Bank officials and others and created a sale deed as though to construct a building



Crl.O.P.No.26530 of 2022

with 815 sq.ft. using 161 UDS of land sale deed had been executed on 02.02.2017 between A2 and A3 as purchaser and A4 as vendor. Thereafter, all the accused have joined together, conspired and using this document had approached the Punjab National Bank in the name of M/s.Sri Nivas Construction/A1, created a building plan for 815 sq.ft. of land and using the same had availed overdraft facility to A1 Company to the tune of Rs.42.78 lakhs. Initially for few months EMI was paid and thereafter they failed to make the payment and hence, loan become NPA. During the enquiry, forgery committed by all the accused in conspiracy with each other and cheating the Bank using the forged document to the tune of Rs.42.78 lakhs revealed. Hence, the Bank lodged a complaint and also initiated SARFAESI proceedings. Thereafter, case was registered, investigation completed and charge sheet filed listing 21 witnesses and documents.

3.The contention of the petitioner is that A1 is the Company, A2 and A3 are the Directors and the petitioner/A4 acted as Power Agent of one Paranthaman, who is the owner of the property and executed sale deeds. The petitioner's husband Late.Balan along with A2 was running a Company



Crl.O.P.No.26530 of 2022

in the name of M/s.Rare Realtors and after the demise of her husband, the petitioner is not aware about the business of M/s.Rare Realtors. The petitioner acted only as a Power of Attorney for Paranthaman and she has got no other business relationship with A2 or with any of the accused. The petitioner being a elderly lady has been falsely implicated for the reason that she had entered into a sale deed with A2 and A3 and this sale deed has been used by A2 and A3 to obtain a overdraft facility from the defacto complainant Bank and thereafter, they had defaulted in repayment is also not known to the petitioner. The petitioner is not a beneficiary to the overdraft availed by A2 and A3 and the respondent police during investigation could not find any trace of money leading to the petitioner. The petitioner after the death of her husband on 28.02.2017, has nothing to do with A2 and A3 and the petitioner has been falsely implicated in this case. In fact A2 in his confession had admitted that the petitioner is not privy to any of the transactions with the defacto complainant Bank and in fact, he gives the clean chit about the petitioner. In view of the same, there is no material against the petitioner and hence, filed the present petition.



Crl.O.P.No.26530 of 2022

4.Learned Additional Public Prosecutor submits that in this case the petitioner had acted in active connivance with other accused, A2 and A3 are known to the petitioner. In fact, A2 and the petitioner's husband Late.Balan were partners in M/s.Rare Realtors and they have been doing flat promotion business. Initially six flats as per the approved plan was constructed by M/s.Rare Realtors and all the six flats were sold to the prospective buyers and the transaction of the petitioner as Power of Attorney of Paranthaman, who is the original land owner, is complete and thereafter, the Power of Attorney lost its significance. Taking advantage of the power of Attorney, a forged document has been created as though A1 was formed by A2 and A3 and 161 sq.ft. of UDS which is for the security room and common area which was retained by A2 has been used to show that 815 sq.ft. of building is to be constructed by A2 and A3, for which the petitioner/A4 had connived and executed the sale deed using the forged document. He would submit that A1 to A3 availed overdraft facility from the defacto complainant Bank to an extent of Rs.42.78 lakhs, to show some genuineness initially two EMI payments were made and thereafter, they failed to make any payment. The Bank thereafter declared the loan as NPA, made inspection, re-visited



the document and found that the Surveyor, Bank Manager and all other accused colluded with each other, created forged documents and cheated the Bank to the tune of Rs.42.78 lakhs. Hence, the Bank lodged a criminal complaint as well as taken steps to recover the money under SARFAESI Act. He further submits that on the complaint of the Bank, FIR registered, investigation conducted and on completion of investigation, found the active connivance of the petitioner along with other accused, filed the final report listing L.W.1 to L.W.21 and documents. He further submitted that in this case already three witnesses, P.W.1 to P.W.3 have been examined and rest of the witnesses to be examined within a short period. The petitioner to put a spokes in the trial and to delay the trial has filed this petition. He would further submit that the petitioner's contentions are disputed which has to be necessarily decided during trial and not in the quash petition. Hence, he strongly opposes the petition.

5.Considering the submissions made and on perusal of the materials, it is seen that in this case, charge sheet has already been filed, trial has commenced and the evidence of P.W.1 to P.W.3 recorded. The contention



Crl.O.P.No.26530 of 2022

of the petitioner are disputed. The petitioner claiming ignorance of creation of forged document and using the same document by other accused in obtaining overdraft facility, misappropriating the same and cheating the Bank is a matter for trial which is a disputed fact which cannot be decided in a quash petition. In view of the same, this Court is not inclined to quash the proceedings in C.C.No.2853 of 2022.

6. Accordingly, the Criminal Original Petition is dismissed making it clear that the observations made herein are only for the disposal of the above petition. The Trial Court to decide the case on its own merits on the materials produced before it and complete the trial preferably within a period of six months from the date of receipt of a copy of this order.

19.06.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
cse



WEB COPY



CrI.O.P.No.26530 of 2022

M.NIRMAL KUMAR, J.

cse

To

- 1.The Sub-Inspector of Police,
Bank Fraud Wing, Central Crime Branch,
Vepery, Chennai – 600 007.
- 2.The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.26530 of 2022

19.06.2023