IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :30.11.2023	Pronounced on:07.12.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.22088, 22098, 22099 and 22097 of 2023
and
Crl.M.P.Nos.15351, 15353, 15355, 15356, 15338,
15354, 15336 &15352 of 2023

Crl.O.P.No.22088 of 2023:

Axis Bank Limited,
represented by its
Authorised Representatives
Mr.Ramachandra Gupta Vinnakota
"Axis House"
C-2, Wadia International Centre
Pandurang Budhikar Marg
Worli, Mambai 400 025. .. Petitioner/Accused No.2

/versus/

1.The State,
Represented by the Inspector of Police,
Bank Fraud Investigation Wing Team-31,
Central Crime Branch,
Vepery, Chennai 600 007. ..Respondent No.1/Complainant

2.Mr.Abdul Salam .. Respondent No.2/
Defacto complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to Calendar Case No.4831 of 2023 pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, and quash the same qua the petitioner bank/accused No.2.

For Petitioner :Mr.B.Kumar, Senior Counsel for
M/s K.Sumathi

For Respondents :Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side) for R1

Mr.Satish Praasaran, Senior Counsel for
Asst.by Mr.M.T.Arunan and
Mr.M.A.Aruneshee for R2

<u>Crl.O.P.No.22097 of 2023</u>

Bharath Gunalan .. Petitioner/Accused No.4

/versus/

1.The State,
Represented by the Inspector of Police,
Bank Fraud Investigation Wing Team-31,
Central Crime Branch,
Vepery, Chennai 600 007. .. Respondent No.1/
Complainant

2.Mr.Abdul Salam .. Respondent No.2/Defacto Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to Calendar Case No.4831 of 2023 pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai and quash the same qua the petitioner/accused No.4.

For Petitioner :Mr.B.Kumar, Senior Counsel for M/s K.Sumathi

For Respondents :Mr.Leonard Arul Joseph Selvam Government Advocate (Crl.Side) for R1

Mr.Satish Praasaran, Senior Counsel for Asst.by Mr.M.T.Arunan and Mr.M.A.Aruneshee for R2

Crl.O.P.No.22098 of 2023

Ramesh .. Petitioner/Accused No.3

/versus/

1.The State,
Represented by the Inspector of Police,
Bank Fraud Investigation Wing Team-31,
Central Crime Branch, Vepery, Chennai 600 007. .. Respondent No.1/ Complainant

2.Mr.Abdul Salam .. Respondent No.2/Defacto Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to Calendar Case No.4831 of 2023 pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai and quash the same qua the petitioner/accused No.3.

For Petitioner :Mr.B.Kumar, Senior Counsel for
M/s K.Sumathi
For Respondents :Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side) for R1

Mr.Satish Praasaran, Senior Counsel for
Asst.by Mr.M.T.Arunan and
Mr.M.A.Aruneshee for R2

Crl.O.P.No.22099 of 2023

Arunkumar .. Petitioner/Accused No.5

/versus/

1.The State,
Represented by the Inspector of Police,
Bank Fraud Investigation Wing Team-31,
Central Crime Branch,
Vepery, Chennai 600 007. .. Respondent No.1/
Complainant

2.Mr.Abdul Salam .. Respondent No.2/Defacto
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to Calendar Case No.4831 of 2023 pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai and quash the same qua the petitioner/accused No.5.

For Petitioner :Mr.B.Kumar, Senior Counsel for M/s K.Sumathi

For Respondents :Mr.Leonard Arul Joseph Selvam Government Advocate (Crl.Side) for R1

Mr.Satish Praasaran, Senior Counsel for Asst.by Mr.M.T.Arunan and Mr.M.A.Aruneshee for R2

COMMON ORDER

Based on information given by one Mr.Abdul Salam, the complaint dated 31/03/2016 came to be registered in Crime No:67 of 2018 on 19/02/2018.

2. According to the complainant, in an existing company by name M/s R.R.Infra Zenith Pvt Ltd floated by one Ramamurthy (A-1), he got himself inducted as one of the Directors. The company opened the current

Account in Axis Bank, Periyar Nagar Branch. As per Board Resolution dated 11/03/2014, the mode of operation of this current account was made by Ramamurthy. Later, from Axis Bank Corporate Banking Branch, the company availed cash credit loan and as per the Board Resolution dated 07.05.2014, the mode of operation of the cash credit account was made as "all by jointly". Loan of Rs.3,00,00,000/- was sanctioned on 12/05/ 2014.

3. It is alleged in the complaint that contrary to the Board Resolution and the instruction to the bank regarding Mode of operation of the cash credit Account, loan amount was transferred to the current account of M/s R.R.Infra Zenith Private Limited unilaterally through single signature by Ramamurthy in connivence with the bank officials. By the time siphoning of fund came to the knowledge of the complainant, except Rs.50 lakhs drawn jointly by him and Ramamurthy, rest of the money about Rs.1,80,00,000/- has been transferred to the account of M/s RR Enterprises, a proprietary concern of Ramamurthy or to the current account of M/s RR Infra Zenith Pvt. Ltd in which Ramamurthy the sole signature. On

completion of investigation the first respondent police filed Final report under Section 173 (2) of CrPC against Ramamurthy and four officials of Axis bank for offences under Sections 406 r/w 34 IPC and 406 r/w 109 r/w 34 IPC.

4. The quash petitions are filed by the Axis Bank and the bank officials, who are arrayed as Accused 2 to 4 on the ground that it is a malicious prosecution devised by the borrower to cheat the bank without repaying the loan availed from the bank by the Company. The second respondent has given his house property as collateral security for the loan. During discharge of their duty, it is alleged that the petitioners allowed the first accused Ramamurthy unilaterally to withdraw the money without the signature of the complainant, contrary to the Board Resolution.

5. It is stated that while the entire records relating to cash credit loan and its operations were controlled by the Head Office at Mumbai, with ulterior motive to harass the bank officials, who had taken steps for recovery

of the debt complaint filed even without mentioning the designations of the petitioners, they hold in the Axis Bank, to mislead the Court.

6. Both the defacto complainant as well as the investigation agency had filed their respective counter justifying the launching of prosecution against the bank officials. According to the counter filed by the defacto complainant, these petitioners were fully aware of the creation and operation of these accounts and the misappropriation of funds, but failed to intervene, suggesting a deliberate collusion with the prime accused Ramamurthy. He alleges that the proposal to substitute the collateral security was based on the promise to relieve him and his property from liability, but he was mislead and the loan account was unilaterally renewed in gross violation of banking practice. The Bank instead of taking action against the erred officials, started protecting them. Hence, he was forced to give complaint against the petitioners for colluding with A-1. Without any Board Resolution which would have allowed Ramamurthy (first accused) to singularly operate the cash credit loan account, these petitioners unlawfully

transferred a total sum of Rs.1,78,48,000/- to his M/s RR Enterprises Accounts, despite the agreed mode of operation was “jointly by all”.

7. The specific case of the defacto complainant is that, the CC loan Account was opened on 12/05/2014 following the Board Resolution. Mode of Operation was frequently changed leading to unauthorised withdrawal by the first accused. Despite his objection via a letter/e mail dated 13/10/2014 and email dated 20/01/2015 indicating his wish to retract his collateral security due to the unauthorised withdrawal, the bank did not halt the single signature transactions.

8. In the counter filed by the Investigation Agency through its Inspector, it is stated that the cash Credit Loan Account was opened on 12/05/2014 with mode of operation mentioned as, “as per Board resolution” instead of “all by jointly”. On 19/08/2014, the account opening form, board resolution and the signatures were uploaded with the remarks of mode of operation as “all by jointly”. On the same day, the mode of operation was

again modified from "all by jointly" to "any one Director" at Central Processing Unit at Mumbai. Thereafter, on 10/09/2014, the mode of operation was modified from " any one Director" to " All By Jointly" at Corporate Banking Branch at Chennai. Due to this, around Rs.2.5 crores was wirthdrawn through cheque drawn in single singarture by Ramamurthy (A-1).

9. Thus, from the counters it appears that the mode of operation changed from "all by jointly" to "any one director" at Central Processing Unit Mumbai and not at Corporate Banking Branch Mumbai. Following the protest letter of the defacto complainant, the Corporate Banking Branch at Chennai had stopped honouring cheque drawn by single director.

10. The defacto complainant had initiated criminal complaint on 19/02/2018 after 3 years of occurrence. The delay gains significance in view of the fact that the company account was declared as NPA on 22/11/2016. The civil proceedings initiated by the defacto complainant in

C.S.No.821/2017 was rejected and the complaint to the Banking Ombustman was closed vide order dated 06/02/2017 with an observation that the complaint made to avoid legal action against the complainant and his property.

11. A pertinent point is raised by these petitioners that how they can be held criminally liable for an error or omission whatsoever committed at Head Office at Mumbai and frequent change in mode of operation by the account holder. The complainant who was privy to all these transaction had belatedly sought for criminal prosecution after all his attempt to fix these petitioners for taking recovery action failed.

12. The records relied on by either side indicates that the money advanced as loan to the Company which is run by the defacto complainant and the first accused was transferred within the company current account or to the other company run by A-1. The money was not taken away by any third party or the petitioners herein. The account opening form, board

resolutions and the candid silence of the defacto complainant for operation by single director till all the loan amount withdrawn only show that after misleading the bank officials by frequently changing the mode of operation, the first accused and the defacto complainant both colluded and accuse the bank officials so as to avoid the recovery process. As per the board resolution, the current account of M/s RR Infra Zenith Private Limited is to be operated only by Ramamurthy (A1). Therefore, when cash credit loan sanctioned and CC account opened and the bank was informed the mode of operation will be as per Board Resolution, the Head Office had presumable considered the Board Resolution passed in respect of current account. The Board Resolution dated 07.05.2014 regarding the mode of operation of CC Account as "all by jointly" came to be recorded later by the Head Office at Mumbai, for which the Bank or its officers cannot be held criminally liable.

13. It is a civil transaction between the borrower and the Bank, four years after initiating recovery process, the criminal complaint been lodged. Even according to the complaint, the beneficiary is the Co-Director of the

company who was permitted to operate the account and not the bank officials who had been handling the loan. Hence in view of this court, this criminal complaint is clear abuse of law, converting a civil transaction by a defaulter to the bank as a criminal complaint against the bank officials who had taken action for recovery of the loan.

14. For the above said reasons, **these Criminal Original Petitions are allowed.** The Criminal Case in C.C.No.4831/2023 stands quashed as against the accused 2 to 5. The trial court shall proceed with the trial as against A-1, who had allegedly withdrawn the money without the knowledge and consent of the co-director / defacto complainant. Consequently, connected Miscellaneous Petitions are closed.

07.12.2023

Index:yes/no
Neutral Citation:yes/no
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To:

1.The Chief Metropolitan Magistrate, Egmore, Chennai.

2.The Inspector of Police, Bank Fraud Investigation Wing Team-31,
Central Crime Branch, Vepery, Chennai 600 007.

3.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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delivery Common Order made in
Crl.O.P.Nos.22088, 22098, 22099
and 22097 of 2023
& Crl.M.P.Nos.15351, 15353, 15355,
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