IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.01.2023**

CORAM:

THE HONOURABLE MR. JUSTICE **G.CHANDRASEKHARAN**

Crl.O.P.No.31069 of 2022
and
Crl.M.P.No.18996 of 2022

1.S.K.Mohammed Farook
2.Shakilabanu
3.Sheik Mohammed ... Petitioners

Vs.

1.The State rep by,
Inspector of Police,
Central Crime Branch
At Coimbatore.

2.M/s. Tamilnadu Mercantile Bank,
Rep. by its Chief Manager, P.Neethirajan,
Nanjappa Road Branch,
Coimbatore. ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the FIR in Crime No.44 of 2021 on the file of the 1st respondent Inspector of Police, Central Crime Branch, Coimbatore and quash the same.

For Petitioner : Mr.F.Sebastin

For Respondent No.1 : Mr.S.Santhosh Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition is filed to call for the records relating to the FIR in Crime No.44 of 2021, on the file of the first respondent and quash the same.

2.The learned counsel for the petitioners submitted that the petitioners obtained a loan from the second respondent Bank. For the purpose of obtaining loan, they mortgaged the property of petitioners worth about 15crores with the second respondent Bank. The second respondent Bank had also filed proceedings before the DRT, Coimbatore, for recovery of amount. Pending suit, a case in crime No.44 of 2021, was registered for the offences under Sections 120 B, 409, 420, 465, 468 & 471 IPC on the file of the first respondent. When civil proceedings for recovery of money is pending in DRT, lodging a criminal complaint is nothing but harassment against the petitioners. Therefore the petition.

3.In reply, the learned Government Advocate (Crl.Side) submitted that petitioners 1 and 2, who are the fourth and fifth accused are the partners of first and second accused firm. The first accused borrowed a sum of Rs.6crores and second accused borrowed a sum of Rs.2crores from the second respondent Bank. They have not returned the amount. The loan borrowed was utilized for a different purpose than for the purpose, for which, the loan was sanctioned. The third petitioner/ninth accused is the son of petitioners 1 and 2. A sum of Rs.77,00,000/- was transfered to the account of third petitioner from the loan amount. Accused 7 and 14 are the beneficiaries of this cheating to the tune of Rs.8crores. He further submitted that the investigation in this case is pending and prayed for dismissal of this petition.

4.Considered the rival submissions and perused the records.

5.It is seen from the FIR that the accused 4 and 5 as partners of accused 1 and 2, approached the second respondent Bank for loan to develop their business. They have shown their properties in S.No.685, Jadayampalayam village, Mettupalayam, Coimbatore, to an extent of 2.51 acres, cold storage building of the third accused in D.No. 5/181 A, along with the machineries available there, as security for loan. Accused 4 and 5 were partners of M/s.K.S.K.Cold Storage. After following the procedures, on 26.04.2018, a sum of Rs.200 lakhs was given as loan to the second accused. Third accused signed as a guarantor for this loan. The accused also applied for enhancement of loan, taking advantage of the Covid-19 lockdown. The accused did not produce the loan documents and other documents with the Bank. When the Bank officials visited the Godown on 16.06.2020, they found that the stock were removed and the Godown was kept vacant. The third accused's cold storage building was not functioning for several months. When the accused had questioned about this, they protracted the matter and refused to permit the Bank Auditors for auditing the books of accounts of the accused. When the Forensic Audit team visited the Godown on 07.12.2020, it was found locked. When the Forensic Audit team visited again on 09.12.2020, except Watchman, there was no one available and the Watchman informed that there is no stock stored in the Godown and the Godown is not functioning. The enquiry revealed that the accused in connivance with the sixth accused, who is an Auditor, created false stock report for the year 2018-19 and obtained loan from the Bank. The loan amount was not properly invested for the business purpose. Proper account books were not produced. Accounts are improperly maintained. All the accused in connivance and conspiracy with each other obtained loan from the Bank for the purpose of cheating and not utilized the bank loan amount for business purpose, but used it for different purpose. Therefore, the complaint came to be registered.

6.FIR allegations clearly makes out cognizable offence against the petitioners for proceeding further with the investigation against the petitioners for the offences under Sections 120 B, 409, 420, 465, 468 & 471 IPC. Since the second respondent Bank had initiated proceedings before the DRT, Coimbatore, for recovery of money, it cannot be stated that no criminal prosecution can be launched for the criminal acts committed by the petitioners. The FIR allegations clearly makes out cognizable offence against the petitioners and the allegations in the FIR are to be investigated by the respondent police to file an appropriate final report.

7.In this view of the matter, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

12.01.2023

sli
Internet:Yes
Index:Yes/No
Speaking/Non speaking order

G.CHANDRASEKHARAN, J.
sli

To:

1.The State rep by,
Inspector of Police,
Central Crime Branch
At Coimbatore.

2.M/s. Tamilnadu Mercantile Bank,
Rep. by its Chief Manager, P.Neethirajan,
Nanjappa Road Branch,
Coimbatore.

3.The Public Prosecutor,
High Court of Madras.

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