IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.31399 of 2022
and
Crl.M.P.Nos.19249 & 19250 of 2022

Puneet Sethia (Alias) Puneet ... Petitioner

Vs.

1.The State rep. by
The Inspector of Police,
Central Crime Branch,
Bank Fraud Prevention Wing, Team XXXI,
Vepery, Chennai – 7.
[Crime No.29 of 2010]

2.Mr.Suyamburaja
The Branch Manager,
State Bank of India
[Previously State Bank of Mysore]
Whites Road Branch [40226],
Royapettah, Chennai. ... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records pertaining to the final report filed in C.C.No.14340 of 2022 pending on the file of the Metropolitan

Magistrate for exclusive trial of CCB Cases and CBCID Metro Cases at Egmore, Chennai and quash the same.

For Petitioner	:	Mr.J.Ramesh
For R1	:	Mr.A.Gokulakrishnan Additional Public Prosecutor
For R2	:	Mr.R.Suyambu Raja [Party-in-Person]

ORDER

The petitioner/A1 in C.C.No.14340 of 2022 facing trial for the offences under Section 420, 465, 467, 468, 471 r/w. 34 IPC altered to 420, 465, 468, 471 r/w. 34 IPC has filed this petition.

2.The case is that on 22.01.2010 the Assistant General Manager, State Bank of Mysore sent a complaint to the Commissioner of Police stating that the petitioner and another accused availed a mortgage loan to a sum of Rs.12,50,000/-, at that time they furnished certain documents which were later found to be forged. Based on the complaint, a case has been registered and the investigation revealed that during the year 2004, the petitioner/A1 purchased a flat bearing No.F3, 6th Main Road, Sri Iyappa Nagar, Koyambedu, Chennai-600 111 measuring 546 sq.ft., he presented the sale agreement before Union Bank of India, Egmore Branch and availed a loan on 29.07.2004 for a sum of 14,50,000/- and purchased the flat. During the same period, the petitioner's brother Praveen Sethia who is arrayed as A2 approached the State Bank of Mysore which is now amalgamated with State Bank of India with an intention to cheat the bank for the property which has already been mortgaged with Union Bank of India and presented the sale agreement for the same flat and obtained a loan of Rs.12,50,000/-. At the time of availing the loan from the State Bank of Mysore, it was projected that the second accused Praveen Sethia is the owner of Guru Foundation and current account No.784 was opened in Punjab National Bank and by Pay Order No.013590 a sum of Rs.6,50,000/- and by Pay Order No.013638 a sum of Rs.6,00,000/- had been withdrawn and got benefited by the accused. Further, they also produced document No.3131 of 2004 dated 30.07.2004 registered in SRO, Anna Nagar. The loan amount was not repaid, the account become NPA and thereafter, for filing mortgage suit certified copies of Document No.3131 of 2004 obtained and found that the petitioner and his brother have created forged document and using the forged document as genuine and cheated the bank for a sum of Rs.12,81,339/-. Hence, a charge sheet was filed for the offence under Section 420, 465, 468, 468, 471 r/w. 34 IPC arraying the petitioner as A1 and his brother Praveen Sethia as A2 listing the witnesses L.W.1 to L.W.14 and documents. At the time of filing of the charge sheet, it was found that the petitioner's brother A2 had passed away on 15.02.2019.

3.The contention of the petitioner is that the alleged offence is said to have committed in the year 2004, FIR in this case came to be registered in the year 2010 and finally, charge sheet has been filed only on 25.10.2022. There has been inordinate delay in registration of FIR and completion of investigation, but no reason has been given for the same. He would submit that the Trial Court had not condoned the delay, thus affecting the fundamental right of the petitioner under Article 21 of the Constitution of India. He further submitted that the admitted case of the defacto complainant is that before approval of loan and disbursement of loan amount, the panel lawyers of the Bank verified the document, the officials of the Bank scrutinized the document, visited the property and conducted physical verification and thereafter only the loan amount was disbursed. But in this case strangely none of the officials are shown as accused. In such circumstances, the documents submitted and on scrutiny found to be genuine at the time of availing loan in the year 2004 cannot be now projected against the petitioner. Further, the admitted case is that it was A2/Praveen who is the beneficiary of the loan amount, he passed away on 15.02.2019 which is not disputed and even in the final report, it is recorded that A2 had passed away. Hence, the person who produced the forged document could not be identified and in such circumstances, merely on presumption and assumption, the petitioner cannot be prosecuted. He further submitted that the petitioner settled the entire loan amount by way of One Time Settlement, the Bank also acknowledged the settlement and issued a letter dated 21.10.2022. he would further submit that in this case, the second respondent was examined as L.W.6 who confirmed about the full and final settlement and also closure of the loan. In such circumstances, the first respondent police ought to have closed the case but on the other hand, filed the charge sheet against the petitioner and that to, with a considerable amount of delay. Hence, he prayed for quashing the proceedings in C.C.No.14340 of 2022.

4.Learned Additional Public Prosecutor appearing for the first respondent would submit that in this case, a case in Crime No.29 of 2010 was registered on 22.01.2010. During investigation, witnesses were examined. L.W.1 is the Assistant General Manager/defacto complainant who states about lodging of complaint and also about the loan particulars, L.W.2 and L.W.3 are the General Manager and Deputy Manager of State Bank of India who state about processing of loan and detection of forged document. L.W.4 is the Valuer who had given the valuation report to the property. L.W.5 is from State Bank of Mysore who states about the loan, L.W.6 is from State Bank of India who states about the loan being settled under One Time Settlement Scheme, L.W.7 is the Proprietor of Guru Foundation who stated about the petitioner earlier purchasing the property on the loan availed from Union Bank of India, L.W.8 and L.W.9 are from Guru Foundation who corroborated the evidence of L.W.7, L.W.10 and L.W.11 are the witnesses for arrest and confession of A1. L.W.12 to

L.W.14 are the Investigating Officers who state about the investigation of the case,. He would submit that on recording of statement of witnesses and collection of documents, charge sheet has been filed in this case. He further submitted that though there have been One Time Settlement which was confirmed by L.W.6 and loan was repaid to State Bank of Mysore, due to the death of A2, who is the real beneficiary, the presentation of the forged document could not be confirmed. He further submitted that the petitioner is attempting to take benefit on this situation cannot be accepted and the contention of the petitioner to be decided during trial. Hence, he prayed for dismissal of the petition.

5.In reply, the learned counsel for the petitioner submitted that it is the admitted case of the second respondent that the loan amount has been repaid to the satisfaction of the defacto complainant Bank. He would submit that the Investigating Agency admits that it is A2/Praveen Sethia is the person who had benefited on the above transaction. Further, the specific finding is that since A2 is no more the person who created the forged document is unable to be found. He further submitted that the bank loan has been repaid and L.W.6/Bank Official who is present before this Court also confirms the same and the Bank has got no objection for quashing the proceedings.

6.Considering the submissions made and on perusal of the materials, it is seen that the petitioner purchased a flat measuring an extent of 546 sq.ft. bearing No.F3, 6th Main Road, Sri Iyappa Nagar, Koyambedu, Chennai-600111 in the year 2004 by availing loan based on the sale agreement from Union Bank of India. This being so, for the same property second loan has been obtained from State Bank of Mysore which is now amalgamated as State Bank of India and this is an individual transaction between the loaner and the loanee. In this case, the Bank itself lodged a complaint in the year 2010 when it become NPA. Thereafter, it had taken 12 years to file a final report in this case. The specific finding during investigation is that it is A2/Praveen Sethia is the cause for creating forged document and he is the beneficiary. Admittedly, A2 passed away on 15.02.2019 and just because the petitioner is the brother of A2 and property in the name of the petitioner has been used twice, it cannot be gainsaid that it is the petitioner who is behind the entire acts of Praveen Sethia. The commission and omission of a person, it is that person alone who is responsible to be proceeded/prosecuted. Further, L.W.6 appeared before this Court and confirms that the loan amount has been repaid in full satisfaction of the Bank and the Bank is no more inclined to proceed against the petitioner. In this case, there is no forging of public documents or the offence affecting the public at large.

7.In the light of the guidelines given by the Hon'ble Supreme Court reported in ***2017 9 SCC 641-(Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrath),*** and after exercising due caution as advised by the Hon'ble Supreme Court in ***The State of Madhya Pradesh v. Dhruv Gurjar and Another*** reported in ***(2019) 2 MLJ Crl 10)***, this Court in exercise of its jurisdiction under Section 482 Cr.P.C., is inclined to quash the case in C.C.No.14340 of 2022 pending on the file of the Metropolitan Magistrate for exclusive trial of CCB Cases and CBCID Metro Cases at Egmore, Chennai.

8.In view of the above, the case in C.C.No.14340 of 2022 pending on the file of the Metropolitan Magistrate for exclusive trial of CCB Cases and CBCID Metro Cases at Egmore, Chennai is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

30.06.2023

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

1.The Inspector of Police,
Central Crime Branch,
Bank Fraud Prevention Wing, Team XXXI,
Vepery, Chennai – 7.

2.The Metropolitan Magistrate for
exclusive trial of CCB Cases and
CBCID Metro Cases at Egmore,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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