BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.994 of 2022
and
Crl.MP(MD)Nos.12322 and 12323 of 2022

K.Jeyaseelan ... Petitioner/Petitioner/Accused

Vs.

1.State through the
Inspector of Police,
C.C.B., Madurai City. ... Respondent/Respondent/Complainant

2.K.Gunasekaran ... Defacto Complainant

(R2 is suo motu impleaded as per order of this Court dated 17.11.2022 in Crl.RC.(MD)No.994/2022 by GIJ)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the order dated 08.08.2022 passed in Crl.M.P.No.683 of 2016 and discharge the petitioner from the charges levelled against him in C.C.No.231 of 2010, on the file of the Judicial Magistrate No.I, Madurai.

For Petitioner : M/s.C.Jawahar Ravindran

For R1 : Mr.M.Muthumanikkam,
Government Advocate(Crl.Side)

For R2 : Mr.S.Poornachandran

ORDER

This petition has been filed to set aside the order dated 08.08.2022, passed in Crl.M.P.No.683 of 2016 and discharge the petitioner from the charges levelled against him in C.C.No.231 of 2010, on the file of the Judicial Magistrate No.I, Madurai.

2. The petitioner is the bank manager arrayed as accused in C.C.No.231 of 2010 and he has committed the offences under Sections 420, 466, 468, 471 and 120(B) of IPC.

3.1. According to the prosecution, the petitioner was working as Chief Manager in Tamilnadu Mercantile Bank Ltd., Simmakkal Branch, Madurai. The defacto complainant along with the Directors of M/s.Mapillai Vinayagar Finance (Madurai) Ltd., have obtained cash credit advance of Rs.70,00,000/- from M/s.Tamilnadu Mercantile Bank Ltd., Simmakkal Branch, Madurai. The defacto complainant and the other directors stood as guarantors and they had also deposited the original title deeds of their properties as security and created equitable mortgage in favour of the bank. The defacto complainant had deposited the original title deeds of his properties with the bank on 30.11.1998 and created equitable mortgage. The guarantee given by the directors are continuing guarantee and they have renewed the cash credit advance by executing necessary documents in favour of M/s.Tamilnadu Mercantile Bank Ltd., lastly on 31.03.2005. According to the defacto complainant, the documents dated 31.03.2005, is a forged one. The accused namely, the petitioner has forged the signature of all the directors and hence, he is said to have committed the offence under Sections 420, 466, 468, 471 and 120(B) of IPC and the legal proceedings has been initiated against the petitioner. The same was investigated by the Investigating Agency.

3.2. The Investigating Agency after conducting detailed investigation, filed final report before the learned Judicial Magistrate No.I, Madurai and the same was taken on file in C.C.No.231 of 2010. Thereafter, the petitioner filed a discharge petition in Cr.M.P.No.683 of 2016 in C.C.No.231 of 2010. In that petition, he stated that he has not forged the signature of the defacto complainant and the remaining borrowers and he initiated the recovery proceedings against the defacto complainant and the other directors only as per law.

3.3. The learned trial Judge, after considering the rival submission, dismissed the discharge petition stating that there is sufficient material to frame the charge against the petitioner.

4. Challenging the same, he filed this revision before this Court opposing the stand taken by the trial Court.

5. The learned counsel for the petitioner made the following submissions:

5.1. He never forged the signature of the directors and the defacto complainant. Due to the demand made by the petitioner for one time settlement is not considered, the above said false complaint has been lodged against him. Further, during the recovery proceedings, one time settlement was accepted and the settlement has also arrived. To prove the allegation of forgery, the Investigating Agency has not produced any records. Further, he proved the fact that the SARFAESI proceedings have been initiated against the defacto complainant and the other directors. Aggrieved over the same, the defacto complainant filed SARFAESI Appeal before the Debt Recovery Tribunal, Madurai, in S.A.No.112 of 2008. In S.A.No.112 of 2008, a petition has been filed by the bank in I.A.No.625 of 2008 seeking interim stay and the same was granted on 03.07.2003, by directing the defacto complainant to pay a sum of Rs. 8 lakhs. Instead of complying the same, he preferred an appeal before the Debt Recovery Appellate Tribunal, Chennai, in S.A.No.632 of 2008. The Debt Recovery Appellate Tribunal, Chennai, has modified the condition and directed the defacto complainant to pay a sum of Rs.5 lakhs. Thereafter, the said SARFAESI Appeal in S.A.No.112 of 2008 before the Debt Recovery Tribunal, Madurai, was dismissed as not maintainable on 27.08.2009. Subsequently, the defacto complainant filed WP(MD)No.9098 of 2009 against the proceedings of Debt Recovery Tribunal, Madurai. Thereafter, an amount of Rs.77,46,000/- was settled by the defacto complainant under One Time Settlement (OTS) Scheme on 31.03.2011.

5.2. According to the petitioner, he is the Chief Manager of the respondent bank. He has done his duty only. By the terms and conditions, the amount was already settled by the defacto complainant. Hence, taking into considerartion of all the aspects, the learned counsel for the petitioner seeks indulgence of this Court to set aside the order passed by the learned trial Judge, dated 08.08.2022, in Crl.M.P.No.683 of 2016 in C.C.No.231 of 2010.

6. The learned counsel for the second respondent submitted that the submissions of the learned counsel for the petitioner that the SARFAESI proceedings/appeal before the Debt Recovery Tribunal and the Writ Petition all are the defence documents. That should not be considered at the stage of deciding the discharge petition and the same was against the principle law laid down by the Supreme Court

7. The specific averments of the learned counsel for the second respondent is that on 31.03.2005, the alleged executions of property documents were created by the petitioner and the other accused. Hence, there is sufficient materials to frame the charge against the petitioner. Hence, the dismissal order passed by the learned trial Judge dated 08.08.2022, does not warrant any interference.

8. This Court considered the rival submissions and also perused the records furnished by both the parties.

9. It is admitted by the learned counsel for the defacto complainant namely, the respondent herein that the defacto complainant along with other Directors of the Mapillai Vinayagar Finance Limited, had availed cash credit

loan of Rs.70,00,000/- from the petitioner's bank, Madurai. The defacto complainant and the other directors stood as guarantors and they had also deposited the original title deeds of their properties as security and created equitable mortgage in favour of the bank. The defacto complainant had deposited the original title deeds of his properties with the bank on 30.11.1998 and created equitable mortgage. Thereafter, they committed default and hence, notice under Section 13(2) of SARFEASI Act was issued to settle the outstanding due of Rs.74,42,784/- with interest in the year 2007. The possession notice was issued on 04.10.2007. The public auction notice was also issued on 28.05.2008, fixing the date of auction on 04.07.2008. The petitioner filed W.P.NO.8560 of 2009 before this Court, seeking relief of writ of Mandamus forbearing the bank authorities from attempting to bring the respondent's residential property in auction without taking action against the company's commercial properties. Before that the respondent also filed S.A.No.112 of 2008 on the file of DRT, Madurai, challenging the public auction. The said S.A., was dismissed on 27.08.2009. Subsequently, the second respondent made a complaint before the respondent police alleging that the petitioner forged the signature of the Director and prepared the "*letter of renewal of loan*". The respondent police registered the case and filed the final report and the same was taken on file in C.C.No.231

of 2010, on the file of the learned Judicial Magistrate No-I, Madurai.

10. In the said final report, no material was collected by the investigating agency to show that the petitioner forged the signature of the second respondent in the said letter of renewal.

11. From the contents of the documents of the final report, this Court finds no incriminating material against the petitioner to make out the offence under Section 468 and 471 of IPC. In this aspect, it is relevant extract following portion of the judgment of the Hon'ble Supreme Court in 2018 7 SCC 581.

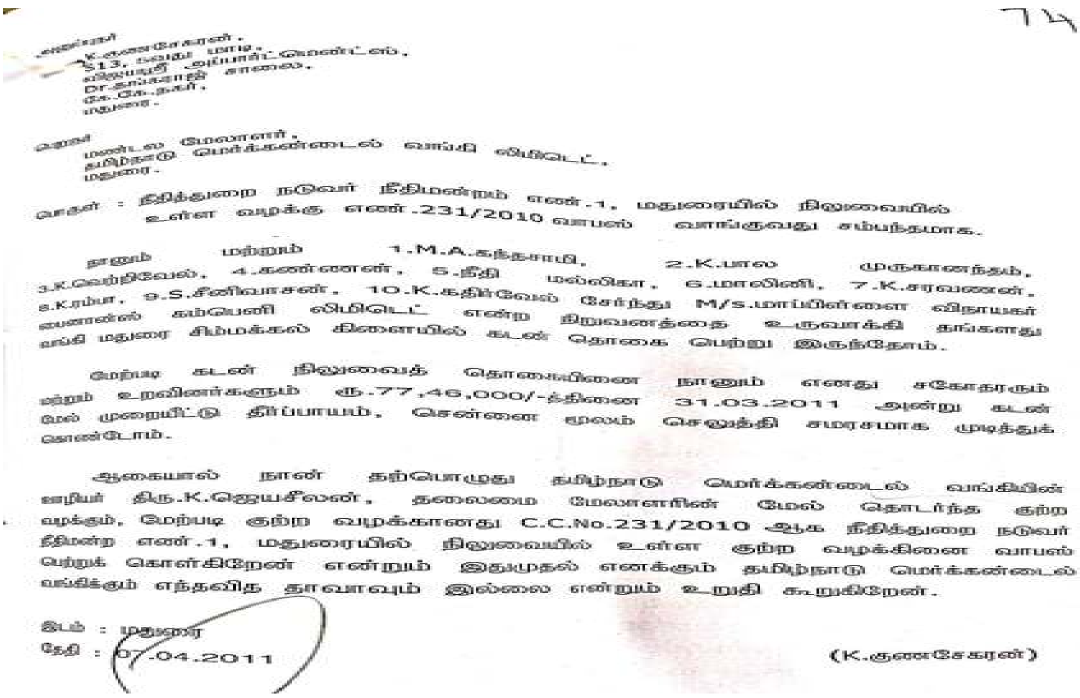
> ***25.*** *Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.*

11. When the prosecution specifically has come up with a case that the petitioner and other officers conspired together and created the said renewal letter dated 31.03.2005, it is the duty of the investigating officer to obtain the specimen signature of the petitioner and get a report from the hand writing expert, or otherwise, to examine some witnesses who are acquainted with the signature of the petitioner to prove his signature in the said alleged forged document. In this aspect, it is relevant to extract the following portion of the Hon'ble Supreme Court Judgment in the case of *Chanchal pati Das Vs. The State of West Bengal and Ors,* reported in *MANU/SC/0592/2023*:

> *In any case, there is nothing to suggest from the other documents on record of the instant appeals that the investigating officer had even bothered to collect any cogent or substantive evidence against the appellants to prosecute them for the alleged offences. There was no expert opinion obtained or scientific evidence collected on the documents allegedly forged to show as to by whom, when and how the theft of vehicle and forgery of documents were committed. Under the circumstances, allowing such prosecution to continue would not only be an empty formality but would be gross wastage of Court's precious time.*

Further, the petitioner has not gained anything by forging the signature. In the bank transaction, it is usual practice to get renewal. The second respondent made this complaint with a *malafide* intention to force the bank authorities to accept their claim of one time settlement, after dismissal of the S.A.No.112 of 2009, by the Debt Recovery Tribunal, Madurai.

11. Subsequently, even though the due amount is Rs.1,02,40,512/- the bank settled the amount for a lesser amount of Rs.77,46,000/-. After the said settlement, they gave an undertaking before the authorities that they would withdraw the criminal case pending before the concerned Court. The material portion of the undertaking is as follows:



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அனுப்புநர்
K.குணசேகரன்,
513, [illegible] மாடி,
விஜயபுரி அப்பார்ட்மெண்ட்ஸ்,
Dr.தங்கராஜ் சாலை,
கே.கே.நகர்,
மதுரை.

பெறுநர்
மண்டல மேலாளர்,
தமிழ்நாடு மெர்க்கன்டைல் வங்கி லிமிடெட்,
மதுரை.

பொருள் : நீதித்துறை நடுவர் நீதிமன்றம் எண்.1, மதுரையில் நிலுவையில் உள்ள வழக்கு எண்.231/2010 வாபஸ் வாங்குவது சம்பந்தமாக.

நானும் மற்றும் 1.M.A.கந்தசாமி, 2.K.பால முருகானந்தம், 3.K.வெற்றிவேல், 4.கண்ணன், 5.நீதி மல்லிகா, 6.மாலினி, 7.K.சரவணன், 8.K.ரம்யா, 9.S.சீனிவாசன், 10.K.கதிர்வேல் சேர்ந்து M/s.மாப்பிள்ளை விநாயகர் பைனான்ஸ் கம்பெனி லிமிடெட் என்ற நிறுவனத்தை உருவாக்கி தங்களது வங்கி மதுரை சிம்மக்கல் கிளையில் கடன் தொகை பெற்று இருந்தோம்.

மேற்படி கடன் நிலுவைத் தொகையினை நானும் எனது சகோதரரும் மற்றும் உறவினர்களும் ரூ.77,46,000/-த்தினை 31.03.2011 அன்று கடன் மேல் முறையீட்டு தீர்ப்பாயம், சென்னை மூலம் செலுத்தி சமரசமாக முடித்துக் கொண்டோம்.

ஆகையால் நான் தற்பொழுது தமிழ்நாடு மெர்க்கன்டைல் வங்கியின் ஊழியர் திரு.K.ஜெயசீலன், தலைமை மேலாளரின் மேல் தொடர்ந்த குற்ற வழக்கும், மேற்படி குற்ற வழக்கானது C.C.No.231/2010 ஆக நீதித்துறை நடுவர் நீதிமன்ற எண்.1, மதுரையில் நிலுவையில் உள்ள குற்ற வழக்கினை வாபஸ் பெற்றுக் கொள்கிறேன் என்றும் இதுமுதல் எனக்கும் தமிழ்நாடு மெர்க்கன்டைல் வங்கிக்கும் எந்தவித தாவாவும் இல்லை என்றும் உறுதி கூறுகிறேன்.

இடம் : மதுரை
தேதி : 07.04.2011

(K.குணசேகரன்)

12. But acting contrary to the above undertaking, the defacto complainant vehemently opposed this petition stating that the petitioner is liable to be prosecuted. The petitioner is the Manager, and he only acted as per the bank regulation and initiated the recovery proceedings. Allowing such type of allegation to continue against the nationalized bank Manager at the instance of some borrower, would jeopardise the smooth functioning of banking business.

13. The Hon'ble Supreme Court condemned such filing of cases against the bank officials in 2015 6 SCC 287 in the case of Priyanka Srivastava v. State of U.P., in the following terms:

> ***"19.*** *We have narrated the facts in detail as the present case, as we find, exemplifies in enormous magnitude to take recourse to Section 156(3) CrPC, as if, it is a routine procedure. That apart, the proceedings initiated and the action taken by the authorities under the Sarfaesi Act are assailable under the said Act before the higher forum and if, a borrower is allowed to take recourse to criminal law in the manner it has been taken, it needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. It is clearly noticeable that the statutory remedies have cleverly been bypassed and prosecution route has been undertaken for*

instilling fear amongst the individual authorities compelling them to concede to the request for one-time settlement which the financial institution possibly might not have acceded. That apart, despite agreeing for withdrawal of the complaint, no steps were taken in that regard at least to show the bona fides. On the contrary, there is a contest with a perverse sadistic attitude. Whether the complainant could have withdrawn the prosecution or not, is another matter. Fact remains, no efforts were made."

14. In the discharge petition filed before the lower Court, the petitioner specifically stated that after dismissal of the S.A.No.112 of 2008, on the file of Debt Recovery Tribunal, Madurai, appeal was filed before the Debt Recovery Appellate Tribunal and a writ petition before this Court. The second respondent made a complaint before the Commissioner of Police and the same was enquired and closed on 14.09.2009. Thereafter, the second complaint was made on 30.12.2009 and on the same day FIR was registered in the present crime number. The said fact was not disputed by the defacto complainant. After filing of the final report, the complainant sent a letter to the Manager, Tamil Nadu Mercantile Bank, Madurai on 07.04.2009 that he would withdraw the case. The same was also not disputed. In the said circumstances, continuation of the criminal proceedings against the bank Manager namely the petitioner, who has discharged

his duty as per the SARFEASI Act amounts to abuse of process of law. Further, the SARFEASI Act also restrains prosecuting the officials who have discharged the duty of recovery as per the Act.

15. In view of the above discussion, this Court finds no material to frame the charge against the petitioner and hence, the discharge petition filed by the petitioner is liable to be allowed.

16. The learned trial Judge, has not considered the above aspect in proper perspective and hence this Court exercises the power under Section 397 r/w 401 of Cr.P.C., to discharge the petitioner for the alleged offence under Sections 468 and 471 of IPC. This Court arrived at the above conclusion keeping in mind the principle laid down by the Hon'ble Supreme Court in the case of ***M.E. Shivalingamurthy v. CBI*****, (2020) 2 SCC 768 :**

> ***Legal principles applicable in regard to an application seeking discharge***
>
> ***17.*** *This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. P. Vijayan v. State of Kerala [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 :] and discern the following principles:*

17.1.*If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.*

17.2.*The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.*

17.3.*The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.*

17.4.*If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial".*

17.5.*It is open to the accused to explain away the materials giving rise to the grave suspicion.*

17.6.*The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.*

> ***17.7.****At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.*
>
> ***17.8.****There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused."*

In this case, it is the allegation that the petitioner, bank manager forged the signature of the defacto complainant, guarantor in the letter of renewal dated 31.03.2005. To substantiate the said allegation, the investigating agency had not obtained any expert evidence to prove the disputed signature of the petitioner in the said document and also has not examined anybody to prove the said disputed signature. In the said circumstances, the case of the petitioner squarely comes under the above guidelines of the Hon'ble Supreme Court. The learned trial Judge has not considered the above aspect and hence, this Court is inclined to interfere with the impugned order and set aside the same.

17. Accordingly, the impugned order passed by the Judicial Magistrate No.I, Madurai, in Crl.M.P.No.683 of 2016 in C.C.No.231 of 2010, dated 08.08.2022, is hereby set aside and the petitioner is discharged from the charges

levelled against him in C.C.No.231 of 2010. The Criminal Revision Case is allowed. Consequently, the connected miscellaneous petitions are closed.

04.09.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

1. The Judicial Magistrate No.I,
   Madurai

2. The Inspector of Police,
   C.C.B., Madurai City.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4.The Section Officer,
Crl.Section (Records),
Madurai Bench of Madras High Court, Madurai.

K.K.RAMAKRISHNAN, J.

dss

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