IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM :

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1438 of 2024

The Chief Manager,
Bank of Baroda,
Assets Recovery Branch,
No.10, C.P.Ramaswamy Road,
Alwarpet, Chennai - 600 018. ... Petitioner

Vs.

1. The Commissioner of Police,
   Commissioner Office,
   Vepery, Chennai - 600 007.
2. The Inspector of Police Central Crime Branch,
   Document Forgery Wing,
   Vepery, Chennai - 600 007.
3. M/s. Rovee Enterprises,
   Rep.by its Proprietor,
   Mr.J.Arokiaraj,
   No.86, Jawaharlal Nehru Street,
   Golden Estate, Gerugambakkam,
   Chennai - 600 122.
4. Mr.J.Arokiaraj
5. B.Vislatchi

6. B.Raja
7. B.Nanthagopal
8. B.Girija ... Respondents

PRAYER: Criminal Revision Case has been filed under Section 438 r/w 442 of BNSS, praying to set aside the order passed in Crl.M.P.No.15704 of 2024 dated 01.08.2024 on the file of the learned Metropolitan Magistrate, cases for CCB & CBCID cases, Egmore, Chennai 600 008 and direct the second respondent police to Register the petitioner's complaint dated 20.01.2018.

For Petitioner	:	Mr.V.R.Kamalanathan for Mr.R.Sridharan
For R1 & R2	:	Mr.A.Damodaran Additional Public Prosecutor

O R D E R

The petitioner is a public sector Bank. They lodged a complaint to the Commissioner of Police on 19.01.2018 which was forwarded to the second respondent on 20.01.2018 and CSR. No. 275 of 2018 assigned, but no enquiry or investigation conducted.

2. The contention of the petitioner is that Mr. Arokiaraj, Proprietor of M/s.Rovee Enterprises is engaged in business of steel fabrication. He approached the Bank of Baroda for cash credit facility to the tune of Rs.60,00,000/- and executed the documents of title deeds as security. The property belongs to (i) Mrs.Visalatchi, (ii) B.Raja, (iii) B.Nanthagopal, (iv) Mrs. Girija, legal heirs of late P.Balaraman and the property is situated at No.37, 4th street, Mageswari Nagar, Hasthinapuram, Chennai 600 064. The loanee executed loan documents on 30.03.2015 along with the property owners/the respondents 5 to 8. The cash credit loan was availed and later borrower failed to repay the said loan amount and interest, following the RBI guidelines, to recover the loan amount a demand notice dated 01.07.2017 was issued to the loanee and guarantors under Section 13 (2) of the SARFAESI Act. After receipt of the demand notice they failed to repay the loan dues with interest. Thereafter, the complainant

issued possession Notice dated 30.07.2020 to the respondents to take symbolic possession of the mortgaged immovable property. Despite receipt of possession notice the respondents failed to repay the loan dues with interest. Subsequently, the petitioner issued e-auction Sale Notice dated 27.08.2020 fixing the auction sale on 05.10.2020. In the meanwhile, an application was filed under Right to Information Act by one Mrs.S.Girija claiming to be the wife of Saravannan to provide the documents executed by Mrs. P.Girija wife of Pandiyan and others with respect to the loan availed by them. The said Girija also sought for production of marriage invitation and family photo and jointly executed Memorandum of Deposit of Title Deeds registered as Document No.3260 of 2015 dated 31.03.2015. It was found that the signature in the RTI application was in total variance with the signature found in the mortgage documents. On 29.11.2017, the Senior Manager of Bank visited the residence of Mrs.P.Girija W/o Pandian at No.4, Kampan Street, Potheri, Kattankulathu (PO), Maraimalai Nagar, Kancheepuram District and came to know that no such person was there in the name of Mrs.P.Girija, W/o Pandian. Thus Mr. J. Arockiaraj, S/o James, Tmt. B. Visalatch W/o late Balaraman, Mr.B.Raja, S/o late Balaraman, Mrs. P. Girija, W/o Pandian committed a criminal offence by creating forged documents, whereby fraud has been committed by them against the bank. As on 29.01.2017 outstanding balance of loan amount was Rs.61,38,147 thereafter, proper enquiry conducted on 05.03.2018 and summons issued. On 08.01.2020 it was informed by the second respondent that the petitioner had forwarded the compliant and the requisite documents for conducting enquiry and investigation. However, the complaint was closed by the investigation officer. Aggrieved by the same, the petitioner filed a petition under Section 156 (3) Cr.P.C. seeking direction to the second respondent to register the complaint against the accused in Crl.MP.No.15704 of 2024. The lower Court by order dated 01.08.2024 finding that the proceedings has been initiated and the 8th respondent Girija filed an application in S.A.No.144 of 2020 before the Debts Recovery Tribunal II, Chennai, obtained a order dated 31.05.2022 striking down the SARFAESI notice against which the petitioner, preferred appeal before the Debts Recovery Appellate Tribunal and the same is pending before DRAT, Chennai. The Lower Court without considering, Public Money involved and one Girija claimed to be the legal heir of Balaraman, along with other legal heirs, executed a mortgage deed. When the borrowers failed to discharge their liability and the property was brought for sale all the legal heirs entered into a criminal conspiracy to defraud the bank. Now a different stand taken. In view of the same proper enquiry and investigation is required, which the court below failed to consider.

3. The learned Additional Public Prosecutor submitted that the petitioner had given a complaint in the year 2018 which was forwarded to

the second respondent in CSR.No.275 of 2018. Thereafter, the petitioner was called for enquiry to submit documents. The second respondent scrutinised the documents and enquired all concerned persons, including the Manager who recommended cash credit facility. When the investigation officer sought details of the persons, who conducted field inspection of the property verification of documents and the further details of borrowers, the petitioner bank failed to respond. Even after two years, the petitioner bank failed to provide details sought for. Hence, the further enquiry was dropped due to non co-operation of the petitioner. However, the learned Additional Public Prosecutor fairly submitted that in the event of the petitioner producing all the necessary documents provide details and participate in the enquiry investigation can be conducted. He further submitted that now the office of the investigation officer/second respondent shifted and the documents earlier produced by the petitioner are not available. Hence petitioner to produce copy of the complaint, all documents aiding enquiry thereafter the second respondent shall an conduct enquiry take further course of action in accordance with law.

4. In view of the above, this Court directs the petitioner to appear submit copy of complaint, supporting documents to the Second respondent / the Inspector of Police, Central Crime Branch -II on or before 18.09.2024. On appearance of the petitioner and submission of documents the second respondent is directed to conduct enquiry, examine the documents and to proceed with the complaint given by the petitioner on merits and in accordance with law, without any delay.

5. With the above direction, this Criminal Revision Case is disposed of.

02.09.2024

Index : Yes/No
Speaking order / Non-speaking order
Neutral citation : Yes/No
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To

1. The learned Metropolitan Magistrate,
for CCB & CBCID cases,
Egmore, Chennai 600 008

2. The Commissioner of Police,
Commissioner Office,
Vepery, Chennai - 600 007.

3. The Inspector of Police Central Crime Branch,
Document Forgery Wing,
Vepery, Chennai - 600 007.

4. The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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