IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2025
PRONOUNCED ON : 15.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.24 of 2025 and
Crl.M.P.Nos.165 & 167 of 2025

P.N.Archana ... Petitioner

Vs.

The Inspector of Police,
Central Bureau of Investigation,
Bank Securities and Fraud Branch,
Bangalore. ... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code/Section 438 r/w 442 of Bharatiya Nagarik Suraksha Sanhita, 2023, to set aside the order passed in Crl.M.P.No.3645 of 2024 dated 19.11.2024 in C.C.No.6 of 2023 pending Trial of Offences under Section 120B r/w 409, 420, 468, 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 on the file of the XI Additional Special Court for CBI Cases (CBI Cases relating to Banks and Financial Institutions), Chennai.

For Petitioner : Mr.C.Arun Kumar

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI Cases

ORDER

The petitioner/A7 in C.C.No.6 of 2023 filed a discharge petition under Section 239 of Cr.P.C in Crl.M.P.No.3645 of 2024 in C.C.No.6 of 2023 before the learned XI Additional Special Court for CBI Cases (CBI Cases Relating to Banks and Financial Institutions), Chennai (Trial Court). The Trial Court, by order, dated 19.11.2024 dismissed the above said petition, against which, the present criminal revision case is filed.

2.The submissions of the learned counsel for the petitioner is as follows:

(i)The learned counsel for the petitioner submitted that the respondent filed final report for offence under Sections 120B r/w 409, 420, 468 and 471 of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 (In short “PC Act”) against the petitioner and eleven others without any legal evidence. To prove the charges under Sections 468 and 471 IPC, the basic requirement is that there should be false document as defined under Section 464 IPC. In the present case, four documents projected against the petitioner LD157 to LD160 but the prosecution not produced the original documents or certified copies of LD157 to LD160, hence the question of framing of charges under Sections 468 and 471 is not sustainable. Likewise, the offence under Section 409 IPC and Section 13(2) r/w 13(1)(d) of PC Act can proceed only against a "public servant" or "a Banker" or "a Merchant" or "an Agent". In this case, the prosecution not brought any material to prove there was any entrustment to the petitioner. With regard to the charge under Section 420 IPC, it is projected that the petitioner availed loan from UCO Bank, Shastri Nagar Branch, Chennai in the capacity of Proprietrix of M/s.Sneha Systems signed and submitted the documents to the Bank, based on which, the loan and financial facilities granted by A1/Senior Manager and A2/Assistant Manager of UCO Bank, Shastri Nagar Branch, Chennai and thereafter, the amount misappropriated and cheating committed. The petitioner is not a signatory to any of the documents including LD157 to LD160.

(ii)He further submitted that the offence under Sections 409 and 420 IPC cannot proceed together for the reason that for offence under Section 409 IPC, the dishonest intention should arise at the later stage but for offence under Section 420 IPC, deception to be at the inception. In this case, originally, on the complaint of Mr.Palaniappan, Deputy General Manager, UCO Bank, Zonal Office, Chennai on 25.07.2016, FIR in RC MA1 2016 A 0021 registered, in the FIR, twenty persons named as accused including 2 officers (A1 & A2) of the UCO Bank, Shastri Nagar Branch, Chennai. During the course of investigation, the respondent collected documents and submitted the same for handwriting expert opinion, thereafter, the statements of witnesses recorded under Sections 161 and 164 Cr.P.C, some of the accused who named in the FIR turned approver, on completion of investigation, charge sheet filed on 01.11.2023. The case is that 34 fraudulent accounts opened by A1 and A2 in connivance with the private individuals, thereafter loan and financial facilities granted by A1 and A2 to the account holders misusing their official position and thereby, cheated and misappropriated to the tune of Rs.3.93 Crores. Admitted position of the prosecution case is that the loan documents, appraisal notes, sanction ticket, pre-sanction and post-sanction inspection, obtaining security or other mandatory documents for the loans all created by A1 and A2, the Senior Manager and Deputy Manager of UCO Bank, Shastri Nagar Branch, Chennai. Since 34 accounts declared NPA, the complaint lodged. The petitioner's father arrayed as A4 as Proprietor of M/s.Bharathamani. The specific allegation against the petitioner is that on 10.05.2014, the petitioner opened current account in UCO Bank, Shastri Nagar Branch, Chennai in the name of M/s.Sneha Systems. On 05.06.2014, the petitioner colluded with A1 and A2 created loan account under SSI Scheme and Rs.8 lakhs disbursed to the loan account without any proper document and the SSI Certificate. On 07.06.2014, a sum of Rs.3 lakhs and Rs.1 lakhs transferred to the account of the petitioner's father/A4, on the same day, another Rs.12 lakhs transferred.

(iii)He further submitted that the petitioner pleaded before the Trial Court for Misjoinder of Charges but the Trial Court not answering to that ground raised, left it open with a liberty to the petitioner to make out a case as to framing of charges in terms of Sections 218 to 220 and 223 of Cr.P.C, is not proper. The petitioner earlier served with a summon to appear before a Magistrate on 22.10.2018 to record the statement under Section 164(1) Cr.P.C with a promise that she will be taken as Approver. The petitioner refused and hence arrayed as accused. The gullible persons who are shown in FIR accepted the prosecution design and gave their statements, taken approver in this case, which would only show the colourable exercise designed by the prosecution and the Trial Court failed to consider the same. On taking into the statement and documents as a whole more specifically LD157 to LD160, it is seen that no case made against the petitioner, hence the petitioner is liable to be discharged from the above case.

(iv)In support of his submissions, the learned counsel for the petitioner produced the Account Opening Form, Statement of Accounts in A/c.No.03290210001202 and A/c.03290610015971, Computer Screen Shots for the debits and credits in the account of M/s.Sneha Systems and Audit Filing Entries. Further, the learned counsel for the petitioner relied on the following decisions:

1. In the case of "***J.Duraimunusamy v. State by the Additional Superintendent of Police, CBI:SPE:ACB, Chennai*** reported in ***2011(2) MWN (Cr.) 47***" for Misjoinder of Charges this Court quashed the charges framed in that case and directed the Trial Court to frame proper charges based on the materials available against each of the accused.

2. In the case of "***Delhi Race Club (1940) Ltd. and others v. State of Uttar Pradesh and another*** reported in ***2024 SCC OnLine SC 2248*** and ***Jayaprakash v. State of Tamil Nadu*** reported in ***2014 SCC OnLine Mad 9124***" it had held that there is a fine distinction between the offence of cheating *viz-a-viz* criminal breach of trust and both offences are independent and distinct and both the offences cannot co-exist simultaneously on the same set of facts.

3. He relied on the decision of the Hon'ble Apex Court in "***Ram Prakash Chadha v. State of Uttar Pradesh*** reported in ***(2024) 10 SCC 651***" and "***K.S.Narayanan v. Gopinathan*** reported in ***1982***

Crl.L.J 1611" for the point that to constitute even an accusation of criminal conspiracy, first and foremost, there must at least be an accusation of meeting of minds of two or more persons for doing an illegal act or an act, which is not illegal in itself, by illegal means. In the case on hand, there is nothing to see or infer that there was any meeting of minds at any point of time between each of the accused.

4. In the absence of clear finding of imposter who said to have made false document by committing forgery, no charge for offence under Sections 468 and 471 IPC can be framed. For this contention, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in "***Sheila Sebastian v. R.Jawaharaj and Ors.,*** reported in ***2018 (7) SCC 581***".

5. He further placed reliance on the decision of Apex Court in "***Century Spinning and Manufacturing Co. Ltd. and Ors., v. State of Maharashtra*** reported in ***1972 (3) SCC 282***" for the point that Under Sub-sections (2) and (3) of 173 Cr.P.C means that if there is no

ground for presuming that the accused has committed an offence, the charges must be considered to be groundless and the accused to be discharged.

(v)Making the above submissions and relying upon the above decisions, the learned counsel for the petitioner prays for discharge setting aside the impugned order.

3.The learned Senior Counsel/Special Public Prosecutor for CBI Cases appearing for the respondent filed counter and submitted that the FIR in RC MAI 2016 A 0021 registered based on the complaint, dated 25.07.2016 by the Deputy General Manager, UCO Bank, Zonal Office, Chennai against A1, A2 and other private persons pertaining to the fraud committed in disbursal of 34 loans at UCO Bank, Shastri Nagar, Chennai. During the year 2014-2015, A1, the then Senior Manager, UCO Bank, Shastri Nagar Branch, Chennai entered into criminal conspiracy with A2, the then Assistant Manager, UCO Bank, Sastri Nagar, Chennai and other private persons *viz.,* Shri.R.S.Kotteswar (A-3), Shri.P.N.Venkataraghavan

(A-4), Proprietor of Bharathamani, Smt.P.Shanthi (A-5), Proprietrix of Sri Ganesha Enterprises, Shri.V.Shankar Ganesh (A-6), Proprietor of S.G.Enterprises, Ms.P.N.Archana/petitioner (A-7), Proprietrix of M/s.Sneha Systems, Shri.P.Dhanasekaran (A-8), Proprietor of Bharathi Amman Stores, Shri.Alfred Dominic(A-9), Smt.L.Nancy (A-10), Smt.Jacintha (A-11), and Smt.Rajeswari Lakshmanan (A-12), Chennai to cheat UCO Bank. In pursuant to the criminal conspiracy A1 and A2 abusing their official position as public servants sanctioned and disbursed 34 fraudulent loans (32 loans and 2 Cash credit facilities) dishonestly and fraudulently diverted the loan proceeds to the other accused persons and others and also to other fictitious accounts without loan documents, appraisal notes, sanction ticket, pre-sanction and post-sanction inspection, without obtaining security or the requisite mandatory documents for the loans disbursed, without ensuring the end use of the loan proceeds. The proceeds of the fraudulent loans were diverted through NEFT/RTGS Internal transfer without any requests. In pursuant to the conspiracy, Smt.Rajeswari Laxmanan (A-12) allowed Shri.Nagarajan (A-1) to use and operate her account at Bank of India, Mogappair Branch to park the proceeds of fraudulent loans and further transfer of the amounts to Shri.Nagarajan (A-1). The granting and disbursement of these loans were suppressed by Shri.R.Nagarajan (A-1) and Smt.R.Vasumathi (A-2) in the Monthly Sanction Report submitted to Zonal Office, all the 34 loan accounts (32 loan accounts and 2 cash credit facilities) became NPA and became unrecoverable due to non repayment and thereby caused wrongful loss of Rs.3.93 Crores to UCO Bank and corresponding wrongful gain to the accused persons. It is submitted that after completion of investigation, charge sheet filed made ready on 05.03.2021 and taken on file by the Trial Court against the accused persons as mentioned above for the offence under Sections 120B r/w 409, 420, 468, 471 IPC and Section 13(2) r/w 13(1)(d) of PC Act in C.C.No.6 of 2023.

4.He further submitted that the petitioner/A7 is the daughter of A4, Proprietor of M/s.Bharathamani. A4 opened current account at UCO Bank, Shastri Nagar Branch in A/c.No.03290210001219 during May 2014 in the name of M/s.Bharathamani. A1 and A2 are the Senior Manager and Assistant Manager of UCO Bank, Sastri Nagar Branch, Chennai respectively and A3 is a private person. A1 and A2 sanctioned Rs.8 lakhs under SSI Scheme without loan documents, no pre and post sanction verification, no appraisal note and without any sanction ticket. Further, A1 and A2 failed to ascertain the end use of the loan proceeds in collusion with A4. As regards the petitioner/A7 is concerned, on 10.05.2014, the petitioner as Proprietrix opened current account in A/c.No.03290210001202 at UCO Bank, Shastri Nagar Branch, Chennai in the name of M/s.Sneha Systems and on 05.06.2014, a loan account No.0329610015971 in the name of M/s.Sneha Systems opened under SSI Scheme and Rs.8 lakhs sanctioned to this account without loan documents, no pre and post sanction verification, no appraisal note was prepared at the branch and no sanction ticket. On 07.06.2014, an amount of Rs.1 lakh disbursed and transferred to the current account of the petitioner/A7 and this amount again transferred to the current account of A4. On 06.06.2014, an amount of Rs.2 lakhs disbursed from the loan account of A4 and transferred to the current account of A4. On 07.06.2014, an amount of Rs.1 lakh credited to the current account of A4 from the petitioner's current account. Thereafter, an amount of Rs.3 lakhs was withdrawn by A4 *vide* self cheque No.616051. Likewise, on 07.06.2014, an amount of Rs.6 lakhs disbursed from the account of A4 and transferred to the current account of A4. On the same day, this amount of Rs.6 lakhs again transferred to the current account of the petitioner. On the same day, an amount of Rs.5 lakhs disbursed from M/s.Sneha Systems and transferred to the current account of the petitioner. Hence, Rs.13 lakhs was available in that account. On the same day, Rs.12 lakhs again transferred from current account of the petitioner to the current account of A4. This amount of Rs.12 lakhs re-transferred from the current account of A4 to the savings bank account A/c.No.712070128 at Indian Bank, Hasthinapuram Branch, Chennai maintained in the name of Mrs.Shanthi wife of Mr.Amritha Kumar, a friend of A4 as hand loan extended by A4 to his friend. Thus, the loan proceeds have been diverted for other than the reasons for which the loan was granted. In conspiracy with the other accused, the petitioner and her father/A4 executed a well orchestrated plan diverting the funds and thereby misappropriated and cheated the bank and now the public money swindled. As a result of which, the petitioner's account in the name of M/s.Sneha Systems now declared NPA and as on 30.06.2015, the petitioner caused wrongful loss to the bank to the tune of Rs.8.65 lakhs.

5.In support of his submissions, the learned Senior Counsel/Special Public Prosecutor relied on the decision of the Hon'ble Apex Court in the case of "***Nirmaljit Singh Hoon v. State of West Bengal*** reported in ***AIR 1972 SC 2639***" and "***State of Bihar v. Ramesh Singh*** reported in ***AIR 1977 SC 2018***" and "***Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja*** reported in ***1979 Crl.J 1390***" and "***Niranjan Singh Punjabi v. State of Maharashtra*** reported in ***AIR 1990 SC 1962***" wherein it had held that at the time of framing of charge, the duty of the Court is only to evaluate the materials and documents to find out whether the facts emerging there from disclose all the ingredients of the alleged offences and to find out whether there are sufficient ground for proceeding and not whether there is sufficient ground for conviction.

6.He further placed reliance on the decision of the Hon'ble Apex Court in the case of "***State Anti Corruption Bureau, Hyderabad and another v. P.Suryaprakasam*** reported in ***1999 SCC (Cri.) 373***" and "***State of Orissa v. Debendra Nath Padi*** reported in ***2004 (8) SC 568***" and "***State of Delhi v. Gyan Devi and others*** reported in ***2001 M.L.J (Crl) 117***" wherein the Hon'ble Apex Court observed that at the stage of framing of charge, what the Trial Court is required to and can consider are only the Police Report under Section 173 Cr.P.C and documents sent with it. The only right of the accused is of being heard and nothing beyond at that stage.

7.It is further submitted by the learned Senior Counsel/Special Public Prosecutor that in this case, the Senior Manager/A1 and Assistant Manager/A2 of UCO Bank, Shastri Nagar Branch, Chennai are the main accused and they have been charged on the basis of the large conspiracy hatched with other accused in all the loan sanctioned by them. The petitioner/A7 and her father/A4 in conspiracy and in connivance with the other accused transacted the amount through their bank accounts by availing loan and credit facilities, but not used the same for the purpose of the loan sanctioned, transferred to the current account and thereafter further transferred to the account of the wife of A4's friend Mrs.Shanthi wife of Mr.Amirthakumar and siphoned out and misappropriated the public funds. The points raised by the learned counsel for the petitioner are all factual and defence of the petitioner which has to be decided during trial and not in this revision. Making the above submissions and relying upon the decision, he prays for dismissal fo the revision.

8.This Court considered the rival submissions and perused the materials available on record.

9.In this case, A1 and A2 Senior Manager and Assistant Manager of UCO Bank, Shastri Nagar Branch, Chennai. The petitioner/A7 is the Proprietrix of M/s.Sneha Systems and her father/A4 is the Proprietor of M/s.Bharathamani. Initially, the petitioner's father/A4 opened current account in A/c.No.03290210001219 in the name of M/s.Bharathmani in UCO Bank, Shastri Nagar Branch, Chennai where A1 and A2 are two Senior Managers. Later, a loan account opened in the name of A4 in A/c.03290610015988 without any documents, no pre and post sanction verification, no appraisal note prepared at the branch and no sanction ticket available. Thereafter, the loan amount credited to the loan account of A4 and then it has been transferred to the current account. Like also the loan account No.0329610015971 in the name of M/s.Sneha Systems, an amount of Rs.8 lakhs sanctioned and transferred to current A/c.No.03290210001202 and further transferred to her father's account M/s.Bharathamani and there are other transactions confirming diversion of funds. Thus, the loan amount transferred to the other accounts through the current account and finally, misappropriation and cheating committed in this case. Added to it, the trail of money clearly proved by the statement of accounts.

10.The defence taken by the petitioner is that the petitioner not signed any loan documents. It is the case of the prosecution that A1 and A2, the Senior Manager and Assistant Manager of UCO Bank, in connivance with the other accused, created false loan accounts, granted loan and thereafter this loan amount gained passage to the current account. Thereafter, all the accused misappropriated and committed cheating. Hence, the trail of money is well documented.

11.It is far-fetched for the petitioner to claim now she has not availed any loan and she had not participated in any transactions. Having allowed the account to be misused either overtly or covertly, the petitioner cannot raise a ground that she has not availed any loan and not participated in any of the transactions. Hence, all are matter for trial. It is the admission of the petitioner that she was called to disclose the true facts that without her knowledge the transactions had taken place. But the petitioner rejected the call and failed to disclose the true facts which makes clear the petitioner though claims innocence but not willing to disclose the true facts. The petitioner's specific stand is that she had not committed any offence in any manner but the documents and transactions made in current account and loan account are self explanatory. Such being the position, the petitioner's claim of false implication cannot be taken in face value without verification and proof, the issues are contentious. The Trial Court rightly held that there is no misjoinder of charges and if at all there is any objection, it can be considered at the time of framing of charges.

12.Likewise, the other contention of the petitioner that the misappropriation and cheating cannot go together, cannot be countenanced. The facts of the case are two fold. As regards opening of loan account, the deception occurred at the initial stage. The entrustment of the loan amount which diverted to the current account, then misappropriated and cheated would constitute the offence of misappropriation and cheating. Hence, the present case is a mixed facts in issue and the charges can be framed against the petitioner.

13.With regard to conspiracy, the contention of the petitioner is that there was no evidence of meeting of minds between each of the accused. It is known fact that the conspiracy are hatched in secrecy in dark and the evidence of conspiracy may not be available in open. It is not necessary that each of the conspirators to know the role played by each other. The conspiracy is a chain of events continues till the achievement of the desired plan which can be inferred and decided during trial.

14.The Apex Court time and again held that there should be *prima facie* material to proceed against the accused and not to see whether there is sufficient ground for conviction. In the present case, as discussed above, there are *prima facie* materials available to proceed against the petitioner. At this stage, probative value of the materials on record cannot be gone into.

15.In view of the above, the points raised by the learned counsel for the petitioner are factual which has to be necessarily decided only during trial. The decisions relied upon by the learned counsel for the petitioner depends upon the facts of the particular case. As regards the facts of the present case, it is not applicable.

16.In view of the above, the contention of the petitioner is not sustainable and this Court is not inclined to interfere with the impugned order. Hence, the impugned order, dated 19.11.2024 in Crl.M.P.No.3645 of 2024 in C.C.No.6 of 2023 passed by the learned XI Additional Special Court for CBI Cases (CBI Cases Relating to Banks and Financial Institutions), Chennai (Trial Court) is hereby confirmed.

17.In the result, this Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

15.04.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

1.The XI Additional Special Court for CBI Cases
(CBI Cases relating to Banks and Financial Institutions),
Chennai.

2.The Inspector of Police,
Central Bureau of Investigation,
Bank Securities and Fraud Branch,
Bangalore.

3.The Special Public Prosecutor for CBI Cases,
Madras High Court.

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY ORDER IN
Crl.R.C.No.24 of 2025

15.04.2025