IN THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2025

Pronounced on: 16.07.2025

CORAM

The Hon`ble Mr.Justice P.DHANABAL

**CRL OP.(MD) No.9731 of 2024**
**and Crl. M.P. (MD) No.6646 of 2024**

1. I. Stalin S/o. Iruthayanathan (A3)
2. K. Sathyanarayana Bhat S/o. Krishna Bhat (A4)
3. S. Shankar Srinivasan S/o. Srinivasan (A5)
4. M. Ganesamoorthy S/o. Muthukrishnan Pillai (A6)
5. A. Ramalingam S/o. Ananthasubbu (A7)
6. C. Sampath Kumar Chary
S/o. Chellam Chary (A8)
7. A. Venkatasubramaniyam
S/o. A.K. Arumugam (A9)
8. Karthikeyan S/o. Murugan (A10)
9. R. Sreekumar S/o. Raghava Varier (A11)
10. D. Surendran S/o. R. Devendran (A12)
11. B. Jeyaseelan S/o. Balakrishnan (A13)
12. P. Chandrashekhar S/o. Sathiya Narayana Panakanti (A16)
13. B. Chunchu Satya Hari S/o. Bahlahaih (A17).

... Petitioners /A3 to 13, 16 & 17

Vs

1. The State of Tamil Nadu,
The Inspector of Police,
Economic Offences Wing-II,
Karur Town & District.
(Ref: Crime No.1/2022) ... 1st Respondent / Complainant.

2. Jaikavitha D/o. R. Selvaraj ... 2nd Respondent / Defacto Complainant.

**PRAYER**: - The Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure praying to call for records in C.C. No.255 of 2024 on the file of the Chief Judicial Magistrate Court, Karur as against the petitioners for the offences under Sections 120-B, 420, 406, 408, 409, 466, 467, 468, 471, 477(A), 464 and 109 of IPC and quash the charge sheet as against these petitioners.

For Petitioners : Mr. A. Ramesh, Senior Counsel
for Mr. D. Shanmuga Raja Sethupathy

For Respondents : Mr. M. Sakthi Kumar [for R1]
Government Advocate [Criminal]

Mr. Abudu Kumar Rajaratnam
Senior Counsel for
MR. K. Prabhakar [for R2]

**ORDER**

This Criminal Original Petition has been filed to call for records and to quash the C.C. No.255 of 2024 on the file of the Chief Judicial Magistrate Court, Karur pending against the petitioners for the offences under Sections 120-B, 420, 406, 408, 409, 466, 467, 468, 471, 477(A), 464 and 109 of IPC.

2. The ***case of the prosecution*** is that the defacto complainant, who is the 2nd respondent herein, has lodged a complaint against her husband, bank Managers and other Staff of the bank stating that the 1st accused is her ex-husband, that he along with the bank Managers of erstwhile Syndicate Bank, now amalgamated with Canara Bank, conspired together and in order to grab the properties of the defacto complainant worth about Rs.35 crores, without her knowledge, by putting her signature in the year 2014 obtained loan to the tune of Rs.4 crores in the name of M/s. Morvi Exports, thereby they manipulated the bank accounts and forged the documents. The 1st accused obtained loan

for the partnership firms M/s. Morvi Export and M/s. Ram Textiles, where the defacto complainant and her daughters were also the partners. In the year 2007, M/s. Ram Textiles obtained loan for a sum of Rs.6 lakhs and on 11.09.2008, M/s. Morvi Exports availed loan for a sum of Rs.16 lakhs. Thereafter, on 01.04.2009, the defacto complainant and her daughters, had retired from the partnership firm. Thereafter, the above said partnership firms were functioned under sole proprietorship. Thereafter, in the year 2009, the outstanding loan amount went upto Rs. 23.96 crores and some of the properties were sold and Rs.10.78 crores was settled towards loan.

(i) While so, on 03.05.2010, the 1st accused Manickavasagam had executed a Settlement Deed in favour of the 2nd respondent, thereby the properties became the absolute properties of the 2nd respondent. Since the loan was obtained by the partnership firms and the 2nd respondent stood as guarantor for the said loan, the above properties were mortgaged towards security for the loan. While so, on 05.10.2010, the bank issued a notice u/s.13(2) of the SARFAESI Act stating that M/s.Morvi Exports was liable to pay Rs.11.8 crores and M/s. Ram Textiles was liable to pay Rs.2.09 crores and total outstanding amount payable by the partnership firms was Rs.13.17 crores and hence, the above said loan amounts were declared as Non-Performing Asset.

(ii) On 16.11.2010, some of the properties were sold and the defacto complainant settled certain dues to the tune of Rs.8.17 crores for M/s.Ram Textiles on 15.04.2011. As on 27.08.2011, 28 PCL loans were due, to the tune of Rs.12.57 crores for M/s.Morvi Exports. Thereafter, again one of the mortgaged properties was sold on 29.03.2012 and a sum of Rs.1.85 crores was paid. In the meantime, the 1st accused Manickavasagam demanded the properties, which were settled in favour of the 2nd respondent and tortured the defacto complainant / 2nd respondent, thereby, she left the matrimonial home and settled at Erode from April 2012 onwards.

(iii) While so, the said Manickavasagam by colluding with the bank officials acted against the 2nd respondent. Thereafter, the 2nd respondent issued a notice to the bank on 07.08.2012, 02.11.2012 and 06.12.2012 stating that the mortgaged properties are the absolute properties of the 2nd respondent. While so, in the year 2012, the 1st accused colluded with bank officials and M/s. Power Creating Zone Private Limited, filed a petition before the Debt Recovery Tribunal in S.A. No.96 of 2012 alleging that the properties belong to the 1st accused and he borrowed money from the 2nd accused for the company and entered into an agreement on 18.04.2012. Thereafter, the 2nd respondent filed an application before the Debt Recovery Tribunal and the same was disposed of by holding that the properties belong to the defacto complainant. On 27.03.2012, the bank issued Statement of Accounts in respect of M/s.Morvi Exports stating that a sum of Rs. 13,85,53,594.92 is due as on 27.03.2012. As on 31.12.2012, the principal amount was paid and interest is due for Rs.2,49,38,274.89.

(iv) On 31.03.2013, 24 PCLs were discharged and for remaining 4 PCL debts, the principal amount was paid and interest amount is Rs. 49,38,274.89. In fact, from 01.09.2009 to 31.03.2013, Rs.37.55 crores were paid. But in the above said account, only Rs.21.32 crores was shown credit for the said PCL debts. For the remaining amount of Rs. 16.23 crores, a current account was opened in the name of M/s.Morvi Exports and they took a sum of Rs.2.45 crores and the same was credited into the account opened by the 1st accused and Rs.5.14 crores was credited with another account. Totally Rs.7.54 crores was taken from the account of M/s. Morvi Exports. But there are no records as to what about the above said amount taken from the account.

(v) Already a sum of Rs.8.17 crores was paid towards debts in the name of M/s. Morvi Export and Rs.21.32 was paid for M/s. Ram Textiles to the bank and there was a deposit of Rs.70 lakhs in the name of M/s.Ram Textiles. Therefore, totally Rs.30.19 crores was settled on 31.03.2013 towards debts in the name of M/s.Morvi Exports. Therefore, the interest for 4 PCL loan for a sum of Rs.49,38,274.89 was closed and on 31.03.2013 itself, the entire loan amount for M/s.Morvi Exports was closed. Therefore, Non-Performing Assets of both the companies were closed and M/s.Morvi Exports' account was declared as 'standard Asset' by the bank to the CRIF.

(vi) Since already the entire amount was settled, the properties mortgaged for that amount was discharged. Therefore, the notice issued by the bank under SARFAESI Act on 27.09.2011 is void as on 31.03.2013. Therefore, the bank is liable to hand over the documents to the 2nd respondent. However, in the cases in S.A. No.96/2012 pending before the Debt Recovery Tribunal and W.P. No.35198 of 2012 before this Court, they stated that there is a due of Rs.1.45 crores payable by M/s.Morvi Exports as on 08.04.2013.

(vii) While the facts are being so, the 1st accused colluded with the bank officials, in order to grab the properties of the 2nd respondent worth about Rs.35 crores obtained a new Packing Credit loan to the tune of Rs.4 crores in favour of sole proprietorship concern M/s.Morvi Exports and the same was declared as Non-Performing Asset on 15.12.2014 and the same was recorded as 'continuation of old NPA' for the period of 2010 and the new debt was converted as Reversal Entry.

Thereby, the accused have forged the documents and cheated the 2nd respondent by showing a new loan obtained on 15.12.2014 as continuation of old loan borrowed in the year 2010 and had shown dues as Rs.11.75 crores for NPA declared on 07.04.2010. Since the 2nd respondent had retired from the partnership firm as early as on 01.04.2009, the subsequent loan borrowed by M/s.Morvi Exports will not bind the 2nd respondent. Therefore, the SARFAESI proceedings against the properties belong to the 2nd respondent are against law. The 6th accused, suppressing the loan obtained in the year 2014, stated that there is a due of Rs.11.75 crores for the old NPA declared on 07.04.2010 through his proceedings dated 07.03.2018. Thereby, attempted to grab the properties.

(viii) Therefore, the 2nd respondent lodged a complaint before the Economic Offence Wing and the same was forwarded to the Superintendent of Police, Karur and the same was forwarded to the 1st respondent police and registered the present FIR. They conducted investigation and filed a final report against the accused alleging that A1 to A13, in pursuance of criminal conspiracy, committed fabrication of false documents and electronic records, of valuable security, for the purpose of cheating, forged the documents, used the forged documents as genuine and falsification of accounts of the bank and committed criminal breach of trust. A14 and A15 have abetted the commission of offences of cheating by A1 to A13 by giving false valuation report and A16 and A17 deleted the evidences. Thus the accused A1 to A17 had committed offences under Sections 464, 467, 468, 466, 471, 477-A, 409 r/w 120-B of IPC and the accused A14 to A16 had committed offence punishable under Section 420 read with 109 of IPC. Now the petitioners have challenged the said charge sheet on various grounds.

3. The learned Senior counsel appearing for the petitioners would submit that the 2nd respondent, who is the defacto complainant having failed in her attempt to get back the documents of mortgaged properties, without discharging the entire liability to the Canara Bank arising out of Packing Credit Loan, by initiating proceedings before the various Forums including Civil Court, Debt Recovery Tribunal and District Consumer Forum, had instituted the malicious prosecution by lodging a

complaint with the 1st respondent. In fact the defacto complainant has submitted a complaint before the Inspector General of Police, Economic Offence Wing, Chennai and the same was forwarded to the Additional Director General of Police, Economic Offence Wing, Chennai. Thereafter, the complaint was forwarded to the Inspector of Police, Economic Offence Wing, Karur by the Additional Director General of Police, Economic Offence Wing, Chennai. On the basis of the same, the 1st respondent registered a case in Cr. No.1 of 2022 for the offences under Sections 120-B, 420, 406, 408, 409, 466, 467, 468, 471, 477(A) of IPC.

(i) One Venkata Subramaniam who is arrayed as 9th accused has filed a Crl. O.P. No.7776 of 2022 before this Court to quash the FIR and the same was dismissed by this Court vide order dated 26.04.2022. As against the above said order, A9 has preferred a Special Leave Petition before the Hon'ble Supreme Court of India in Special Leave to Appeal (Crl) No.6348 of 2022 and the same is pending before the Hon'ble Supreme Court. The petitioners 2,6,8,9 and 10 have jointly filed a Criminal Original Petition before this Court to quash the FIR. An interim protection was given from taking any coercive action against the petitioners during the investigation. The 1st respondent has issued more than 33 summons purportedly under Section 160 and 91 of Cr.P.C. to the various bank officials. The 1st respondent has been continuously insisting and threatening the bank officials to produce the original title deeds. The bank has issued E-Auction Notice dated 17.03.2022 in pursuance of the recovery proceedings under the provisions of SARFAESI Act. However, the 1st respondent issued a letter dated 18.04.2022 to the Chief Manager, directing him to postpone all further proceedings in pursuance of the E-Auction Notice. The said notice is without any authority. Thereafter, the bank officials filed a Crl O.P. No. 14954 of 2023 seeking direction forbearing the 1st respondent and the Deputy Superintendent of Police from harassing witnesses / officials of the Canara Bank under the guise of investigation and this Court highly deprecated the action of the 1st respondent. When the original case was reserved for orders, the 1st respondent proceeded with investigation and filed the charge sheet.

(ii) In fact, M/s. Morvi Exports has availed Packing Credit facilities from the erstwhile Syndicate Bank, which was subsequently amalgamated with Canara Bank. The defacto complainant and her husband / 1st accused were partners of M/s. Morvi Exports. M/s. Ram Textiles is the Sister concern of M/s.Morvi Exports. The defacto complainant stood as guarantor to the said loan. The said credit facilities were secured by way of mortgage of properties belonging to the 1st accused, M/s.Morvi Exports and M/s. Ram Textiles. Due to the family dispute, they were unable to conduct business, thereby, there is a default in payment of loan. Therefore, the outstanding amount was classified as Non-Performing Asset on 07.04.2010. The Canara Bank had initiated proceedings under SARFAESI Act for recovery of outstanding amount of Rs.11,08,19,798/-. Subsequently, the bank had taken physical possession of the mortgaged properties in accordance with the procedures under SARFAESI Act. While so, the 1st accused Manickavasagam has proposed for One Time Settlement on behalf of the firm and agreed to pay Rs.12.50 crores towards full and final settlement. Accordingly, One Time Settlement was sanctioned by the bank. The 1st accused has also committed to pay Rs.3 crores on 09.04.2012 and the balance on or before 30.04.2012. Subsequently, M/s.Morvi Exports through the partner Manickavasagam had informed the bank that M/s.Power Creating Zone Private Limited was ready and willing to purchase the secured asset in pursuance of the sale agreement between them. However, the 1st accused had not made any payment as stipulated by the terms and conditions of the One Time Settlement. Therefore, OTS Scheme was cancelled and the Canara bank proceeded with further action under SARFAESI Act.

(iii) While so, M/s. Power Creating Zone Private Limited filed an application in S.A. No.96 of 2012 before the Debt Recovery Tribunal-II, Chennai and challenged the sale notice issued on the basis of sale agreement. The Debt Recovery Tribunal-II passed an interim order on 26.10.2012 directing the applicant M/s. Power Creating Zone Private Limited company to pay Rs.4 crores in two installments on or before 28.12.2012. Thereafter, time was extended by the Tribunal and the last instalment was made on 22.02.2013 by the applicant M/s.Power Creating

Zone Private Limited. The said deposited amount was adjusted towards the liabilities of M/s.Morvi Exports. The said repayment was credited to the loan account from the current account of M/s.Morvi Exports. The Canara Bank had received a sum of Rs.1105 lakhs into the loan account between 20.06.2012 and 25.02.2013 including the amount of Rs.4 crores remitted by M/s.Power Creating Zone Private Limited as per the order of the Debt Recovery Tribunal. Based on the above, the said amount was credited to the NPA Packing credit account and 24 out of 28 PCL accounts were fully closed and the balance amount was adjusted to the remaining 4 accounts proportionately. Therefore, 4 PCL accounts were remaining to be closed. As such, the entire liability arising out of loan transaction was not paid and the charge created on the secured assets was not cleared. In the meantime, the defacto complainant has filed an impleading petition in the pending securitization application before the Debt Recovery Tribunal and the same was allowed. Thereafter, the Debt Recovery Tribunal dismissed the main petition and directed the bank to refund Rs.4 crores to the applicant. In pursuance of the order passed by the tribunal, the Canara Bank refunded Rs.4 crores to M/s.Power

Creating Zone Private Limited by four demand drafts dated 26.11.2014. Therefore, the above said amount of Rs.4 crores had become due to the bank by the defaulting partnership firm. Since there was no provision in the software to debit the amount, which was already remitted and adjusted as against the loan amount, a new account number was assigned to the loan account of M/s.Morvi Exports on 26.11.2014. Thus, the outstanding number of PCL account became 5 i.e., earlier 4 outstanding PCL accounts and one new PCL account would come to 5.

(iv) The above said facts are being falsely projected in the charge sheet alleging that a new loan account was fraudulently opened by the bank official after the entire loan amount was repaid by the firm and the charge created on the secured assets in pursuance of the mortgage was discharged / cleared, therefore, the bank was liable to handover the documents of the mortgaged properties. It is further alleged that 1st accused in connivance with the officials of the bank has extended new loan by mortgaging the properties. Apart from the above, 5 Packing Credit Loan accounts, bank has not sanctioned any other loan to

M/s.Morvi Exports as alleged in the charge sheet. The borrowers have not made any repayment to the loan accounts subsequent to the refund of Rs.4 crores on 26.11.2014. However, the account numbers of the above said 5 packing credit loan accounts have undergone changes subsequently. The software upgradation from 6.X to 11.X happened on 13.09.2019 which has led to the changes in the account numbers. Both the account numbers are relating to one and same account transaction. But both the account numbers were erroneously shown in the erred CRIF report relied on by the investigating officer referred to in the charge sheet. The date of conversion is erroneously shown as date of sanction and the 'amount overdue' is not shown for account numbers 017PCLN192560015, 017PCLN192560016, 017PCLN192560014 and 017PCLN192560013 which means that the bank does not raise any claim under these accounts. However, it is falsely projected in the charge sheet as if new loan accounts were opened in 2019. The above said 5 PCL accounts were later transferred to CASA Account No.63611570001063 on 12.03.2020 in accordance with the guidelines of E-Syndicate Bank since suit for recovery was already filed by the bank before the Debt

Recovery Tribunal. The transfer of the above said 5 accounts is clearly reflected in statement of account. The closing balance shown in each account is exactly the same as the total outstanding amount shown for each respective account in the concurrent audit report. However, this is again falsely projected as if new current account was opened in the year 2020 on the basis of the erred CRIF report referred to in the charge sheet. The amount overdue is not shown for the 017PCLN192560015, 017PCLN192560016, 017PCLN192560014 and 017PCLN192560013 which means the bank does not raise any claim under these accounts separately as the accounts are already merged in the 157 account wherein the total claim of the bank is reflected.

(v) It is falsely alleged in the charge sheet that the 3rd accused opened a fictitious current account No.63611630000032 in the name of M/s.Morvi Exports and unlawfully diverted the amount of Rs.2.45 crores from the regular current account No.63611010000800. In fact, it is not a fictitious account. It was opened for adjusting the OTS amount received in accordance with the guidelines of the Bank. Therefore, the above said current account no.63611630000032 was opened for adjusting the recovery proceeds received from M/s.Morvi Exports as prescribed by the Board approved policy of the bank. During the investigation, the errors in the CRIF report was brought to the knowledge of the bank by Economic Offence Wing by summons dated 16.08.2022 to which the bank replied on 22.08.2022 that there were errors and the matter is taken up with CRIF through HO and the update report would be provided. Later the rectified report was provided to EOW on 16.09.2022. However subsequently Economic Offence Wing sent an email to CRIF with specific direction to reinstate the erred report and not to disclose it to the bank and as a result of which, the erred report was reinstated. However, the CRIF has later updated the error-free report on understanding that the pending litigation is only the quash petition filed by the bank officials. The facts are being so, the 2nd respondent with malafide intention lodged a false complaint and the investigation officer has also, in a biased manner, filed the final report.

(vi) The defacto complainant already filed a Writ Petition in W.P.

No.35198 of 2012 before this Court to direct the authorized officer of the bank to conduct public auction in respect of 1/4th of the property, appropriate the amount with interest and refund the amount to the Canara Bank and to give back the rest of the property to her. The said Writ petition was dismissed on 04.06.2013 with cost for the frivolous petition. Thereafter, in the review application, adverse remarks made against the Writ petitioner were deleted. Thereafter, the bank initiated further recovery action by issuing sale notice as per the provisions of the SARFAESI Act, against which, the defacto complainant filed a petition in S.A. No.182 of 2015 before the Debt Recovery Tribunal and the same is pending. Further the defacto complainant has also instituted a Suit in O.S. No.91 of 2016 before the Principal Sub Court, Karur seeking declaration that the loan of M/s.Morvi Exports was already discharged and the defacto complainant is not liable to pay the loan amount and the same is also pending. Further the defacto complainant also filed a Consumer Complaint vide C.C. No.6 of 2019 before the District Consumer Disputes Redressal Forum, Karur and the same was allowed. Thereafter, the bank filed an appeal before the State Consumer Disputes

Redressal Commission (Circuit Bench) at Madurai vide F.A. No.26 of 2020 and the same was also allowed through an order dated 23.03.2020. After having failed in all her attempts, to walk away with the title documents of the secured assets, without discharging full satisfaction of the loan liability, she has initiated the vexatious and malafide prosecution by suppressing the material facts. Therefore, the pending charge sheet is liable to be quashed.

(vii) Further, the bank has not been arrayed as an accused in this case. As per the law laid down in ***Irridium India Telecom Ltd., v. Motorola INC reported in AIR 2005 Supreme Court Cases 514 case,*** the corporate body can be included as offender and the corporate body is a person as per law. Therefore, without prosecuting the bank, the case against the other accused is not maintainable. Whereas in a civil case filed before the Principal Sub Court, Karur, the Syndicate Bank is a party. Therefore, without prosecuting against the bank, the prosecution against the other bank officials, is not maintainable. As far as the offences are concerned, as per the charge sheet, criminal conspiracy, forgery, cheating and criminal breach of trust have been charged. The petitioners are alleged to have committed offences under Section 120-B read with other offences. While describing the overt act of each accused in the charge sheet, it is alleged as stereo-type version saying that 'in pursuance of the criminal conspiracy' at the same place at Karur in the year 2014. But none of the witnesses has spoken about the criminal conspiracy. There are no allegations that an agreement between the accused. Mere statement that the petitioners conspired among themselves is not sufficient to attract the offence under Section 120-B of IPC.

(viii) As far as 'cheating' is concerned, as per the charge sheet, Section 420 of IPC is included. To attract Section 420 of IPC, the 'dishonest inducement to do any act' is sine-qua-non. Two essential ingredients of offence would be (i) to make a false statement so as to deceive any person and (ii) fraudulently and dishonestly inducing the person to deliver any property or to do or omit to do something. In this case, there is no any dishonest intention. The factual details spelt out in the charge sheet does not exhibit element of 'dishonest intention' coupled with false representation or inducement. As far as 'criminal breach of trust' is concerned, as per the charge sheet, Sections 406, 408 and 409 of IPC were included. To make out the offence of Criminal Breach of Trust, a person should have been entrusted with property or entrusted with dominion over the property, the person with whom the property is entrusted should have dishonestly misappropriated or converted to his own use of that property, such misappropriation, conversion or disposal should be in violation of any direction of law in which such trust is to be discharged. In this case, there is no any entrustment of property or misappropriation by the petitioners or Bank. Entrustment of original documents would not amount to entrustment of property and the 2nd respondent herself admitted that the properties in question were mortgaged and charge was created as against the Packing Credit Loan availed by M/s. Morvi Exports.

(ix) As far as the offences under Sections 466, 467 and 468 of IPC are concerned, forgery is sine-qua-non for attracting all the above said offences. The term 'forgery' used in these sections is defined in Section

463 of IPC. As per Section 463 of IPC, making any 'false documents' with intent to cause damage or injury to any person, or support any claim or title, or to cause any person to part with property, or to enter into express or implied contract would amount to forgery. 'Making false document' is defined under Section 464 of IPC. To attract Section 464 of IPC, a person if made or executed a document claiming to be someone else or authorized by someone else, he altered or tampered a document, he obtained a document by practicing deception or from a person not in control of his senses. But to attract those ingredients, no any averments found either in the FIR or in the charge sheet. As far as offence under Section 477-A of IPC is concerned, the ingredients that "the employee or servant should have altered or destroyed or falsifies any books or records which were in the possession of his employer and intention to defraud the employer" are necessary. In this case, the employer of the petitioners of Canara Bank has not made any such allegation of false document against the petitioners. Even if the 2nd respondent has disputed the accounts maintained by the Canara Bank in respect of the loan transactions, it does not mean to be falsification of accounts within the

meaning of Section 477-A of IPC. Therefore, there are no materials to make out the case under Sections 120-B, 420, 406, 408, 409, 466, 467, 468, 471 and 477A of IPC r/w 109 of IPC as against these petitioners.

(x) The loan transaction is contractual in nature. Already the bank has initiated SARFAESI proceedings and the litigations are pending before the Debt Recovery Tribunal and Sub Court, Karur. While so, if the impugned prosecution is allowed to be continued based on the false allegations, it would be abuse of process of law. Moreover, in the year 2016, the defacto complainant had filed a Suit before the Sub Court, Karur, but the present complaint has been preferred in the year 2021 after 6 years from the date of presentation of Plaint. Therefore, the defacto complainant has lodged a false complaint and the Trial Court also without considering that no prima facie materials are available to constitute the above said offences, had taken cognizance without applying mind. Therefore, the pending charge sheet against the petitioners are liable to be quashed.

(xi) In support of his arguments, the learned Senior Counsel appearing for the petitioners has relied upon the following judgments:-

**1. Delhi Race Club (1940) Ltd., and others vs. State of Uttar Pradesh reported in (2024) 8 SCR 670.**

**2.Sushil Sethi and another vs. State of Arunachala Pradesh reported in (2020) 3 SCC 240.**

**3.Ramesh Rajagopal vs. Devi Polymers Private Limited reported in (2016) 6 SCC 310.**

**4.M.N. Ojha & others vs. Alok Kumar Srivastav and another reported in (2009) 9 SCC 682.**

**5.Chanchalpati Das v. State of West Bengal and others & Madhupandit Das vs. State of West Bengal and others reported in (2023) 6 SCR 655.**

**6.Zandu Pharmaceutical Works Ltd & others vs. Mohd. Sharaful Haque and another reported in (2005) 1 SCC 122.**

**7.Dinesh Gupta vs. State of Uttar Pradesh and another reported in (2024) 1 SCR 390.**

**8.Kishan Singh vs. Gurpal Singh & others reported in (2010) 8 SCC 775.**

**9.Paramjeet Batra vs. State of Uttarakhand and others reported in (2013) 11 SCC 673.**

**10.Sheila Sebastian vs. Jawaharaj and another reported in (2018) 7 SCC 581.**

**11.Mohammed Ibrahim & others vs. State of Bihar (2009) 8 SCC 751.**

**12.Babubhai vs. State of Gujarat and others reported in (2010) 12 SCC 254.**
**13.R.P. Kapur vs. State of Punjab reported in AIR 1960 SC 686.**
**14.Subhash Shirodkar vs. State of Goa in CRMAM No.116 of 2014, High Court of Bombay at Goa.**

**15.TGL Groundnut Corporation vs. Agricultural Market Committee**

**reported in 1985 (1) APLJ 368 (AP) / 1984 SCC OnLine AP 183.**

**16.Ratna Khandelwal and another vs. Kotak Mahindra Bank in CM(M) No. 1106/2021, Delhi High Court.**

**4.** The learned Senior Counsel appearing for the 2nd respondent / defacto complainant would submit that based on the complaint dated 17.02.2022 lodged by the 2$^{nd}$ respondent, the 1$^{st}$ respondent registered a case in Cr. No.1 of 2022 for the offences under Sections 120-B, 406, 408, 409, 420, 464, 466, 467, 468, 471, 477-A r/w 109 of IPC. Thereafter, the 1st respondent conducted the investigation elaborately and filed the final report. As per the final report, all the accused entered into criminal conspiracy at Karur on 18.04.2012 and created false documents and also falsely stated that A2 representing M/s.Power Creating Zone Private Limited agreed to purchase the properties from A1 for Rs.12.50 crores. A1 and A2, knowing fully well that the properties belong to the defacto complainant, created false documents and based on the false documents, the 2$^{nd}$ accused filed a petition before the Debt Recovery Tribunal-II, Chennai.

(i) A3, worked as a Senior Manager, Syndicate Bank, Karur Branch during the period from 2007 to 2013, entered into criminal conspiracy, on 30.07.2012, dishonestly, fraudulently and unauthorizedly opened fictitious current account bearing A/c. No.63611630000032 in the name of M/s. Morvi Exports and unlawfully diverted the amount of Rs.2.45 crores from the regular current account No.63611010000800 to the said fictitious account opened by him. Without any authorization from the above account holders, he transferred the amount of Rs.2.45 crores to the fictitious account opened by him on various dates on 29.08.2012, 03.10.2012 and 27.11.2012. The said current account No. 63611630000032 was opened without account opening form and without customer signature. A3, knew fully well that the current account opened was illegal act and the amount transferred by him would cause damage to the defacto complainant.

(ii) The 4th accused was working as Chief Manager / Authorized Officer of Syndicate Bank, Regional Office, Chennai, during the period from 2012 to 2013, entered into criminal conspiracy, mislead the Court with an intention to grab the defacto complainant's properties. He colluded with A1 to A3 and on 13.02.2013 filed a false affidavit before this Court in W.P. No.35198 of 2012 and falsely stated that the third party M/s. Power Creating Zone Private Limited had so far paid Rs.10.05 crores to the bank to purchase the properties by Sale Deed dated 18.04.2012. Whereas the said company represented by A2 paid only a sum of Rs.4.10 crores to the bank. A5 worked as Branch Senior Manager, Syndicate Bank, Karur Branch during the period from 2014 to 2016, entered into criminal conspiracy, dishonestly and fraudulently opened a loan account bearing No.017PCLB143300001 for Rs.4 crores in the name of M/s.Morvi Exports without any documents and authority and dishonestly and fraudulently disbursed loan to M/s. Morvi Exports for Rs.4 crores on 26.11.2014. Thereafter, A5 declared the said new loan as Non-Performing Asset on 15.04.2015 and unlawfully brought the defacto complainant's entire properties for sale on 20.03.2015 by fabricating the accounts to Rs.7,61,73,579/- under e-auction as outstanding by illegally using the old demand notice issued in the year 2011 for the loan of the year 2014 and has deliberately created false accounts and unauthorisedly debited amount to Rs.4 crores and taken Demand Drafts.

(iii) A6, who was the Branch Manager in the year 2016-2018 as the successor of A5, had joined in the criminal conspiracy and after knowing well that M/s.Morvi Exports loans which were classified as Non-Performing Asset on 07.04.2010 had fully been discharged and become a standard account in March 2013 itself from his own bank records. On 28.11.2016, he fabricated the account statements and calculated the loan amount due from M/s.Morvi Exports as Rs. 9,81,33,252.54 for the earlier Non-Performing Asset as on 07.04.2010 and filed an application in O.A. No.1277 of 2017 before the Debt Recovery Tribunal. A7, joined as Regional Manager, Salem during the period 2017-18 and he dishonestly and fraudulently claimed Rs. 11,75,55,826.74 from the defacto complainant under the old loan Non-Performing Asset on 07.04.2010, which is not in their books of accounts. A8, General Manager of NPA Management, Syndicate Bank, Bangalore worked in the year 2018-2020, on 30.06.2018, published one crore and above defaulters in their website on 30.06.2018 as per RBI guidelines. In that list, M/s. Morvi Exports due mentioned Rs.4.53 crores as on 30.06.2018 and date of NPA as 15.12.2014. But before the District Consumer Forum in C.C. No.6 of 2019, he falsely claimed that due in old loan which as NPA on 07.04.2010 and he concealed the new loan which was declared as NPA on 15.12.2014.

(iv) A9, joined as Branch Manager, Karur Branch in the period 2018-19 and entered into criminal conspiracy and dishonestly claimed by quoting the old loan which was declared as NPA on 07.04.2010 before the Court of law for wrongful gain from defacto complainant and based on the false entries made by A5 and A6, A9 filed false affidavits and statements in the case in O.S. No.91 of 2016 before the Principal Sub Court, Karur. A10, worked as Branch Manager of Karur Branch during the period 2019-2020 and A11 worked as Assistant General Manager, Trichy in the year 2019-2020. Both had actively colluded in the criminal conspiracy, while pending consumer Court Case, opened fictitious accounts Nos.1) 017PC2B192560001, 2) 17PC2N192560013, 3) 017PCLN192560014, 4) 17PCLN192560015 and

5) 17PCLN192560013 on 13.09.2019 and created 5 loan accounts for Rs. 21.60 crores said to have been sanctioned to the already defaulted accounts of M/s.Morvi Exports.

(v) A12, worked as General Manager of Canara Bank Circle Office, Madurai and he conspired with A10 and A11, directed A10 to transfer M/s. Morvi Export account from Karur to ARM Branch, Trichy. The Madurai circle office was under A12's direct control. The above transfer was took place in order to continue such manipulations. A13, worked as Chief Manager, ARM Branch, Trichy during the period 2020-22 and he also joined criminal conspiracy. But he falsely stated that Rs.7.05 crores only was recovered from M/s.Morvi Exports in the period from 07.04.2010 to 31.03.2013, whereas during the said period, a sum of Rs.14.54 crores was recovered by the bank. He intentionally suppressed the the above said fact. He also got a false valuation certificate from A14 and A15 by undervaluing the properties of the defacto complainant as fair market value of Rs.13.42 crores and Rs.13.33 crores respectively in the year 2021, when actual fair market value of the said properties is worth about Rs.50 crores. A13 intentionally got undervalued the properties, thereby, falsified the books of accounts and attempted to grab and sell the property of the defacto complainant. A14 and A15 are Civil Engineers and valuer and joined as Panel Valuers of Canara Bank. Under instigation of A13, A14 undervalued the property and gave false valuation report. A15, a Civil Engineer, joined as a Panel Valuer of Canara Bank, under instigation of A13, A15 undervalued the property.

**(vi)** **I**n the year 2022, after registration of FIR, during the investigation, it was found that A16 attempted to delete the evidence in the CRIF credit report and requested the CRIF credit registering company Bureau to delete and suppress the loan account numbers of 2019 and 2020 details in the CRIF M/s.Morvi Exports credit report with an intention to scree and safeguard the offenders. On 01.09.2022, A16 sent mail to CRIF customer service and attempted to delete the evidence on direction of A12. A17, worked as Chief Manager, ARM Branch, Trichy during the period 2022-23 and in pursuance of criminal conspiracy, A17 falsely stated that he only recovered Rs.7.05 crores from

M/s.Morvi Exports from 07.04.2010 to 31.03.2013. Whereas the actual amount recovered from M/s.Morvi Exports was Rs.14.54 crores. A17 used to claim A10's created loan card dated 18.12.2020 and he intentionally suppressed Rs.7.49 crores from the originally repaid amount of Rs.14.54 crores.

(vii) Therefore, all the accused have entered into criminal activities. During the investigation, the 1st respondent collected the materials and recorded statements from the witnesses and as per their statements and materials collected during the investigation revealed that there are prima facie materials as against all the accused and the same can be tested through trial. Therefore, the present petition is liable to be dismissed.

5. The learned Government Advocate (Criminal side) appearing for the 1st respondent would submit that all the accused conspired together, forged the documents, thereby, the defacto complainant lodged a complaint. Based on the complaint, the 1st respondent registered a

case in Cr. No.1 of 2022 for the offences 120-B, 420, 406, 408, 409, 466, 467, 468, 471 and 477(A) of IPC. The 1st respondent investigated the case elaborately and filed the final report. As per the final report, there are prima facie materials available to constitute the offences as against the accused. Therefore, it is matter of trial and the petitioners have to face the trial. In other aspects, adopted the arguments of the 2nd respondent. Therefore, the petition is liable to be dismissed.

6. Heard both sides and perused all the materials available on record.

7. According to the prosecution, all the accused conspired together and in order to cheat the defacto complainant, they created false documents, committed forgery and also falsified the accounts. The 1st accused and the defacto complainant are husband and wife. They along with their daughters started Partnership Firms in the name of M/s.Morvi Exports and M/s. Ram Textiles and obtained loan for a sum of Rs.6 crores in the name of M/s.Ram Textiles and Rs.16 crores in the name of

M/s.Morvi Exports and the properties in the name of M/s.Ram Textiles and the 1st accused were mortgaged for the purpose of security to the above said loan. Thereafter, during pendency of loan, a Settlement Deed was executed by the 1st accused in favour of the defacto complainant / 2nd respondent. In the meantime, some of the amounts were settled to the bank. Due to non-payment of the remaining amount, the said loans were declared as Non-Performing Asset. In the meantime, there was a misunderstanding between the 1st accused and the 2nd respondent. The 2nd respondent / defacto complainant along with her daughters were retired from the Partnership firms on 01.04.2009. These are the admitted facts.

8. After retirement from the partnership firms by the 2nd respondent and her daughters and after execution of a Settlement Deed in favour of the 2nd respondent, the bank initiated SARFAESI Proceedings to recover the debts. In the meantime, the 1st accused entered into an agreement with M/s.Power Creating Zone Private Limited, represented by the 2nd accused, in respect to the properties already settled in favour

of the 2nd respondent, to settle the outstanding dues to Syndicate Bank, thereby, the 1st accused approached the Syndicate Bank for One-Time Settlement. At that time, the amount due to the bank is Rs.11.05 crores. Thereafter, the bank also agreed for the one time settlement, however, the 1st accused failed to pay the said amount within the stipulated time, hence, the One-Time Settlement was cancelled. In the meantime, the 1st accused paid a sum of Rs.3 crores to the bank on 09.04.2012 and the balance amount has to be paid on or before 30.04.2012. Thereafter, the 2nd accused approached the Debt Recovery Tribunal, Chennai challenging the SARFAESI notice issued by the bank under the SARFAESI Act through a S.A. No.96 of 2012 and the Tribunal also directed M/s.Power Creating Zone Private Limited to pay a sum of Rs.4 crores to the bank and the same was adjusted for the loan amount. During the pendency of the proceedings before the Debt Recovery Tribunal and based on the order of the Debt Recovery Tribunal, the loan account of M/s. Morvi Exports was closed. Thereafter, the defacto complainant approached the Debt Recovery Tribunal and stated that the properties were already settled to the defacto complainant by the 1st accused and thereby, the 1st accused has no any right to enter into an agreement with M/s.Power Creating Zone Private Limited and thereafter, the Debt Recovery Tribunal dismissed the application filed by M/s.Power Creating Zone Private Limited and directed the bank to refund Rs.4 crores to the account of M/s.Power Creating Zone Private Limited. Thereafter, again the bank proceeded for the recovery of the amount under SARFAESI Act. Thereafter, since the loan account of M/s.Morvi Exports was already closed, a new account was assigned in the name of M/s. Morvi Exports and the amount was debited from the loan account of M/s.Morvi Exports.

9. According to the petitioners, since already the loan amount was settled and the account was closed and, in the meantime, based on the order of the Debt Recovery Tribunal, in order to debit the amount paid by M/s.Power Creating Zone Private Limited, they assigned a new account in the name of M/s. Morvi Exports and there is no any intention to create a new account to cheat the 2nd respondent. Since the accounts were computerised and the same were closed, thereafter there is no possibility

to reopen the same account. Thereby, they assigned a new number to the above said account of M/s. Morvi Exports and the amount was shown as outstanding balance along with interest. The above said facts are to be tested in the trial.

10. Further, according to the prosecution, the bank opened new PCL accounts. But according to the petitioners, out of 28 PCL debts, already 24 PCL loan accounts were closed. 4 PCL debts are only outstanding. In the meantime, based on the order of the Debt Recovery Tribunal, the loan already settled was also reopened and thereby, totally 5 PCL debts are pending and for administrative purpose and upgradation of software version, the changes were made. The above said explanation of the petitioners cannot be decided through this quash petition and it needs elaborate trial.

11. According to the prosecution, the 3rd accused opened fictitious current account bearing No.63611630000032 in the name of M/s.Morvi Exports and unlawfully diverted the amount of Rs.2.45 crores from the regular current account No.63611010000800. But the petitioners explained that it was opened for discharging the One-Time Settlement

amount received as per the order of the Debt Recovery Tribunal in accordance with the guidelines of the bank. The petitioners have also relied some documents to prove the same. The above said documents have to be tested through trial. Therefore, it is not appropriate to quash the charge sheet as against all the petitioners and there are prima facie materials available to proceed with the case as against some petitioners. Therefore, all the grounds, raised by the petitioners against whom prima facie materials are available, have to be tested before the trial Court including the vexatious and malicious prosecution.

12. However, the investigation officer conducted the investigation in a mechanical manner and without applying his mind, he simply included all the persons who are all dealt with the bank accounts of M/s.Morvi Exports.

13. As far as the charges against A3 and A5 are concerned, the 3rd accused opened the fictitious current account and diverted the amount of Rs.2.45 crores from the regular account to the said fictitious current

account and A5 dishonestly and fraudulently opened the loan account for Rs.4 crores in the name of M/s.Morvi Exports and fraudulently taken 4 demand drafts each for Rs.1 crore from the customers current account without any application or cheque. But according to the petitioners, since the loan account was already closed, they assigned new number to credit the money to M/s. Power Creating Zones Private Limited, as per the order of the Debts Recovery Tribunal. Therefore, those allegations are to be tested through trial.

14. As far as the charges levelled against A4 are concerned, A4 filed a false affidavit before the High Court of Madras in W.P. No.35198 of 2012 by falsely stating that the 3rd party M/s.Power Creating Zone Private Limited had paid Rs.10.05 crores to the bank to purchase the properties by a Sale Deed dated 18.04.2012, whereas the said company M/s.Power Creating Zone Private Limited did not pay Rs.10.05 crores to the bank and paid only Rs.4.10 crores. Therefore, he filed a false affidavit before the Court. As far as these allegations are concerned, they are only vague allegations. Even assuming that a false affidavit is filed, a

complaint has to be lodged as per Section 195 of Cr.P.C., but no such procedures had been followed in this case as against A4. Merely filing an affidavit before the Court, would not amount to fabrication of documents and falsifying accounts. Moreover already the said Writ petition was disposed of by the High Court and this Court made adverse remarks against the defacto complainant and thereafter, in the Review Petition expunged the adverse remarks. Therefore, there are no materials as against A4 to constitute offences.

15. As far as charges against A6 are concerned, during the year 2016-18, A6 as the successor of A5, had joined in the criminal conspiracy and knowing fully well that M/s.Morvi Exports loans which were classified as NPA on 07.04.2010 had fully been discharged and become a standard account in March 2013 itself. However, he filed an application before Debts Recovery Tribunal and deliberately concealing the loan disbursed and NPA as on 2014 details, he fabricated the accounts statement in the NPA loan as of 2010 and falsely filed the said O.A. No.1277 of 2016 before the Debts Recovery Tribunal to recover

money from the defacto complainant. Therefore, he falsified the accounts. Though the entire amount was settled to the bank and thereafter due to the order of the Debts Recovery Tribunal, Chennai, the amount was returned to M/s. Power Creating Zone Private Limited, thereby there was a due. Therefore, based on the previous documents, A6 would have acted and merely filing a petition before the Debts Recovery Tribunal, that too based on the documents available in the bank, it will not amount to commission of offence. Therefore, there are no materials as against A6 to constitute any offence.

16. As far as A7 is concerned, charge against him is that he dishonestly and fraudulently claimed a sum of Rs.11,75,55,826.74 from the defacto complainant under the old loan NPA of 07.04.2010, which is not in their Books of Accounts. Therefore, he fabricated the accounts and falsified the books of accounts and fabricated records using the official position on his capacity as Regional Manager and the said account was controlled by him. As far as these allegations are concerned, he was the incharge from the period 2017-18 and the alleged accounts were opened

in the year 2014 itself and he is only incharge from 2017-18 and based on the accounts, he would have acted. There are no records to show that he only fabricated the accounts and even according to the prosecution case, the accounts were created in the year 2014 itself. This accused A7 had only joined as Regional Manager in the year 2017-18. Therefore, he cannot be roped into the criminal case, only because he is the controlling authority . Therefore, there are no materials as against A7.

17. As far as A8 is concerned, the allegation is that he worked as General Manager of NPA Management, Syndicate Bank, Bangalore and he only published the defaulters' list in the website on 30.06.2019, where the name of M/s.Morvi Exports due was mentioned as Rs.4.53 crores as on 30.06.2018 and the date of NPA is 15.12.2014, but A8, before DRT, filed a false affidavit and therefore, he has been roped into this case. The investigation officer without applying his mind, has roped the persons, who are all filed petitions before the competent authority, unnecessarily by concluding that they falsified the accounts. As far as filing of affidavit is concerned, already the concerned Courts have disposed all the matters by accepting the affidavits and as far as filing of affidavit

before DRT, Madurai is concerned, it is for him to prove the same before the concerned Court and as far as affidavit before Debts Recovery Tribunal, Chennai is concerned, already the matter has been disposed of by the competent authorities and therefore, it cannot be reopened by way of this Criminal cases, that too without any records. Therefore, there are no materials against A8 to rope him into the criminal case.

18. As far as charges against A9 are concerned, the allegation is that he joined duty during the period 2018-19 and he dishonestly claimed and wrongly quoted the old loan which was declared as NPA of 07.04.2010 and thereby, falsified the accounts and filed affidavit before the Court in O.S.No.91 of 2016. Since the case is pending before the Principal Sub Court, Karur, at this stage, it cannot be decided that he filed a false affidavit and false statements as he joined duty only in the year 2018-19. As per the prosecution, the above said offences took place in the year 2012-14. Therefore, merely because of filing affidavit before the concerned Court, would not amount to commission of offence. Even if any affidavt filed, it is for the concerned Court to decide as to whether

the affidavits are false or not. Therefore, there are no any materials against A9 to rope him into this criminal case.

19. The allegation as against A10 is concerned, he worked as a Branch Manager at Karur during the year 2019-2020 and A11 worked as Assistant General Manager at Trichy during the year 2019-2020 and both colluded and entered into criminal conspiracy, while pending Consumer Court case No.6/2019, A10 fraudulently opened fictitious accounts in the name of M/s.Morvi Exports. All the above loans were said to have been disbursed unauthorizedly without any loan opening forms. Therefore, it needs elaborate trial and it has to be tested before the competent Court and hence, A10 has to face the trial.

20. As far as the charges levelled against A11 are concerned, he fabricated the documents and account statement of M/s.Morvi Exports and A11 obtained false certificate from the Auditor for the outstanding amount of Rs.13,55,36,258.55, which is not in their Bank Books of Accounts for the loan NPA on 07.04.2010. It is also subsequent to the

period of 2012-2014 during which the offences are said to have been taken place. Therefore, he cannot rope into the criminal case, merely because he obtained statement from the Auditor for the outstanding dues.

21. As far as A12 is concerned, the allegation is that he worked as General Manager of Canara Bank Circle office, Madurai in the year 2020. The charge against him is that he joined together in criminal conspiracy with A10 and A11. A11 relieved from Trichy Regional Office on 10.07.2020 and joined as Assistant General Manager in Madurai Circle Office and he directed A10 to transfer M/s. Morvi Exports accounts from Karur to ARM Branch, Trichy. The Madurai Circle Office is under A12's direct control. Therefore, he has been roped into this criminal case, only because, the account was transferred from one branch to another branch. Without any material it cannot be construed as he had malafide intention to transfer the accounts to grab the property. Therefore, there are no materials as against A12 to rope him into this criminal case.

22. As far as A13 is concerned, he was the Chief Manager, ARM

Branch Trichy during the period 2020-2022. The allegation as against A13 is that he also joined together with A10 to A12 and falsely stated that Rs.7.05 crores only was recovered. But actually Rs.14.54 crores was recovered by the bank from M/s.Morvi Exports, but A13, had intentionally suppressed Rs.7.49 crores. Since the major offences took place from 2012-2014, this A13 worked only during the period 2020-22, he cannot be roped into this criminal case. As far as the calculation of amounts is concerned, it can be decided by the competenet Court where the claims are pending. Therefore, there are no records as against A13 and he cannot be roped into the criminal case.

23. As far as A14 and A15 are concerned, no any petition has been filed by them.

24. As far as A16 is concerned, charge against A16 is that he attempted to delete the evidence in the CRIF Credit report and he requested the CRIF Credit registering company bureau to delete and suppress the loan account numbers of 2019 and 2020 details in the CRIF

M/s.Morvi Excort credit report with an intention to screen and safeguard the offenders. On 01.09.2022, A16 sent an email to CRIF customer service and attempted to delete the evidence under the direction of A12. Based on the request of A16, CRIF deleted the report and A16 obtained the modified report from the CRIF and submitted to the police. Therefore, he abetted the commission of offence of cheating. Even as per the prosecution case, as per the request made by A12, A16 made corrections in the CRIF and all the alleged offences were committed from 2012 to 2014. Therefore, mere correcting the errors will not constitute any offence. Without any materials that the petitioner/A16 had intention and acted, he cannot be roped into this case.

25. As far as A17 is concerned, the charge is for the occurrence in the year 2014. But A17 worked as Chief Manager, ARM Branch, Trichy during the period 2022 to 2023. According to the prosecution, he entered into criminal conspiracy with A10 to A13 and A16. The amount of Rs.14.54 crores was actually recovered by the bank from M/s.Morvi Exports between the period from 07.04.2010 to 31.03.2013. But A17

falsely stated that only Rs.7.05 crores was recovered from M/s.Morvi Exports. Therefore, he committed the offence. As already discussed by this Court in the previous paragraphs, the offences took place between the period of 2012 and 2014 and A17 worked from 2022-23 and based on the records, he had shown the accounts and it cannot be considered that he committed offences. Therefore, he cannot be roped into a criminal case.

26. The Investigation Officer without any materials included all the bank officials, who were all dealing with the accounts of M/s.Morvi Exports, without applying his mind in a mechanical manner and the entire investigation reveals his non-application of mind. Therefore, the petitioners 4, 6 to 9, 11,12,13, 16 and 17 need not face the ordeal of trial without any prima facie materials against them.

27. The learned counsel appearing for the petitioners would submit that Sections 420 and 406 of IPC cannot co-exist simultaneously on same set of facts, but the prosecution charged for the offences under

Sections 420 and 406 of IPC and relied the judgment of Hon'ble Supreme Court in **Delhi Race Club (1940) Ltd., and others vs. State of Uttar Pradesh reported in (2024) 8 SCR 670,** wherein the Hon'ble Supreme Court held that in a case of Criminal Breach of Trust, the offender is lawfully entrusted with the property and he dishonestly misappropriated the same. Whereas in a case of cheating, the offender fraudulently or dishonestly induced a person by deceiving him to deliver any property, in such a situation, both the offences cannot co-exist simulataneously. In the case on hand, there are so many accused and as against whom, the particular offence is made out has to be decided at the time of framing charges as against the petitioners against whom prima facie materials available and there are series of continuing offences, therefore, the said case law will not be applicable to the present facts of the case.

28. Further, the learned Senior counsel appearing for the petitioners would submit that the Bank has not been included as accused and without impleading the Bank as one of the accused, the prosecution against the Bank officials is not maintainable and he relied the judgment

of Hon'ble Supreme Court in **Sushil Sethi and another vs. State of Arunachala Pradesh reported in (2020) 3 SCC 240.**

On a careful perusal of the said judgment, it is clear that in the absence of specific allegations against the Managing Director of vicarious liability, in the absence of company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a company. In the case on hand, there are specific allegations as against the Bank officials and all the offences are on their individual capacity, therefore, the said case law will not be applicable to the present facts of the case.

29. Further the learned Senior counsel for the petitioner would submit that the allegations are as a part of ongoing disputes between the 1st accused and the defacto complainant and the offences are inherently improbable and there is no sufficient ground to proceed against the accused. To support his contention relied the judgments in **Ramesh Rajagopal vs. Devi Polymers Private Limited reported in (2016) 6 SCC 310 and M.N. Ojha & others vs. Alok Kumar Srivastav and**

**another reported in (2009) 9 SCC 682.**

On a careful perusal of the said judgments, it is clear that whether the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused., the High Court can quash the proceedings. In the case on hand, there are allegations to constitute the offences as against some accused.

30. The learned Senior counsel appearing for the petitioners would further submit that in this case, there are allegations in respect of falsification of accounts and creation of documents, but 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 documents were forged. To support his contention, he relied the judgment in **Chanchalpati Das v. State of West Bengal and others & Madhupandit Das vs. State of West Bengal and others reported in (2023) 6 SCR 655.**

On a careful perusal of the said judgment, it is clear that if 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. In the case on hand, there are so many offences charged and there are prima facie materials available as against some accused, therefore, the said case law will not be applicable to the present facts of the case.

31. The learned Senior counsel would further submit that the defacto complainat earlier filed Writ petition and filed a Suit before the Principal Sub Court, Karur and also filed a petition before the Debt Recovery Tribunal and filed a complaint before the Consumer Redressal Forum and after failing in all the above attempts, she filed this complaint with malafide intention and she has not come to the Court with clean hands, therefore, the charge sheet is to be quashed. In support of his contention, he relied upon judgments in (i) **Zandu Pharmaceutical Works Ltd & others vs. Mohd. Sharaful Haque and another**

**reported in (2005) 1 SCC 122, (ii) Dinesh Gupta vs. State of Uttar Pradesh and another reported in (2024) 1 SCR 390, (iii) Kishan Singh vs. Gurpal Singh & others reported in (2010) 8 SCC 775, and (iv) Paramjeet Batra vs. State of Uttarakhand and others reported in (2013) 11 SCC 673.**

On a careful perusal of the above said judgments, it is clear that the parties approaching the Court should come with clean hands, in case of malicious prosecution and the complainant deliberately and unnecessarily had caused substantial delay and had been waiting for opportune moment for initiating false and frivolous litigation, it amounts to abuse of process of law and those prosecution can be quashed by the High Court.

32. The learned Senior counsel also relied upon the judgments in (i) **Sheila Sebastian vs. Jawaharaj and another reported in (2018) 7 SCC 581, (ii) Mohammed Ibrahim & others vs. State of Bihar (2009) 8 SCC 751, (iii) Babubhai vs. State of Gujarat and others reported in (2010) 12 SCC 254, (iv) R.P. Kapur vs. State of Punjab reported in**

**AIR 1960 SC 686, (v) Subhash Shirodkar vs. State of Goa in CRMAM No.116 of 2014, High Court of Bombay at Goa, (vi) TGL Groundnut Corporation vs. Agricultural Market Committee reported in 1985 (1) APLJ 368 (AP) / 1984 SCC OnLine AP 183 and (vii) Ratna Khandelwal and another vs. Kotak Mahindra Bank in CM(M) No.1106/2021, Delhi High Court.**

On a careful perusal of the above said judgments, it is clear that to make out a case for forgery, mere execution of a document by claiming the property being sold was executant's property did not amount to commission of offence under Sections 467 and 471 of IPC, even if title of property did not vest in the executant. Further, from the above judgments, it is clear that the investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive and fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and when a mortgage was created in favour of a Bank, without consenet of the Bank, if any document is executed by the

Mortgagor, the same can be defeat the rights of the Bank as Mortgagee in respect of the said property. In the case on hand, there is no 'forgery' charge in respect of the mortgage deed. Since there are some materials available as against some accused, it is for the trial Court to decide as to what offences are made out against the particular accused. It is true that the investigation officer has not conducted fair investigation, but it is the matter of trial for the accused against whom prima facie materials are available and the matter is pending before Civil Court in respect of the mortgage.

33. Therefore, as discussed supra, there are materials to proceed with the case further as against A3, A5 and A10 and it is the matter of trial and therefore, they have to face the trial.

34. As against A4, A6 to A9, A11, A12, A13, A16 and A17, there are no materials to constitute offences as against them.

35. In view of the above discussions, this Court is of the opinion that this petition has to be allowed in part and charge sheet has to be quashed as against A4, A6 to A9, 11, 12, 13, 16 and 17.

36. Accordingly, the Criminal Original Petition is partly allowed and

(i) the charge sheet pending in C.C. No.255 of 2024 on the file of the Chief Judicial Magistrate Court, Karur is quashed against the petitioners 2, 4 to 7 and 9 to 13 / the accused 4, 6 to 9, 11, 12, 13, 16 and 17.

(ii) With respect to the accused 3, 5 and 10, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

16.07.2025
[2/2]

index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mjs

To

The State of Tamil Nadu,
The Inspector of Police,
Economic Offences Wing-II,
Karur Town & District.

**P.DHANABAL,J**

mjs

**Pre-delivery Judgment in**
CRL O.P.(MD) No.9731 of 2024

16.07.2025
[2/2]