(2016) 03 MAD CK 0091

In the Madras High Court

Case No : Crl. O.P. Nos. 25331, 25332 of 2015 and Crl. M.P. Nos. 449, 450 of 2016

Kishore APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Citation : (2016) 03 MAD CK 0091

Hon'ble Judges : R. Mala, J.

Bench : Single Bench

Advocate : V. Raghavachari for S. Ashok Kumar, for the Appellant; C. Emalias, A.P.P., for the Respondent

Final Decision : Dismissed

Judgement

R. Mala, J.—1. Heard the learned counsel appearing for the petitioner, learned Additional Public Prosecutor appearing for the respondents.

2. The petitioner has come forward with the present applications seeking for a direction to the respondent/police to register a case on the complaint dated 24.06.2015 preferred by the petitioner on the file of the second respondent stating that the petitioner herein has preferred a complaint making allegations against the propose accused. Even though the respondent had received the said complaint, without examining the petitioner and perusing the documents, the complaint was closed on 18.09.2015 on the ground that it was civil in nature.

3. The learned counsel appearing for the petitioner would submit that the petitioner''s company had borrowed Rs. 200 crores from ICICI bank on 29.03.2011. The petitioner had also executed a shortfall agreement in respect of the shares. Subsequently, a memorandum of understanding was entered into between the petitioner''s company and the Varkey Group on 19.09.2011. However, the management of the Varkey Group Limited failed to pay the amount due to the ICICI bank and hence, without notice to the petitioner, as per the

shortfall agreement, the shares pertaining to the petitioner and his mother to the tune of Rs. 5,80,62,976/- were sold by the bank in the guise of recovering the monthly interest and misappropriated the same towards the defaulted four months interest due made by the principal borrower. That factum would show that the proposed accused with the intention to cheat the petitioner, colluded with the ICICI bank officials and taken away nearly 20 lakh shares, without notice as per the shortfall agreement. But the enquiry officer without enquiring into the alleged misappropriation had closed the complaint preferred by the petitioner stating the same is civil in nature. Hence, the petitioner has come forward with the present application to direct the respondents to register a case on the basis of the complaint given by the petitioner dated 24.06.2015.

4. Resisting the same, the learned Additional Public Prosecutor appearing for the respondents would submit that after the receipt of the complaint from the petitioner, the respondent had conducted an enquiry and found the complaint to be civil in nature and hence, closed the same. He would further submit that as per the memorandum of understanding, it was agreed to sell 10,90,000/- shares valued at Rs. 36 crores and out of the said amount, Rs. 31 crores had been paid and the balance amount is only around Rs. 5 crores. Further, the petitioner had also entered into a shortfall undertaking with the bank on 09.04.2011 and since there was amount due, as per the shortfall undertaking, the bank had utilised the shares. So, the nature of dispute is only civil in nature. Thus, the learned Additional Public Prosecutor prayed for dismissal of the petitions.

5. Considered the rival submissions made by both sides and perused the typed set of papers.

6. The first issue is in respect of purchase of 30 lakh shares to the tune of Rs. 99 crores by the proposed accused from the petitioner. In the partial transaction, 10 lakh shares to the tune of Rs. 36 crores had been sold and admittedly, a sum of Rs. 31 crores had been received by the petitioner. So, the balance amount is only Rs. 5 crores and admittedly, as per the Term Sheet, there is an arbitration clause and hence, the complaint preferred by the petitioner was closed stating that it is civil in nature. In view of the above stated position, I do not find any reason to interfere with the closure report.

7. As regards the next issue is concerned, there was an agreement between the petitioner''s company and the ICICI bank for availing a loan of Rs. 200 crores. Further, the petitioner had also entered into a shortfall undertaking with the bank on 09.04.2011. So, the bank officials in collusion with the proposed accused, in the guise of recovering the monthly interest due had sold the shares belonging to the petitioner and his mother for a sum of Rs. 5,80,62,976/- and misappropriated the same towards the defaulted four months interest due made by the principal borrower from 13.09.2012 to 21.01.2013 by unlawfully invoking the shortfall undertaking. Further, even as per the Term Sheet, there is an arbitration clause.

8. In such circumstances, I am of the view that the enquiry officer had perused the entire documents and after conducting the enquiry had closed the complaint. So, I do not find any reason to interfere with the closure report. However, the petitioner is entitled to approach the other forum in accordance with law. It is also made clear that the observations made in this petition shall not influence the other forum. In view of the observations made above, the intervenor petition filed in Crl. M.P. Nos. 449 & 450 of 2016 stands dismissed.

9. In fine, these criminal original petitions are dismissed.