

Crl.O.P.No.15172 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2025

PRONOUNCED ON : 18.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.15172 of 2024
and Crl.M.P.No.9276 of 2024

1. City Union Bank Limited,
Rep. by its Managing Director and CEO,
Admin Office, "Narayana",
24B, Gandhi Nagar,
Kumbakonam – 612 001.

2. N.Kamakodi

3. B.Praksh

4. G.Venkatesh

... Petitioners

Vs.

1. Sumerchand Bafna

2. The Sub Inspector of Police,
Central Crime Branch,
Land Fraud Investigation Wing,
Team V-A, Vepery,
Chennai – 600 007.

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 01.04.2024 passed by the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases



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(Relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai in CrI.M.P.No.25130 of 2023 in CNR TNCH0f-035792-2023.

For Petitioners : Mr.Abudukumar Rajaratnam
Senior Counsel
for Mr.Sharath Chandran

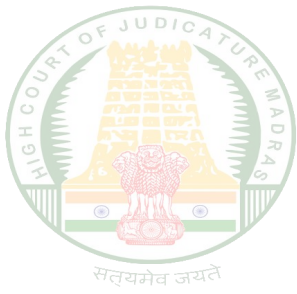
For Respondents

For R1 : Mr.B.Kumar,
Senior Counsel
For M/s. Aruna Ganesh

For R2 : Mr.K.M.D.Muhilan
Government Advocate (CrI.Side)

ORDER

This petition has been filed challenging the order dated 01.04.2024 passed by the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases (Relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai in CrI.M.P.No.25130 of 2023 in CNR TNCH0f-035792-2023, thereby directed the Deputy Commissioner of Police to appoint an office in the level of Inspector of Police to enquiry the complaint lodged by the first respondent and whether, if it is necessary registered an FIR or to file report within a period of fifteen days from the date of receipt of that order and investigate into the matter and file report within a period of three months.



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WEB COPY 2. The petitioners are the proposed accused persons in the complaint lodged by the first respondent. On the complaint lodged by the first respondent, the learned Magistrate issued direction under Section 156(3) of Cr.P.C., thereby directed the Deputy Commissioner of Police to engage an officer not below the rank of Inspector of Police to enquire the complaint dated 07.12.2022 and file report.

3. The learned Senior Counsel appearing for the petitioners submitted that the petitioners are being bankers, they have nothing to do with the allegations leveled against them and there is absolutely no *prima facie* case to enquire further. The first respondent suppressed several facts such as initiation of SARFAESI proceedings in O.A.No.162 of 2023 on the file of the Debt Recovery Tribunal-3, Chennai and obtained direction from the Magistrate. Further the suit in C.S. (Comm Div) No. 178 of 2023 also filed before this Court by one Mahalaxmi Inn Private Limited and the same was suppressed by the first respondent. If the pendency of these proceedings disclosed before the learned Magistrate, no directions would have been issued to conduct enquiry into the complaint lodged by the first respondent. The learned Magistrate

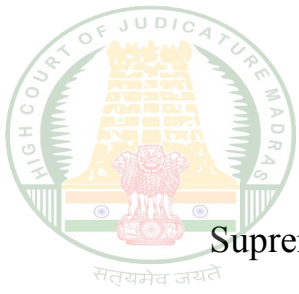


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without application of mind mechanically issued direction and without even gone through the complaint.

3.1. He further submitted that the first respondent availed financial assistance to the tune of 27.43 crores. Thereafter, the first respondent committed default and their loan amount has been declared as non-performing assets which resulted in initiation of proceedings under the SARFAESI Act. Accordingly, the petitioners served notice under Section 13(2) of the SARFAESI Act. On receipt of the same, the first respondent requested for one time settlement. It was considered favorably and as per the terms of the settlement a sum of Rs.20,00,000/- were to be deposited in a time bound manner. The last installment was payable on 31.03.2022. However, one time settlement was also not effected and committed default. Therefore, the petitioners had terminated one time settlement scheme on 30.11.2021. Hence, no offence is made out as against the petitioners as alleged by the first respondent.

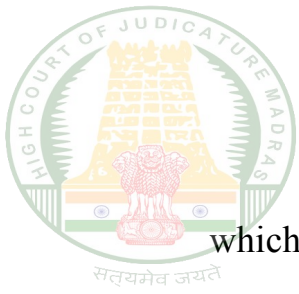
3.2. In support of his contention, he relied upon the judgment reported in *2020(2) LW (Crl) 562* in the case of *Vinubhai Haribhai Malaviya and ors Vs. State of Gujarat and anr.*, in which the Hon'ble



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Supreme Court of India held that the learned Magistrate before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath. He also relied upon another judgment of the Hon'ble Supreme Court of India in the case of ***Om Prakash Ambadkar Vs. The State of Maharashtra & ors.***, in CrI.A.No.352 of 2020 dated 16.01.2025, which held that before approaching the Magistrate under Section 156(3) of the Cr.P.C., which is a discretionary remedy as the provision proceeds with the word 'may'. The Magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizance offences and also about the necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. Further the Magistrate ought to have directed the investigation by the police only where the assistance of the investigating agency is necessary. Therefore, the Magistrate is not supposed to act merely as a post office and needs to adopt a judicial approach while considering an application seeking investigation by the police. He relied upon another judgment reported in ***(2015) 6 SCC 287*** in the case of ***Priyanka Srivastava and anr Vs. State of Uttar Pradesh and ors.***, in



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which the Hon'ble Supreme Court of India held that prior to making an application to the Magistrate under Section 156(3) of Cr.P.C., the applicant must necessarily make application under Section 154(1) & 154(3) of Cr.P.C.

4. Heard the learned counsel appearing on either side and perused the material placed before this Court.

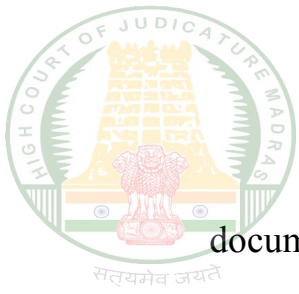
5. On perusal of the complaint filed by the first respondent revealed that the first respondent is one of the directors and he is in-charge of day-to-day affairs of the companies viz., M/s.Vinitha Associates Ltd., M/s. Shopper's Spot (Chennai) Lrd., M/s. Mahalaxmi Inn Pvt. Ltd., M/s. Mahalaxmi & Sons and M/s. Vinitha Resorts Ltd. These companies have availed credit facilities from the petitioners from the year 2017 onwards. However, during Covid-19, these companies failed to repay the loan amount and defaulted. Therefore, the petitioners declared the companies loan account as non performing assets and initiated proceedings under the SARFAESI Act. At that juncture, the first respondent requested for one time settlement. Accordingly, the petitioners agreed that the property belonging to each company would be



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released from all manner of encumbrances on completion of pro-rata payments by the respective company and its entity. Accordingly, the first respondent settled the outstanding to retrieve the properties and made remittances. However, the petitioners merely returned the original title deeds and parent documents of M/s. Vinitha Associates Limited and Shoppers Spot (Chennai) Limited and issued no objection certificate for opening of accounts with any other bank. The petitioners had given false assurance that they would release the documents from their encumbrances. However, the properties of company are not released from encumbrance of the petitioners as agreed by them. Hence, the companies were put to wrongful loss by reason of all encumbrance over the properties. Though the properties were put on sale, they were not drawing interest from the investors on account of the charge over the properties to an extent of Rs.130 crores in respect of all companies.

6. Therefore, the first respondent caused legal notice to release the properties from encumbrance. The mortgage documents and extension of mortgage documents were in the custody of the petitioners. Thereafter, the first respondent came to understand that the false entry created by the petitioners in the Memorandum of Deposit of Title



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document No.480 of 2021 dated 22.02.2021. They also made false entries and falsification of records and records made in the mortgage deed, falsely claiming a sum of Rs.1260 crores.

7. That apart, on the basis of the false and fabricated records, which have been uploaded by way of electronic records on the portals of Ministry of Corporate Affairs and Registrar of Companies to detriment the first respondent, whose business can never be free of the online debts foisted by the petitioners. Therefore, the first respondent lodged complaint before the Commissioner of Police, Greater Chennai and same was duly acknowledged on 07.12.2022, Thereafter it was forwarded to the Inspector of Police R-1, Mambalam Police Station for conducting enquiry. Thereafter, the first respondent was issued with C.S.R.No.40 of 2023 dated 23.01.2023. For want of pecuniary jurisdiction, the complaint was once again forwarded to the first respondent for investigation. During the enquiry, the petitioners gave their statements and thereafter the first respondent without conducting any further enquiry simply closed the complaint by holding that there is another court case filed by the first respondent and as such the petitioners have not created any falsified documents. Therefore, the first respondent filed private



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complaint before the learned Metropolitan Magistrate for Exclusive trial of CCB Cases (relating to cheating cases), Chennai in CrI.M.P.No.25130 of 2023.

8. After perusal of the complaint and the documents thereon, the learned Magistrate found that the complaint made out prima facie offence and it requires police investigation and therefore, directed the Deputy Commissioner of Police to engage officer not below the rank of Inspector of Police to conduct enquiry and whether, if necessary register FIR or to file the report, on the basis of the complaint lodged by the first respondent within fifteen days and file final report within a period of three months.

9. The Hon'ble Supreme Court of India repeatedly held that the power of the Magistrate under Section 156(3) of Cr.P.C., to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government. It can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further



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investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report.

10. The first respondent initially lodged complaint before the Commissioner of Police and the same was forwarded to the Inspector of Police to investigate the same. However, it was closed and as such the first respondent rightly filed private complaint before the jurisdiction Court. On receipt of the complaint, the Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of Cr.P.C., for the purpose of enabling the police to start the investigation and also the Magistrate can direct the police to register the FIR. There is nothing illegal in doing so. After all registration of FIR involves only the process of entering the substance of information relating to the commission of cognizable offence in a book kept by the officer in charge of the police station as indicated under Section 154 of Cr.P.C. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of Cr.P.C., that an FIR should be registered. It is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by



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the complainant because that police office could take further steps contemplated in Chapter XII of the Code only thereafter. Therefore, the judgments cited by the learned Senior Counsel appearing for the petitioners are not applicable to the case on hand.

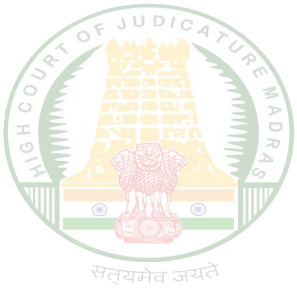
11. In view of the above discussions, this Court finds no infirmity or illegality in the order dated 01.04.2024 passed by the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases (Relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai in Crl.M.P.No.25130 of 2023 and the present petition is devoid of merits and liable to be dismissed.

12. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

18.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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G.K.ILANTHIRAIYAN. J.

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To

1. The Metropolitan Magistrate
for Exclusive Trial of CCB Cases
(Relating to Cheating Cases in Chennai)
and CBCID Metro Cases,
Egmore, Chennai

2. The Sub Inspector of Police,
Central Crime Branch,
Land Fraud Investigation Wing,
Team V-A, Vepey,
Chennai – 600 007.

3. The Public Prosecutor
Madras High Court,
Chennai.

Pre delivery Order in
CrI.O.P.No.15172 of 2024
and CrI.M.P.No.9276 of 2024

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