

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 26.04.2022
Pronounced on:09.05.2022

**CRMC No.440/2018
CrIM No.322/2021**

STATE BANK OF INDIA ANANTNAG ... PETITIONER(S)

Through: - Mr. Q. R. Shamas, Advocate.

Vs.

G. M. JAMSHEED DAR ...RESPONDENT(S)

Through: - Mr. G. M. Jamsheed, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

- 1) The petitioner has challenged the complaint filed by the respondent against it before the Court of learned Chief Judicial Magistrate, Anantnag, as also order dated 31.07.2018 passed by the learned Magistrate in the said complaint.
- 2) Before coming to the grounds of challenge raised in the petition, it would be apt to refer to the allegations contained in the complaint filed by the respondent.
- 3) A complaint came to be filed by respondent before learned Chief Judicial Magistrate, Anantnag, seeking a direction for conducting enquiry/registration of FIR against the officials of the State Bank of India, Branch office Anantnag. The particulars of the officials of the Bank are

given in para (7) of the complaint. It was alleged in the complaint that respondent is maintaining a cash credit account No.11419005877 with State Bank of India, Branch Office, Anantnag. It was further averred that on 29.01.2018, it came to the knowledge of the complainant/respondent that a huge amount has been credited and debited in his said account with effect from 01.01.2009 to 03.04.2014 at his back and without his knowledge, the details of which are projected in the statement of account issued by the Bank. It is also averred that the officials of the petitioner Bank have deceitfully and dishonestly used his account for ulterior motives supposedly in the name of 'Window Dressing', a process of operating the accounts, the knowledge of which the respondent herein got through reliable sources. The respondent is alleged to have made a representation on 31.01.2018 to the Branch Manager of the Bank, who issued revised statement of account after deleting the fictitious entries and also issued a certificate to the effect that inflated debit and credit entries made in the account do not belong to the account holder but the same have been made by the Bank officials as a means of "Window Dressing". It was also alleged in the complaint that by making these illegal/fictitious transactions, the officials of the Bank have committed serious offences thereby tarnishing image of the respondent/complainant. It is contended that due to these fictitious credit and debit entries in the account of the respondent/complainant, his position became dubious before the Income Tax Department, as a result whereof, the Income Tax Authorities issued notices under Section 133(6) of the Income Tax Act for the year 2010-2011 and 2011-2012 against the respondent/complainant. With these

allegations, the respondent/complainant sought direction that the matter be investigated under law.

4) It appears that on 17.04.2018, another application was made by the respondent/complainant whereby he sought permission to place on record the reply dated 09.04.2018 sent to him by the Branch Manager, State Bank of India, Anantnag.

5) Upon the aforesaid complaint filed by respondent/complainant, the learned Chief Judicial Magistrate, Anantnag, recorded preliminary statement of the respondent/complainant and one more witness, whereafter the learned Magistrate recorded in his order dated 17.04.2018, that the matter needs to be enquired into. On 31.07.2018, another order came to be passed by the learned Magistrate, whereby the learned Magistrate forwarded the complainant of respondent/complainant to police for conducting preliminary verification. It was observed in the said order that the record highlights the fact that the officials/unknown persons have operated the bank account of the complainant illegally thereby inflating the bank account without the knowledge of the complainant and fictitious entries/transactions have been made in the account head of the complainant, which requires a detailed enquiry.

6) The petitioner has challenged the impugned order as well as the impugned complaint filed by the respondent/complainant on the ground that the allegations made in the complaint do not make out any offence against the petitioner nor recording of entries in the account of respondent constitute any offence under any penal law. It is further contended that the

first application filed by the respondents before the learned Magistrate was sent to the police for enquiry, as such, when second application was made by respondent before the learned Magistrate on 17.04.2018, it was not open to the learned Magistrate to direct enquiry in terms of Section 202 of Cr. P. C. It is also contended that the alleged entries were made from the year 2009 to 2014, but the complaint has been filed by the complainant/respondent in February, 2018. Thus, the same is barred by limitation. Another contention that has been raised by the petitioner is that the officials of the petitioner Bank being public servants, cognizance of offences against them cannot be taken without previous sanction and that this aspect of the matter has been ignored by the learned Magistrate.

7) I have heard learned counsel for the parties and perused the material on record.

3) So far as the first contention of learned counsel for the petitioner that no offence is made out against the officials of the petitioner Bank is concerned, the determination of merits of the said contention at this moment of time when no process has been issued against the officials of the petitioner Bank would be premature. Any opinion that may be rendered by this Court in this regard would definitely have a bearing upon the course that may be adopted by the learned Chief Judicial Magistrate after getting the report of enquiry from the police. The petitioner has, it seems, prematurely approached this Court when not even process has been issued against the officials of the petitioner Bank, which means that learned Chief Judicial Magistrate has yet to make up his mind whether

any offence is made out on the basis of the material before him. In fact, the enquiry report has still not been produced by the police before the learned Chief Judicial Magistrate. It is only thereafter that the learned Magistrate would be in a position to make a, prima facie, opinion as to whether any offence is made out against the officials of the petitioner Bank. The filing of the instant petition, even prior to issuance of process against the officials of the petitioner Bank, is premature, as a prospective accused has no right or locus standi to be heard on the question whether the process should be issued against him or not.

4) Coming to the second contention raised by learned counsel for the petitioner that it was not open to the learned Magistrate to direct the police to conduct the preliminary verification, the same also appears to be without any merit. A perusal of the trial court record shows that there is no order on record of the file that would indicate that the first complaint filed by the respondent was referred to the police for enquiry by the order of the learned Magistrate. There is only an endorsement by clerk of the Court of Chief Judicial Magistrate, which records that earlier application has been sent for enquiry but no order of the Court could be found on the record of the file to this effect. Although respondent in his complaint filed before the learned Chief Judicial Magistrate had prayed that an FIR should be registered against the officials of the petitioner Bank, yet the learned Magistrate instead of directing registration of the FIR in terms of Section 156(3) of Cr. P. C recorded the preliminary evidence and took cognizance of the complaint, whereafter in terms of Section 202 of Cr. P. C, a

direction was issued on 31.07.2018 asking the concerned police to conduct the preliminary verification. The course adopted by the learned Chief Judicial Magistrate is in accordance with law and cannot be found fault with.

5) The third contention which has been raised by learned counsel for the petitioner is with regard to the bar of limitation. According to the petitioner, cognizance of the offences alleged in the complaint cannot be taken in view of the bar contained in Section 538-B of J&K Cr. P. C. The argument of the learned counsel is misplaced for the reason that respondent in the complaint has alleged commission of offences under Section 409, 420, 120-B, 467, 471 of RPC. Some of these offences carry punishment upto imprisonment for life. Therefore, provisions contained in section 538-B of J&K Cr. P. C, which create a bar to take cognizance after lapse of the period of limitation, is not attracted to the instant case, as the bar to take cognizance of offences carrying punishment of life imprisonment is not applicable at all.

6) Lastly, it has been argued by learned counsel for the petitioner that officials of the petitioner Bank are public servants and, as such, cognizance of offences against them cannot be taken without previous sanction. He has pressed into service provisions of Section 197 of Cr. P. C in this regard.

7) It is true that the officials of the petitioner Bank come within the definition of public servant as contained in Section 21 of IPC but the officials of the bank are not the public servants who cannot be removed from their office save by or with the sanction of the Government. The appointing and removing

authority of the officials of the petitioner Bank is not the Government but it is the competent authority of the State Bank of India who is empowered to do so. Thus, the provisions of Section 197 of the Cr. P. C are not attracted to the case of the petitioners. I am supported in my aforesaid view by the judgment of the High Court of Madras in the case of **Ramesh Gelli vs. The Inspector of Police, Central Bureau of Investigation, 2017 Supreme (Mad) 1915**, wherein, while considering this question, the Court observed as under:

“18. Even that is so, it is not the Government who has appointed him and it is not the competent authority to remove him from office. Therefore, banking sector, being governed by the Reserve Bank of India and considered as limb of the Status under Article 12 of the Act and by virtue of Section 46A of Banking Regulation Act, the petitioner is deemed to be a ‘public servant’ for the purpose of provisions under the Prevention of Corruption Act. It cannot be extended to I.P.C.

12. Even for the sake of argument, if the petitioner should be considered as a ‘public servant’ for I.P.C offences also, the protection available under Section 197 Cr. P. C, is not available for the petitioner herein since the conditions in-built in Section 197 Cr. P. C, which say a person removable from office save or by sanction to Government and the act committed or purported to committed in discharge of official duty, does not attract to the facts of the present case.”

8) From the foregoing enunciation of law on the subject, it is clear that an official of the bank may qualify to be a public servant and for prosecuting such an official in connection with offences under the provisions of Prevention of Corruption Act, a previous sanction has to be obtained but so far as prosecution of officials of the bank in connection with offences under I.P.C/RPC are concerned, no previous sanction is required.

9) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. It is, however, provided that the learned Magistrate shall, after obtaining the enquiry report from the enquiry officer, consider the material on record and thereafter take a decision as to whether any offence is made out against the officials of the petitioner Bank without being influenced by the observations made by him in his order dated 31.07.2018.

10) A copy of this order be sent to the learned Magistrate for information and compliance.

(SANJAY DHAR)
JUDGE

Srinagar,
09.05.2022
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No