

IN THE COURT OF THE IV ADDL. C.M.M AT BANGALORE.

DATED THIS THE 4th DAY OF MARCH 2017

PRESENT

Smt. Roopa R. Kulkarni,
B.Com., L.L.B., (Spl)
IV A.C.M.M. Bangalore

CC 19964/2011

Complainant : State by CCB F & M

V/s.

Accused : A5: B.K.Puttaramaiah

**ORDER ON APPLICATION FILED BY
ACCUSED No.5 U/S.239 of Cr.P.C.**

The counsel for accused No.5 has filed application by stating that the complainant police have submitted charge sheet against the accused for the offences punishable u/s.408, 409, 418, 473, 471, 420, 120(B) of IPC. It is stated that, on 19.8.2010 one M.Ramakrishnappa, in-charge Manager Administration and establishment BBR and RDCC Bank Ltd., appeared before the SHO of respondent police station and lodged a complaint alleging that he is incharge Manager of RDCC Bank Ltd., Bangalore and he has been authorised by the Board of Management of his bank to lodge complaint against the accused persons for the offences punishable u/s.408, 418, 420 r/w 34 of IPC. It is submitted that, to connect the accused No.5 for the offences alleged against him prosecution has to place some materials to show that there was an entrustment

of property or with any dominion over the property dishonestly misappropriated by the accused No.5 or converting the said property to his own use. Looking to the facts of the case there is no entrustment of property to accused No.5 or there is no misappropriation by accused No.5. There is no positive materials to connect the accused No.5 for the alleged offences. It is also submitted that, no material has been produced by the complainant police and no prima facie case has been made out against accused No.5 to proceed against him. It is also submitted that, when the alleged offences are said to be committed the accused No.5 was working as Senior Manager at Head Office in Planning and Development Wing and there is guidelines by RBI in processing and consideration of loan application submitted by self help group. ON receipt of VSSN scrutinise the application and two directors of the VSSN should attest the application submitted by the groups and groups has to maintain accounts in VSSN and the Secretary has to satisfy about the transactions of elf help groups and after satisfaction, the VSSN forward the applications to branch office of the bank and afterwards field supervisor should visit the spot and examine the genuineness of the application and submit report and branch manager after satisfying the recommendation of Secretary and filed supervisor forward the application to Head Office. In this case also accused No.1 performed the work of Supervisory in nature and when the loan applications came to Head office case workers cross checked and recommended loan amount and the same will be placed before MD and MD asked the accused No.5 to recommend the loan amount recommended by VSNN branch and as per the say of MD accused No.5 endorsed the recommendation.

It is also submitted that, when the Head Office received the loan applications and other documents which are recommended by the officers of the bank and there was no reason to suspect the said documents and creation and fabrication of the loan application and documents were not within the knowledge of the accused no.5 and in routine process the applications were recommended. It is also submitted that, in order to prove the allegations the prosecution has relied upon 140 witnesses amongst them CW1 to 11 are bank officials, CW12, 13 are directors of VSSN, CW15 is partner of chartered accountant officer, and other witnesses are belonging to different villages and they speak no such self help groups in existence and documents created and obtained the loan and misappropriated the loan and misappropriated the statements of those material witnesses are hear say witnesses with regard to accused No.5. So, the prosecution has not placed any material to make out a prima facie case against the accused No.5. Hence, accused No.5 is entitled for discharge.

2. The prosecution has filed objections to the said application by stating that, the complainant police after detailed investigation and on the basis of the complaint given by the complainant have filed charge sheet against the accused for the offences punishable u/s.408, 409, 477 of IPC. The investigation officer has collected documentary as well as oral evidence of the witnesses and unless the witnesses are examined before the court the prosecution may not be possible to prove the case against the accused. It is also submitted that, the prosecution has to establish the case by examining the witnesses and producing the oral evidence before the

court. So, the materials placed before the court are sufficient to frame charge against the accused. So, the application filed by the accused is not maintainable and prayed to reject the application.

3. Heard both the sides.
4. I have gone through the materials placed before the court.
5. The points that would arise for my consideration are:
 - 1) Whether the accused No.5 has made out a ground to discharge him from proceedings ?
 - 2) What order ?
6. My finding on the above points are:
 - Point No.1 : In the negative.
 - Point No.2 : As per the final order for the following:

REASONS

7. Point No.1 : The counsel for accused No.5 has submitted that when the alleged offences were taken place the accused No.5 was working as Senior Manager at Head Office in Planning and Development Wing and there is a guideline in processing and consideration of loan application submitted by Self Help Group. When the Head office receives the loan application and other documents which are recommended by the officers of the bank there was no reason to suspect the said documents and creation or fabrication of the loan application or other documents. Accused No.5 had no knowledge about the fabrication or creation of the loan applications or other documents in routine process the applications

were recommended and he also came to know at a later stage about the fabrication of the documents and availing loan and misappropriation of the said loan amount. So, when the act of other accused persons was not within the knowledge of accused No.5, he is not responsible or accountable or liable for the alleged acts. Even on perusal of the complaint averments no specific allegation has been made against accused No.5 and the witnesses who have been cited by the complainant police are hear say witnesses and no case has been made out against accused No.5 and so he is entitled for discharge.

8. On the other hand, the Senior APP submitted that at the time of framing the charge matter need not be considered meticulously and truth and veracity of the case will be considered at the time of trial. Charges can be framed even though there is a doubtful case made out by the prosecution.

9. I have gone through the complaint averments and the charge sheet papers. On perusal of the complaint averments it is alleged that, when the accused No.5 was working as Senior Regional Manager of the RDCC Bank, during January 2010 to February 2010 he colluding with the other accused has committed criminal breach of trust and have misused their power and have fabricated the documents to the effect that so many help groups have been formed under SHG scheme and created other documents for the financial assistance under the scheme in collusion. Even on perusal of the complaint averments also, it is also alleged that, between January 2010 to April 2010 Sri.B.K.Puttaamaiah,

Manager, Loans working in their Head Office in collusion with Sri.Krishna, incharge Branch Manager, Kanakapura and sri.K.N.Swamy Gowda, Field Supervisor attached to their branch Kanakapura in collusion floated 12 self help groups by fabricating documents required for availing the loan or financial assistance from their bank under SHG scheme and have taken Rs.59 Lakhs. Further it is also alleged that, B.K.Puttaramaiah has recommended knowing fully well that these groups are not in existence and are containing benami names and has obtained loan to the extent of Rs.59 Lakhs and released the same to the some groups and have illegally benefited themselves. So, looking to the complaint averments and the charge sheet averments and the statement of the witnesses the allegation is also been made against accused No.5.

10. As per the provisions of Sec.239 of Cr.P.C. upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers that charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing. But in the present case, looking to the charge sheet and the other materials, it does not appear that the charges made against accused are groundless. Hence, the application filed by accused No.5 is not tenable. Hence, I answer the above point in the negative.

11. Point No.2 : In view of the above discussion, I proceed to pass the following :

ORDER

The application filed by accused
No.5 u/s.239 Cr.P.C. is hereby rejected.

(Dictated to the stenographer, transcribed and computerised by her, corrected by me and then pronounced in open court on this the 4th day of March 2017)

(Roopa R. Kulkarni)
IV Addl.CMM, Bengaluru.

04.03.2017
Complainant
Accused
For orders

ORDER

(Pronounced in open court vide separate order)

The application filed by accused
No.5 u/s.239 Cr.P.C. is hereby rejected.

IV Addl.CMM

