IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Original Petition Nos.10710 and 5950 of 2015 and connected MPs.

1.S.Vaidyanathan
2.Gomathy ...Petitioners/Accused 2 & 3 in Crl.O.P.10710/2015

1.S.Ashok Kumar
2.A.Vijaya ...Petitioners/Accused 6 & 7 in Crl.O.P.5950/2015

vs.

1.The Inspector of Police
Central Bureau of Investigation
Anti-corruption Branch
Chennai
Crime No.RC08/A/2008/CBI/ACB/Chennai)

2.The Union Bank of India
Ashok Nagar Branch
Chennai-82 ..Respondents in both Crl.OPs.

Prayer in both Crl.O.Ps.:-Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to call for the records relating to C.C.No.2988 of 2009 on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai and quash the proceedings.

For petitioners : Mr.S.Angamuthu

For respondents : Mr.K.Srinivasan, Spl.Public Prosecutor for CBI Cases for R1.

COMMON ORDER

These Criminal Original Petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for records relating to C.C.No.2988 of 2009 and quash the same.

2. It is averred in the petitions that petitioners have been arrayed as Accused Nos.2, 3, 6 and 7, in C.C.No.2988 of 2009. During investigation, the petitioners have paid the alleged defalcation

amounts. Under the said circumstances, the present petitions have been filed. Further, accused Nos.4 and 5 have filed Crl.O.P.Nos.26874 of 2009; 8043 of 2011 on the file of this Court and the same have been allowed on the same ground.

3. In the counter filed on the side of the respondent No.1, it is averred that the petitioners and others are initially charged punishable under Section 120 B read with 420 IPC, 467, 468 read with 471 IPC, 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988; it is false to aver that simply because the petitioners have repaid the amounts involved in the crime, they are entitled to get quash the entire proceedings relating to C.C.No.2988 of 2009 and there is no merits in the petitions and the same are liable to be dismissed.

4. The learned counsel appearing for the petitioners have contended that on similar ground, Crl.O.P.No.26874 of 2009 and 8043 of 2011 have been filed by the accused 4 and 5 on the file of this Court and the same are allowed and therefore, the present petitions have been filed for getting relief sought for therein.

5. The learned Special Public Prosecutor appearing for the 1st respondent has contended that even at the time of passing orders in Crl.O.P.Nos26874/2009 and 8043/2011, the Honourable Supreme Court has held that mere payment of money involved in the offence would not entitle the concerned accused to quash Criminal proceedings and this Court has erroneously allowed Crl.O.P.Nos.26874/2009 and 8043/2011.

6. On the basis of the diverging submissions made on either side, the Court has to look into as to whether the mere payment of money involved in criminal offence would be sufficient to quash criminal proceedings initiated against the concerned accused ?

7. The learned Special Public Prosecutor has straight away drawn the attention of this Court to the decision rendered in State of Maharashtra, through CBI Vs. Vikram Anantrai Doshi and others, wherein, at paragraph 23, the Honourable Supreme Court has observed as follows:-

> " We are in respectful agreement with the aforesaid view. Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and

predominantingly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible."

8. A cursory look on the observations made by the Honourable

Supreme court, it is made clear that mere payment of money involved in criminal offences is not at all sufficient to quash criminal proceedings either in case of IPC offences or in case of offences punishable under the Prevention of Corruption Act.

9. The entire contention put forth on the side of the petitioners is that similar petitions filed in Crl.O.P.Nos.26874/2009 and 8043/2011 are allowed.

10. As pointed out on the side of the first respondent that at the time of passing orders in the said Crl.O.Ps., the decision rendered by the Honourable Supreme Court is in existence, but unfortunately, the same has not been brought to the knowledge of the learned Judge, who passed such kind of order. Therefore, viewing from any angle, the relief sought for in the petitions cannot be granted and altogether these Criminal Original Petitions deserve to be dismissed.

11. In fine, these Criminal Original Petitions are dismissed. Consequently, connected MPs are also dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To
1.The Inspector of Police
Central Bureau of Investigation
Anti-corruption Branch, Chennai
Crime No.RC08/A/2008/CBI/ACB/Chennai)

2.The Union Bank of India
Ashok Nagar Branch
Chennai-82

3.The Additional Chief Metropolitan Magistrate, Egmore.

4.The Spl.Public Prosecutor, for CBI Cases, High Court, Madras.

1 cc to Mr.S.Angamuthu , Advocate Sr.No.43734

Crl.A.No.770 of 2004

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pmk.14.9.2015