IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2015

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THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Crl.R.C.No.1229 of 2014
and
M.P.Nos.1 and 2 of 2014

1.M.Anitha
2.Megavannan .. Petitioners/Accused

Versus

State Rep. By
The Inspector of Police,
DCB, Kancheepuram.
[Crime No.22 of 1987] .. Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure, against the order dated 07.07.2014 made in C.M.P.no.4723 of 2013 in C.C.No.334 of 2005 by the learned Judicial Magistrate No.I, Kancheepuram, Kancheepuram District.

For Petitioners : Mr.N.R.Elango, Senior Counsel
for Mr.R.Vivekananthan

For Respondent : Mr.V.Arul, GA (Criminal Side)

O R D E R

Being aggrieved by the order dated 07.07.2015 passed in C.M.P.No.4723 of 2013 in C.C.No.334 of 2005 by the learned Judicial Magistrate No.I,Kancheepuram, refusing to discharge the petitioners from the case, this revision case is filed by the accused therein.

2. The case of the petitioners in brief is that they are silk yarn twisters and they have been arrayed as A3 and A4 respectively in the said case. A3 is running a silk yarn twisting factory in the name and style of "Lakshmi Silk Twisting Factory", while A4 is running a twisting factory in the name and style of "C.Prasad Twisting Factory" at Dharmapuri District. According to the allegations in the first information report, with a criminal intention of cheating and misappropriating, the petitioners obtained huge amounts as loan against bank guarantees for the purpose of raw silk over and above the amounts for which they were eligible and thereby committed offence punishable under Sections 408 and 420 of IPC respectively.

On completing the investigation, the Inspector of Police, DCB, Kancheepuram, has filed a final report for offence punishable under Sections 408, 420 r/w 109 of IPC as against the petitioner and 9 others and the same has been taken cognizance in C.C.No.334 of 2005 by the learned Judicial Magistrate No.I, Kancheepuram. Now, they are facing the trial.

3. It is the further case of the petitioner that when they filed a petition seeking to discharge them from the case on the ground the allegations would make out only a civil dispute and there is no mens rea on the part of the petitioners to commit any offence as alleged by the prosecution, the learned Judicial Magistrate refused to discharge them and thereby dismissed the petition. That is how, the petitioners are now before this court with this criminal revision petition.

4. Heard both sides and also perused the available records carefully.

5. The main ground of attack made by the learned senior counsel for the petitioner is that the trial court has failed to take into consideration of the fact that the entire allegations would make out only pure and simple, a civil dispute and that the loans were obtained by the petitioners against Bank Guarantees only on the recommendations made by the officials of the cooperative society. He would further submit that there is no mens rea on the part the petitioner to commit any offence at all. When there is no mens rea, there cannot be any criminal liability at all on the part of the petitioner. Therefore, the learned senior counsel would contend that the trial court ought not to have summarily rejected the discharge petition on the ground that the matter can be decided only at the trial.

6. In this connection, the learned senior counsel would rely upon an order of this court dated 12.04.2015 made in Crl.O.P.No.18199 of 1998, wherein, the case as against one of the co-accused, who was also a borrower, came to be quashed at the very FIR stage itself. Thereafter, insofar as the other officials are concerned, namely, A7, A8, A9, A10 and A11, all their discharge petitions have been allowed by the trial court itself. Only insofar as the petitioners are concerned, the same has been dismissed.

7. The learned senior counsel would further add that the very occurrence is said to have taken place between the years 1991 and 1996 and that the case has been registered way back in the year 1997 and the petitioners have been undergoing the ordeal of facing the prosecution for quite some years. Apart from this, the learned senior counsel would also contend that already civil suits in O.S.Nos.236 and 237 of 2000 have been filed by the society against the petitioners for recovery of the alleged loan amounts and the same are pending. Under those circumstances, there is no offence at all

made out as against the petitioners and that they cannot be made criminally liable for non payment of alleged loan amounts. Thus, the trial court ought to have discharged the petitioner from the case.

8. After making an elaborate argument, the learned senior counsel for the petitioner would fairly submit that the petitioners are prepared to deposit voluntarily a sum of Rs.5,00,000/- to show their bona fide as the society is also suffering at this point of time.

9. The learned Government Advocate (Criminal Side) would on the other hand contend that the involvement of the petitioners in the crime is very clear because what they were entitled was a lesser amount and the bank guarantees which have been given by the petitioners were for huge amounts. Even according to the petitioners, though they knew very well that they were not eligible for such huge amount as loans, their participation in taking loans itself would be sufficient to show their criminal intention and that the trial court was right in refusing to discharge them from the case.

10. I have considered the rival submissions carefully.

11. The very reading of the allegations made in the charge-sheet would go to show that there was failure on the part of the petitioners in making repayment of loans and that the loan facilities against bank guarantees have been extended only after getting bank guarantees from the petitioners. Had it been the case of the prosecution that the officials and the petitioners have connived with each other and that pursuant to the same, the society accommodated the loan requests of the petitioners more than what they were eligible against bank guarantees, then, it would be sufficient to infer mens rea or criminal intention on the part of the petitioners. Whereas the allegations in the charges are that after availing huge amounts as loan against bank guarantees, the petitioners failed to repay the loans and thus, this is pure and simple, a civil dispute, for which, civil suits have already been filed by the society and the same are now pending before the Subordinate Judge, Kancheepuram. If at all any amount is due from the petitioners, the same has to be recovered only under appropriate proceedings. In this regard, useful reference can be made to the decision of this Court reported in (C. Selvakumar vs. State through Inspector of Police, C.C.I.W. C.I.D., Tirunelveli) 2011 1 Law Weekly 314 wherein this Court following the decision of the Honourable Supreme Court in Union of India and others vs. J. Ahmed, AIR 1979 SC 1022, held that misbehaviour or misconduct leads to disciplinary proceedings and it would not be sufficient to be construed as guilty mind or mens rea to initiate a criminal proceedings. In Para Nos. 16 to 18, this Court held as follows:-

"16. In Union of India and others vs. J. Ahmed reported in AIR 1979 SC 1022, the Honourable Supreme Court held as follows:-

"The High Court was of the opinion that misconduct in the context of disciplinary proceedings means misbehaviour involving some form of guilty mind, mens rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.

17. It is a settled proposition of law that to constitute an offence, two basic elements are required 1. 'acus reus' and 2. 'mens rea'. In the abovesaid decision of the Hon'ble Supreme Court, it is made clear that misbehaviour or misconduct leads to disciplinary proceedings which would not be sufficient to be considered as guilty mind or mens rea to initiate a criminal proceeding. It is an admitted fact the petitioner herein was working in a supervisory capacity as Field Manager of Central Co-operative Bank, hence, in the absence of conspiracy or any favour relating to conspiracy between the petitioner and the accused/A1 to A3, who subsequently paid the amount, it cannot be decided that there was mens rea to initiate criminal proceeding against the petitioner/A8, apart from the findings of the departmental proceeding.

18. In the light of the decision of the Honourable Apex Court, referred to by both the learned counsel, I am of the view that there is no prima facie case made out against the petitioner/A8 who was subsequently arrayed as one of the accused in the Criminal case and accordingly he is entitled to get discharged and accordingly, the impugned order passed by the Court below is liable to be set aside.

12. Applying the ratio laid down by this Court in above decision to the facts and circumstance of this case, I am of the considered view that in the absence of mens rea on the part of the petitioners to commit any offence as alleged, allowing the petitioners to under go the ordeal of trial furthermore would not be proper in the interest of justice. Even otherwise, the petitioners have already been facing the prosecution since the year 1987, that is, for about 18 years and more particularly, facing the ordeal of trial since the year 2005. Moreover, some of the co-accused in the said case have already been discharged from the case. The 1st petitioner is now aged about 60 and the 2nd petitioner is now aged about 55 years. The 1st petitioner has become senior citizen. Since the learned senior counsel for the petitioners has fairly submitted that the petitioners, in order to show their bona fide de hors the fact that the civil suits are pending, prepared to deposit a sum of

Rs.5,00,000/-, I am of the view that this is a fittest case where the petitioners/accused are to be discharged.

13. In the result, this criminal revision petition is allowed and the order dated 07.07.2014 passed in C.M.P.No.4723 of 2013 in C.C.No.334 of 2005 by the learned Judicial Magistrate No.I, Kancheepuram, is hereby set aside; C.M.P.No.4723 of 2013 in C.C.No.334 of 2005 is allowed and the petitioners/A3 and A4 are discharged from the above said case, however, with a condition that the petitioners shall deposit a sum of Rs.5,00,000/- within a period of three months from today without awaiting for a copy of this order. No costs. Consequently, connected MPs are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The The Inspector of Police,DCB, Kancheepuram.[Crime No.22 of 1987]

2.The Judicial Magistrate No.I, Kancheepuram, Kancheepuram District.

3.The public Prosecutor High Court Madras-104

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