IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23-09-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Original Petition No.8851 of 2014
and M.P.Nos.1 and 2 of 2014

T.R. Narayanan ... Petitioner (A4)

Vs.

State rep. by
The Inspector of Police
Central Bureau of Investigation
SCB, Chennai ... Respondent

Criminal Original Petitions under Section 482 of Cr.P.C., to call for the records in C.C.No.42 of 2013 on the file of the XI Additional Judge (CBI cases Relating to Banks & Financial Institutions), City Civil Court, Chennai and quash the same.

For petitioner :: Mr. Abudu Kumar Rajarathinam
for Mr. S.Ashok Kumar

For respondents :: Mr. K. Srinivasan, Spl.PP for CBI

ORDER

This criminal original petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 praying to call for the records relating to Calendar Case No.42 of 2013, pending on the file of the XI Additional City Civil & Sessions Judge cum Special Judge for CBI Cases, Chennai and quash the same.

2. It is averred in the petition that the petitioner has been arrayed as fourth accused in C.C.No.42 of 2013. The petitioner and one A.L.Nagarathinam have scrutinized the loan papers and forwarded the same to the Indian Bank Circle Office, Chennai -8. The Circle Office, after scrutinising loan papers and its documents, has forwarded the same to the General Manager of the Bank for sanction. One of the prosecution witnesses by name K.B. Nagendra Murthy (General Manager) after having due satisfaction has granted sanction for over draft facilities to the tune of Rs.250 lakhs (Rupees Two hundred and fifty lakhs). The respondent has conducted investigation and ultimately, filed a final report under Sections 120 (B) r/w 420,

468 and 471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. It is further averred in the petition that the petitioner has not done any one of the offences mentioned in the final report and in the said circumstances, the present petition has been filed for getting the relief sought for therein.

3. On the side of the respondent, a detailed counter has been filed wherein it is contended interalia that all the averments made in the petition are false and since the petitioner and others are facing a charge under Section 120(B), IPC along with other sections of law, it is not possible to quash the proceedings initiated against the petitioner and there is no merit in the petition and the same deserves to be dismissed.

4. The only point that comes up for consideration in the present criminal original petition is as to whether the proceeding in C.C.No.42 of 2013 against the petitioner is liable to be quashed?

5. The case of the prosecution is that a Company by name M/s.Eventus Integrated Management Private Ltd., Chennai represented by its Managing Directors Mr. Suresh Pillai and Mrs. Sandhya Verma entered into criminal conspiracy during the year 2006 with some unknown bank officials and thereby, cheated the Indian Bank by way of submitting glossy, unsigned and inflated balance sheets to avail overdraft facilities of Rs.250 lakhs and thereby, caused wrongful loss to the concerned bank. The concerned Company has been arrayed as first accused and the Managing Directors have been shown as accused Nos.2 and 3. The Chief Manager has been arrayed as fourth accused. Under the said circumstances, all the accused have committed the offences mentioned in the final report.

6. The learned counsel appearing for the petitioner has culled out the following points in support of the contentions raised in the petition:

(i) No sanction has been obtained under Section 197, Cr.P.C., and (ii) One of the proposed accused by name Nagarathinam has not been prosecuted, since sanction has been refused.

7. The learned Special Public Prosecutor has contended with great vehemence to the effect that several materials are available so as to proceed further against the petitioner and therefore, the relief sought for in the present petition cannot be granted.

8. Before contemplating the rival submissions made on either side, the Court has to look into some relevant materials available in final report.

9. In one of the paragraphs of final report it is mentioned like thus:

> "The Chief Manager (A4) vide his letter dated 28.10.2006 replied to GM that they verified the suit list of CIBIL list and found the companies name did not find figure. T.R. Narayanan(A4) further replied that the Company submitted a letter for getting the Corporate Guarantee of

M/s Fountain Head but futher communicated that SBI was not willing to give NOC and further the Fountain Head Account would be operated through MGT Bank. Finally the proposal was approved by GM on 28.10.2006 with condition to switch over of M/s Fountain Head Communication Pvt. Ltd. to happen by 20.11.2006 and conveyed the Sanction vide Sanction Ticket No.147/2006-07 dated 28.10.2006 for sanction of OD on book debts amounting to Rs.250 Lakhs plus guarantee limit of Rs.15 Lakhs."

10. At this juncture, the learned counsel for the petitioner has drawn the attention of this Court to the order dated 05-03-2012 wherein it is stated that, "There are lapses on the part of the Executive. However, as there is apparently no mala fide on the part of the Executive, I take a lenient view and impose the punishment of "Censure" in terms of Regulation 4(a) of Indian Bank Officer Employees'(Discipline and Appeal) Regulations, 1976 under minor penalty proceedings."

11. The first and foremost contention put forth on the side of the petitioner is that no sanction has been obtained under Section 197, Cr.P.C. It is an admitted fact that during the relevant period, the present petitioner has served as Chief Manager. The learned Special Public Prosecutor has contended that all the offences alleged to have been committed by all the accused are not in consonance with official or public duty and hence, no sanction is required.

12. The learned counsel appearing for the petitioner has drawn the attention of this Court to the decision reported in 2009 (8) SCC 617 (State of Madhya Pradesh Vs. Sheetla Sahai and others), wherein the Honourable Supreme Court has held that sanction for prosecution was not required inasmuchas criminal misconduct arising out of corrupt practices of a public servant committed under Sections 13(1)(d)(ii)-(iii) of Prevention of Corruption Act, 1988, has nothing to do with his normal activity as a public servant, and also that none of the accused was any longer a public servant, held, sanction under Section 197, Cr.P.C., is necessary.

13. In the instant case, no sanction has been obtained so as to prosecute the present petitioner. Even assuming without conceding that no sanction is necessary, even by way of reading the materials found in the final report, the Court can easily cull out that as Chief Manager, the present petitioner has pointed out all the defects which are in existence in the loan applications submitted by the accused Nos.2 and 3. But, however, sanction proposal has been approved by the General Manager on 28-10-2006. Therefore, it is quite clear that there are no lapses on the part of the petitioner and the Court can easily come to a conclusion that he cannot be arrayed as one of the accused.

14. The second point that has to be decided is that sanction has been rejected in respect of one Nagarathinam. It is seen from the petition that the said Nagarathinam and the present petitioner have scrutinised loan papers and forwarded the same to the Circle Office. Since both of them have done the same work and since no sanction has been accorded to prosecute the said Nagarathinam, the same yardstick can also be applied to the petitioner. Further, as pointed out earlier the petitioner has clearly pointed out the lapses found in the proposal.

15. It has already been pointed out that for prosecuting the petitioner necessary sanction has not been obtained under Section 197 Cr.P.C., and further, the petitioner has pointed out all the lapses found in the proposal and further, both the present petitioner and Nagarathinam have done the same works, but sanction has been refused to prosecute the said Nagarathinam. Under the said circumstances, this Court is of the considered view that no materials are found place so as to proceed further against the petitioner and therefore, the present petition is liable to be allowed.

In fine, the petition is allowed and the proceeding in C.C.No.42 of 2013, pending on the file of the XI Additional City Civil & Sessions Judge cum Special Judge for CBI Cases, Chennai is quashed only in respect of the present petitioner, arrayed as fourth accused in the said proceeding.

The connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CSII)
dt:30/9/2015

True Copy

Sub-Assistant Registrar

To

1. The XI Additional Special Judge for CBI case, Chennai

2. The Inspector of Police,
Central Bureau of Investigation
SCB, Chennai

3. The Special Public Prosecutor,
High Court, Madras

+1 cc to M/S.S.AshokKumar Advocate sr.52011
+1 cc to SPECIAL PUBLIC PROSECUTOR
FOR CBI HIGH COURT MADRAS.(SR.52008)27/10/2015

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