IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02-09-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Crl.O.P.Nos.16516 and 16517 of 2015 and M.P.Nos.1 and 1 of 2015

V. Pachiayappan ... Petitioner in Crl.O.P.16516/15

D. Kothandaraman ... Petitioner in Crl.O.P.16517/15

Vs.

State Represented by
The Inspector of Police
SPE/CBI/ACB/Chennai ... Respondent

Criminal Original Petitions under Section 482 of Cr.P.C., to call for the entire records and quash the entire proceedings against the petitioners A15 and A8 respectively in Crime No.4/2012 pending before the XI Additional City Civil and Sessions Judge,Chennai CBI cases relating to Banks and Financial Institutions.

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

COMMON ORDER

These criminal original petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 praying to quash the entire proceedings in Calendar Case No.4 of 2012 pending on the file of the XI Additional City Civil Court/Sessions Judge, CHennai - 600 001.

2. The material averments made in the petition filed in Crl.O.P.No.16516 of 2015 are that the petitioner has been shown as 15th accused in C.C.No.4 of 2012. The petitioner is an agriculturist. On 12-02-2008, a new branch of Union of India has been opened in Tiruvannamalai. For the purpose of purchasing power tiller, the petitioner has given necessary application. On the basis of the application furnished by the petitioner a tune of Rs.2,50,000/-(Rupees Two lakhs fifty thousand only) has been sanctioned. But the agent has not supplied power tiller. The Bank Manager has not ensured supply of power tiller. The prosecution witnesses have not stated anything about the petitioner in the alleged commission of offence punishable under Sections 120(b), 409,

467, 468 read with 471 and 477-A, IPC and also under Section 13(2) read with 13(1)(c) and (d) of Prevention of Corruption Act, 1988. The respondent without considering the fact that the petitioner is an agriculturist and only for bona fide reason, he obtained loan has erroneously impleaded him as the 15th accused under C.C.No.4 of 2012. Under the said circumstances, the present petition has been filed for getting the relief sought for therein.

3. The material averments made in Crl.O.P.No.16517 of 2015 are that the petitioner is an agriculturist; a new branch of Union Bank of India has been opened on 12-02-2008. With an intention to purchase a power tiller, the petitioner has applied for loan and accordingly, a sum of Rs.2,50,000/-(Rupess Two lakhs fifty thousand only) has been sanctioned. But the concerned agent has not supplied power tiller to the petitioner. On the basis of the complaint, a case has been registered under Sections 120(b) 409, 467, 468 read with 471 and 477-A, IPC and also under Section 13(2) read with 13(1)(c) and (d) of Prevention of Corruption Act, 1988. Further on 26-11-2011, the petitioner has repaid the entire loan amount. But the respondent without conducting proper investigation has erroneously impleaded the petitioner as 8th accused. Under the said circumstances, the present petition has been filed for getting the relief sought for therein.

4. In the counter filed on the side of the respondent in Crl.O.P.No.16517 of 2015, it is averred that from 12-02-2008 to 18-12-2008, one V. Kannan has acted as Branch Manager of Tiruvannamalai Branch. He and others entered into criminal conspiracy and deliberately sanctioned and disbursed agricultural loans. Mere repayment of loan amount does not absolve the criminal liability of the petitioner. The loan amount has been given to the petitioner only for the purpose of purchasing power tiller. But the petitioner has not utilised the same for the said purpose. It is false to say that only bank officials and agents are alone responsible for loans. The petitioner has already filed a discharge petition on the file of the Trial Court and the same has been dismissed. Further, framing of charges is a rule and discharge is an exemption. There is no merit in the petition and the same deserves to be dismissed.

5. The only point that comes for consideration in both the criminal original petitions is that as to whether the proceedings in C.C.No.4 of 2012 can be quashed for the reasons mentioned in the petitions?

6. Before perpending the rival submissions made on either side, it has become shunless to narrate the following admitted facts:

It is an admitted fact that a new branch of Union Bank of India, Thiruvannamalai Branch has been opened on 12-02-2008. During the relevant period, one V.Kannan has served as Branch Manager. The present petitioners have applied for loans so as to purchase power tillers and accordingly, each petitioner has been sanctioned a sum of Rs.2,50,000/-(Rupees Two lakhs fifty thousand only). But the petitioners have not purchased the same. The petitioner found in Crl.O.P.No.16517 of 2015 has repaid the loan to the Branch Manager on 26-03-2011. On the basis of the complaint in question, a case has been registered against the petitioners and others, in R.C. MA1 2010 A 0022, under Sections 120(b), 409, 467, 468 read with 471 and 477-A, IPC and also under Section 13(2) read with 13(1)(c) and (d) of Prevention of Corruption Act, 1988. The final report fled by the respondent has been taken on file in C.C.No.4 of 2012, wherein the present petitioners have been shown as accused Nos.15 and 8, respectively.

7. The learned counsel appearing for the petitioners has emphatically contended that the petitioners are poor agriculturists. For the purpose of augmenting their income they applied for loan and accordingly, the Union Bank of India, Tiruvannamalai Branch has sanctioned Rs.2,50,000/-(Rupees Two lakhs fifty thousand only) to each petitioner for the purpose of purchasing power tiller. But the concerned dealer has deceived the petitioners and further, the petitioner found in Crl.O.P.No.16517 of 2015 has settled the entire amount and since the present petitioners have had no connection whatsoever with the offence committed by other accused, these petitions have been filed so as to quash the proceedings in C.C.No.4 of 2012, so far as the petitioners are concerned.

8. As a repost to the contentions raised on the side of the petitioners, the learned Special Public Prosecutor appearing for the respondent in both the petitions has meticulously contended that during the relevant period, one V. kannan has served as Branch Manager of Tiruvannamalai Branch and with his active connivance and others including the petitioners, loans have been sanctioned under the guise of purchasing power tillers. In fact, the concerned agents are not dealing with selling of power tillers and the said Branch Manager and others including the petitioners have hatched a deep routed machination and for the purpose of achieving their furtive objects, loans have been disbursed to various farmers including the petitioners. But, actually they have not purchased power tillers and in fact, all the accused found in C.C.No.4/2012 have misused the loan amounts and simply because loan amount has been repaid, a particular accused cannot be allowed to escape from criminal liability and therefore, these petitions are liable to be set aside.

9. On the basis of the rival contentions put forth on either side, the Court has to look into, as stated earlier, as to whether the proceedings against the petitioners in C.C.No.4 of 2012 can be quashed.

10. As marshalled earlier, the present petitioners and others have been given loans for the purpose of purchasing power tillers and admittedly, they have not purchased the same. The only defence

taken on the side of the petitioners is that they have been cheated by the concerned agents and therefore, they are liable to be exculpated from concerned charges. Further, the petitioners found in Crl.O.P.No.16517 of 2015 has repaid the entire amount. In fact, this Court has perused the averments made in the final report, wherein it has been elaborately stated to the effect that all the accused have colluded together and under the guise of purchasing power tillers the prime accused V.Kannan, the Branch Manager of Union Bank of India, Tiruvannamalai has sanctioned the loan amounts. It has already been pointed out that after getting the loan amounts, the concerned agent has not supplied power tillers to loanees. The main contention put-forth on the side of the respondent is that all the accused have hatched a criminal conspiracy for the purpose of obtaining loans under the guise of purchasing power tillers. But, they utilized loan amount for some other purpose and therefore, they committed offences mentioned in the final report. Considering the fact that the prime accused viz., V. Kannan has acted as Branch Manager of Union Bank of India, Tiruvannamalai during the relevant period and the specific case of the respondent is that all the accused have joined together so as to achieve their evil design, this Court is of the considered view that the alleged involvement of the petitioners in the offences mentioned in the final report can only be decided at the time of trial.

11. It is an admitted fact that the petitioners and others are said to have committed offences under Sections 120(b), 409, 467, 468 read with 471 and 477-A, IPC and also under Section 13(2) read with 13(1)(c) and (d) of Prevention of Corruption Act, 1988. Since the offence of criminal conspiracy has also been mentioned along with other Sections of law, the alleged criminal conspiracy cannot be inferred on the basis of available documents. But, to prove the same, appropriate oral evidence is required along with documentary evidence. Therefore, at this stage, the Court cannot come to a conclusion that the petitioners have no connection whatsoever with the offences alleged to have committed by other accused.

12. The learned counsel appearing for the petitioners has drawn the attention of this Court to the following decisions:

(1) In Civil Appeal No.8546 of 2014 (Gold Quest International Private Limited Vs. The State of Tamil Nadu & Others) dated 8th September 2014, the Honourable Supreme Court has observed as follows:

> "8. In view of the principle laid down by this Court in the aforesaid cases, we are of the view in the disputes which are substantially matrimonial in nature, or the civil property disputes with criminal facets, if the parties have entered into settlement, and it has become clear that there are no chances of conviction, there is no illegality in quashing the proceedings under Section 482 Cr.P.C. "

(2) In Crl.O.P.Nos. 9427 and 15899 of 2014 (S. Narayanamurthy Vs. State of Tamil Nadu), this Court observed as follows:

"Before adverting to the facts of the case, it is appropriate to consider the decision reported in 2013 (1) SCC (Cri) 160 (Gian Singh V.State of Punjab and another), in para-58, the Apex Court held that in respect of serious offences like murder, rape, dacoity or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. But whereas it was specifically mentioned that the proceedings in respect of transaction in the civil flavour having arisen out of civil, mercantile, commercial,financial, partnership, can be quashed, if the matter has been settled between both the parties. So it is appropriate to incorporate para-58 of this judgment, which is extracted hereunder:

"58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

(3) In 2012 (10) SCC 303 (Gian Singh Vs. State of Punjab), the Honourable Supreme Court has observed that inherent power of High Court under SEction 482 to quash criminal proceedings involving non-compoundable offences in view of compromise arrived at between the parties is permissible. Further in paragraph No.57, it is observed as follows:

"53. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment."

Further, in paragraph No.61, it is observed thus:

"The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the

> offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

The corollary of the Honourable Supreme Court is that the High Court may quash criminal proceedings if it is related to commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc. or the family dispute where the wrong is basically private or personal in nature and the parties have resolved their entire dispute.

13. In the instant case, as pointed out in many places, the specific contention reiterated on the side of the respondent is that the Branch Manager, agents and agriculturists have hatched a criminal conspiracy so as to obtain loans under the guise of purchasing power tillers. At this juncture, learned Special Public Prosecutor has contended that the concerned agent during the relevant period has not dealt with power tillers. Therefore, it is quite clear that the specific case of the prosecution is that all the accused have hatched criminal conspiracy so as to achieve their sinister motive.

14. It is pertinent to point out that the charges put forth on the side of the prosecution punishable under Sections 120(b), 409, 467, 468 read with 471 and 477-A, IPC and also under Section 13(2) read with 13(1)(c) and (d) of Prevention of Corruption Act, 1988 cannot be decided at this stage. For deciding the same elaborately, both the oral and documentary evidence are required. Further, all

the accused are also facing charges under Section 13(2) read with 13 (1)(c) and (d) of Prevention of Corruption Act, 1988. Further, in the decisions relied upon on the side of the petitioners, it has not been specifically stated that the offences under Section 13(2) read with 13(1)(c) and (d) of Prevention of Corruption Act, 1988 can also be compounded. Further, in all the decisions referred to earlier, a specific category of cases can be compounded only with the consent of both the parties. In the instant petitions, such facts are not available. Further, mere payment of money is not at all sufficient to exculpate an accused from charges. Therefore, viewing from any angle, the contentions put forth on the side of the petitioners cannot be accepted and consequently, these petitions are liable to be dismissed.

In fine, these petitions are dismissed. The connected miscellaneous petitions are also dismissed.

-s/d-
Assistant Registrar(Records)
dt:29/9/2015

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police, SPE/CBI/ACB/Chennai
2. The XI Additional City Civil and Sessions Judge,
   Chennai CBI cases

+1 cc to M/S.S.Vediappan Advocate sr.50092

Crl.O.P.Nos.16516 and 16517 of 2015
and M.P.Nos.1 and 1 of 2015

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