IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

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THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.R.C.No.138 of 2015

V.Ravikumar ... Petitioner/A1

Vs

The Inspector of Police,
CBI/ACB/Chennai .. Respondent /Complainant

Prayer:- Criminal revision case filed under Section 397 read with 401 Cr.P.C., against the order dated 31.07.2014 passed by the II Addl. District Judge/Special Judge(CBI cases), Coimbatore in Crl.M.P.No.196 of 2012 in C.C.No.11 of 2009.

For Petitioner :Mr.N.Manokaran for
Mr.S.Vinoth Kumar

For Respondent :Mr.K.Srinivasan,Spl.P.P. for CBI

ORDER

Criminal revision case has been directed against the order dated 31.07.2014 passed, in M.P.No.196 of 2012, in Calendar Case No.11 of 2009, by the II Additional District Judge/Special Judge, CBI cases, Coimbatore.

2. The respondent herein has filed a final report under Sections 120-B r/w.420, 419, 468, 468 r/w.471 of the Indian Penal Code and also under Section 13(2) r/w.13(d) of the Prevention of Corruption Act, 1988, wherein the present revision petitioner has been shown as first accused. The final report filed on the side of the respondent has been taken on file, in Calendar Case No.11 2009. During pendency of the same, the petition in question has been filed under Section 239 of the Code of Criminal Procedure, 1973, praying to discharge him from the proceedings of Calendar Case No.11 of 2009.

3. In the petition it is averred that as per first information report, various officials have been shown as accused and in fact, the petitioner has done his duty in the process in question at the fifth stage and further, served from 16.6.2003 to 17.6.2004 as Inspector of Customs at Coimbatore, Tirupur. Under the said circumstances, the present petition has been filed so as to get the relief sought for therein.

4. On the side of the respondent, counter has been filed, wherein it is contended that all the averments made in the petition are false and ultimately prayed to dismiss the same.

5. The Court below, after considering the divergent contentions raised on either side, has dismissed the petition by way of holding that a prima facie case is in existence so as to proceed further against the petitioner. The order of dismissal passed by the Court below is being challenged in the present criminal revision case.

6.The learned counsel appearing for the revision petitioner/petitioner has raised the following points, so as to set aside the impugned order passed by the Court below:

(a) In the first information report, various officials have been arrayed as accused and they have not been shown as accused in the final report.

(b) In the annexure given on the side of the respondent, the petitioner has been shown in the fifth place and especially in the alleged process and for the reasons best known to the investigating officer, the petitioner has alone been arrayed as accused among officials.

(c) The petitioner has served as Inspector of Customs from 16.3.2003 to 17.4.2004 and the same has not at all been considered by the Court below.

(d) In the present petition, various points have been urged, but the Court below, without considering nor discussing those points, has simply arrived at a conclusion to the effect that prima facie materials are available so as to proceed further against the petitioner.

7. The learned Special Public Prosecutor appearing for the respondent has contended that in Calender Case No.11 of 2009, the petitioner has been arrayed as the first accused. The petitioner and the remaining accused are facing charges under Sections 120-B r/w.420, 419, 468, 468 r/w.471 of IPC and also under Sections 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988 and further, some of the prosecution witnesses have clearly spoken about the role alleged to have been played by the petitioner and further due to misconduct/lapses on the part of the petitioner, a loss has occurred to a tune of Rs.2,31,53,444/- and the Court below, after considering the involvement of the petitioner in the alleged offences, has rightly found that prima facie materials are available so as to proceed against the petitioner and consequently, dismissed the petition and therefore, the dismissal order passed by the Court below need not be set aside.

8. On the basis of the rival contentions put forth on either side, this Court has to find out as to whether the impugned order passed by the Court below is perfectly correct or the same needs interference.

9.The learned counsel appearing for the revision petitioner has repeatedly contended that in the first information report, some of the officials, who served along with the petitioner, have been shown as accused, but for the reasons best known to the investigating officer, some of them are left out in the final report and therefore, the final report in question has been filed against the petitioner with mala fide intention.

10. As rightly pointed out on the side of the revision petitioner, in the first information report the names of some officials have been mentioned. But after investigation, a final report has been filed, wherein their names are not found. Even though their names are not found in the final report, as per Section 319 of the Code of Criminal Procedure, 1973, the Court is having enormous power and at any stage of trial, can implead the proper persons as accused. Therefore, mere non-inclusion of some of the officials, who are said to have involved in the alleged offences, would not help the petitioner to allow the present petition.

11. It is true that in the annexure given along with the final report, the name of the revision petitioner has been shown in the fifth place and that itself would not pave the way for allowing the present petition.

12. The learned counsel appearing for the revision petitioner has repeatedly drawn the attention of this Court to the decision reported in Central Bureau of Investigation vs. K.Narayana Rao - (2012) 9 Supreme Court Cases 512, wherein the Hon'ble Supreme Court has culled out certain points in dealing with the petitions filed under Section 239 of the IPC.

13. The Hon'ble Supreme Court has held as follows:

> "Leave granted. This appeal is directed against the final judgment and order dated 9.7.2010 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in K.Narayana Rao v. State of A.P. whereby the High Court allowed the petition filed by the respondent herein under Section 482 of the Code of Criminal Procedure, 1973 (in short "the Code") and quashed the criminal proceedings pending against him in C.C.No.44 of 2007 (Crime No.36 of 2005) on the file of the Special Judge for CBI Cases, Hyderabad.
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> Brief facts
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> 2.According to the prosecution, based on an information, on 30.11.2005, CBI, Hyderabad registered an FIR being No.Rc 32(A) of 2005 against Shri P.Radha Gopal Reddy (A-1) and Shri Udaya Sankar (A-2), the then Branch Manager and the Assistant Manager, respectively of Vijaya Bank, Narayanaguda Branch, Hyderabad, for the commission of offences punishable under Sections 120-B, 419, 420, 467, 468

and 471 read with Section 109 of the Penal Code, 1860 (in short "IPC") and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 for abusing their official position as public servants and for having conspired with private individuals viz., Shri P.Y.Kondala Rao (A-3), the builder and Shri N.S.Sanjeeva Rao (A-4) and other unknown persons for defrauding the Bank by sanctioning and disbursement of housing loans to 22 borrowers in violation of the Bank's rules and guidelines and thereby caused wrongful loss of Rs.1.27 crores to the Bank and corresponding gain for themselves. In furtherance of the said conspiracy, A-2 conducted the pre-sanction inspection in respect of 22 housing loans and A-1 sanctioned the same.

3.After completion of the investigation, CBI filed charge-sheet along with the list of witnesses and the list of documents against all the accused persons. In the said charge-sheet, Shri K.Narayana Rao, the respondent herein, who is a legal practitioner and a panel advocate for Vijaya Bank, was also arrayed as A-6. The duty of the respondent herein as a panel advocate was to verify the documents and to give legal opinion. The allegation against him is that he gave false legal opinion in respect of 10 housing loans. It has been specifically alleged in the charge-sheet that the respondent herein (A-6) and Mr.K.C.Ramdas (A-7), the valuer have failed to point out the actual ownership of the properties and to bring out the ownership details and names of the apartments in their reports and also the falsity in the permissions for construction issued by the municipal authorities.

4.Being aggrieved, the respondent herein (A-6) filed a petition being Criminal Petition No.2347 of 2008 under Section 482 of the Code before the High Court of Andhra Pradesh at Hyderabad for quashing of the criminal proceedings in CC No.44 of 2007 on the file of the Special Judge for CBI Cases, Hyderabad. By the impugned judgment and order dated 9.7.2010, the High Court quashed the proceedings insofar as the respondent herein (A-6) is concerned. Being aggrieved, CBI, Hyderabad filed this appeal by way of special leave.

5.Heard Mr.H.P.Raval, learned Additional Solicitor General for the appellant CBI and Mr.R.Venkataramani, learned Senior Counsel for the respondent (A-6).

6.After taking us through the allegations in the charge-sheet presented before the Special Court and all other relevant materials, the learned ASG has raised the following contentions:

(i)The High Court while entertaining the petition under Section 482 of the Code has exceeded its jurisdiction. The powers under Section 482 are inherent which are to be exercised in exceptional and extraordinary circumstances. The power being extraordinary has to be exercised sparingly, cautiously and in exceptional circumstances;

(ii)The High Court has committed an error in holding that no material had been gathered by the investigating agency against the respondent herein (A-6) that he had conspired with the remaining accused for committing the offence; and

(iii)There is no material on record to show that the respondent herein (A-6) did not verify the originals pertaining to housing loans before giving legal opinion and intentionally changed the pro forma and violated the Bank's circulars.

7.On the other hand, Mr.Venkataramani, learned Senior Counsel for the respondent (A-6), after taking us through the charge-sheet and the materials placed before the respondent for seeking legal opinion, submitted that he has not committed any offence much less an offence punishable under Section 120B read with Sections 419, 420, 467, 468, 471 and 109 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. He further submitted that based on the documents placed, the respondent herein after perusing and on satisfying himself, furnished his legal opinion for which he cannot be implicated as one of the conspirators for the offence punishable under Section 420 read with Section 109 IPC."

13. A mere reading of the decision rendered by the Hon'ble Apex Court, it is made clear that in dealing with the petitions filed under Sections 227 and 228 of the Code of Criminal Procedure, 1973, the Court has to follow the conditions enumerated by the Hon'ble Supreme Court.

14. It is true that in the present petition, on the side of the revision petitioner/petitioner, various points have been raised. In fact, this Court has perused the impugned order passed by the Court below and the Court below has referred to certain decisions rendered by the Hon'ble Supreme Court and ultimately, simply held that prima facie materials are available so as to proceed against the petitioner.

15. In fact, the Court below has not at all considered the points raised in the present petition and also the points raised on the side of the respondent. Under the said circumstances and also in view of the decision rendered by the Hon'ble Apex Court, this Court is of the view that the impugned order passed by the Court below is totally bereft of particulars and under the said circumstances, the same is liable to be set aside and the matter is liable to be remitted to the file of the Court below.

16. In fine, this criminal revision case is allowed. The order passed, in Crl.M.P.No.196 of 2012 in C.C.No.11 of 2009, by the Court below is set aside and the petition filed in Crl.M.P.No.196 of 2012 is remitted to the file of the Court below. The Court below is strictly directed to consider the rival points raised on either side and pass a detailed order on the basis of the decision reported in Central Bureau of Investigation vs. K.Narayana Rao - (2012) 9 Supreme Court Cases 512. Further, the Court below is directed to dispose of the petition before the end of October 2015 and report the same to this Registry without fail.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

msk

To
1.The Inspector of Police,
CBI/ACB/Chennai

2.The II Addl. District Judge/Special Judge for CBI Cases,
Coimbatore

3 The Public Prosecutor,
High Court, Madras.

Copy to:
1. The Section Officer, Criminal Section,
High Court, Madras.
(for further action and post it for Compliance on 02/11/2015)

+1 cc to Mr.K.Srinivasan, Special P.P. for CBI, sr.44715
+1 cc to Mr.S.vinothkumar, Advocate, sr.45268

pvr(co), kra(2/9) Crl.R.C. No.138 of 2015