IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.11.2015

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THE HONOURABLE MR. JUSTICE A.SELVAM

Crl. R.C.Nos.153 and 154 of 2015

Subash .. Petitioner/A2 in Crl.R.C.No.153 of 2015
B.Gowtham .. Petitioner/A4 in Crl.R.C.No.154 of 2015

vs.

The State of Tamil Nadu
rep.by the Inspector of Police
Central Bureau of Investigation/BS & FC
Bangalore .. Respondent/Complainant in both Crl.R.C.

Prayer in Crl.R.C.No.153/2015: Revisions under Sections 397 and 401 of Criminal Procedure Code against the order dated 3.9.2014 in Crl.M.P.No.3742 of 2013 in C.C.No.46 of 2009 passed by the XI Additional City Civil and Sessions Judge, Chennai-1 (CBI Cases relating to Banks and Financial Institutions).

Prayer in Crl.R.C.No.154/2015: Revisions under Sections 397 and 401 of Criminal Procedure Code against the order dated 3.9.2014 in Crl.M.P.No.5375 of 2013 in C.C.No.46 of 2009 passed by the XI Additional City Civil and Sessions Judge, Chennai-1 (CBI Cases relating to Banks and Financial Institutions).

For petitioner in both Crl.R.Cs : Mr.P.V.Sudakar
For respondent in both Crl.R.Cs : Mr.K.Srinivasan, Spl. Public Prosecutor for CBI Cases

COMMON ORDER

These Criminal Revision Cases have been directed against the orders passed in Crl.M.P.Nos.3742 of 2013 and 5375 of 2013 in Calendar case No.46 of 2009 by the XI Additional City Civil and Sessions Judge, Chennai.

2. The revision petitioners herein have filed the petitions in question under section 239 of Code of Criminal Procedure, 1973 praying to discharge them from the proceedings of Calendar Case No.46 of 2009, wherein the present respondent has been shown as sole respondent.

3. It is averred in both petitions that the petitioners have been arrayed as accused Nos.2 and 4. The second accused is the Managing Director of a company, viz., M/s.Kannya Electronics Private Limited. The fourth accused is none other than the brother of the second accused. The specific case of the prosecution is that the present petitioners and remaining accused have hatched a conspiracy so as to cheat the Union Bank of India and in pursuance of their conspiracy, huge amount of Rs.304.57 Lakhs have been dealt with and in fact, the prosecution has not produced relevant documents for the purpose of showing the alleged conspiracy and further the documents relied upon by the prosecution are not at all sufficient for coming to a conclusion that the conspiracy has been hatched amongst all the accused. Under the said circumstances, present petitions have been filed for getting the reliefs sought therein.

4. The court below, after considering the divergent contentions raised on either side, has dismissed both petitions. Against the orders passed by the court below, the present Criminal Revision Cases have been filed at the instance of the petitioners as criminal revision petitioners.

5. Since common questions of law and facts are involved in both Criminal Revision Cases, common order is passed.

6. Before adverting to the rival submissions made on either side, the Court has to narrate the case of the prosecution. The third accused is a company by name M/s.Kannya Electronics Private Limited, wherein the second accused has been acting as Managing Director and one P.N.Ramakrishnan has been acting as Director. The said company has obtained a loan for a sum of Rs.304.57 Lakhs by way of impersonating the erstwhile real owner of Survey Nos.737/1A1A and 739/1A1A. The name of erstwhile owner is P.N.Ramakrishnan. Since the erstwhile owner has been impersonated, all the accused are said to have committed an offence punishable under section 120-B of IPC along with other sections of law.

7. The learned counsel appearing for the revision petitioners/accused 2 and 4 has repeatedly contended that in the instant case, on the side of the prosecution, relevant documents have not been filed for showing the alleged involvement of these revision petitioners in criminal conspiracy and further on the side of the prosecution, certain sale deeds are relied upon and the same are not at all relevant for the purpose of coming to a conclusion that all the accused have contrived themselves so as to cheat the Union Bank of India. Under the said circumstances, present petitions have been filed, but the Court below, without considering the nature of averments made in the present petitions and also the nature of alleged involvement made by

these petitioners, has erroneously dismissed both petitions and therefore, the dismissal orders passed by the Court below are liable to be set aside.

8. Per contra, the learned Special Public Prosecutor has contended that the properties comprised in Survey Nos.737/1A1A and 739/1A1A are originally belonged to one P.N.Ramakrishnan and he sold the same in favour of M/s.Mercury Enterprises. The Director of M/s.Kannya Electronics Private Limited is one Ramakrishnan and by utilizing similarity in the names, certain bogus documents have been created in respect of the said Survey Numbers and by way of giving the same as collateral security, huge amount of Rs.304.57 Lakhs have been parted with from the Union Bank of India. Further, a portion of the amount derived from the Bank has also been utilized by the fourth accused. Under such circumstances, the Court below has rightly dismissed both petitions and therefore, the orders passed by the Court below do not call for any interference.

9. It is seen from the records that the specific case put forth on the side of the prosecution is that the present revision petitioners and other accused have contrived themselves so as to cheat Union Bank of India to the tune of Rs.304.57 Lakhs. The specific case put forth on the side of the prosecution is that the lands comprised in Survey Nos.737/1A1A and 739/1A1A are originally belonged to one P.N.Ramakrishnan and he disposed of the same before the transaction in question. The Director of M/s.Kannya Electronics Private Limited is one P.N.Ramakrishnan and by utilizing similarity in the names, certain bogus documents have been created in respect of the said Survey Numbers and the same have been given as collateral security for getting loan of Rs.304.57 Lakhs.

10. In fact, this Court has perused the orders passed by the Court below, wherein it has been clearly stated that in respect of Survey Numbers 737/1A1A and 739/1A1A, impersonation has been made. The erstwhile owner of the said Survey Numbers has given a statement on the side of the prosecution as L.W.55, wherein he has specifically stated to the effect that already he has disposed of the lands comprised in Survey Nos.737/1A1A and 739/1A1A.

11. It is an admitted fact that the lands comprised in the said Survey Numbers have been given as collateral security for the purpose of getting loan, by way of executing relevant documents by the Director of M/s.Kannya Electronics Private Limited. It is also equally an admitted fact that his name is also P.N.Ramakrishnan. Considering the similarity in the names and also considering the specific statement of the erstwhile owner of the said Survey Numbers to the effect that he has not executed any mortgage deed in favour of any Bank, the Court can

easily come to a conclusion that sufficient materials are available on the side of the prosecution to the effect that some impersonation has been done. The specific case of the prosecution is that a portion of the amounts obtained by way of loan has been diverted to the company of the fourth accused. Further, the specific case of the prosecution is that all the accused have contrived themselves so as to cheat the bank in question and in fact, all the accused have faced a charge under section 120-B of IPC along with other sections of law and the offence of criminal conspiracy can be decided only at the time of trial. Under the said circumstances, this Court is of the view that since sufficient materials are available so as to proceed further against both revision petitioners, the orders passed by the court below are perfectly correct and the same need not be interfered with.

In fine, these Criminal Revision Cases are dismissed. The orders passed in Crl.M.P.Nos.3742 of 2013 and 5375 of 2013 in C.C.No.46 of 2009 by the trial court are confirmed.

ajr

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1. XI Additional City Civil and Sessions Judge
(CBI Cases relating to banks and financial institutions)
Chennai.

2. Inspector of Police Central Bureau of Investigation/BS & FC
Bangalore

3. The Public Prosecutor, High Court, Madras.

+ 2 ccs to Mr.T.Saravanan, Advocatge SR 62987 & 62988

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