

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15-10-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Revision Case Nos.1305 to 1307 of 2008

State rep. by
Inspector of Police
SPE/CBI/EOW/Chennai ...Petitioner/Complainant

Vs.

Praansu Knits (A4) ...Respondent
in CrI.R.C.1305/2008

Prathibaa Lulla (A6) ...Respondent
in CrI.R.C.1306/2008

Sudhir Lulla (A5) ...Respondent
in CrI.R.C.1307/2008

Criminal Revision Cases against the order made in
CrI.M.P.Nos.32,33 and 49 of 2008 in C.C.No.9 of 2007 dated 19-
05-2008 on the file of the II Additional District
Judge/Special Judge for CBI cases, Coimbatore.

For petitioner :: Mr. K. Srinivasan, Spl.Public
Prosecutor for CBI Cases

For respondent :: No appearance

ORDER

These criminal revision cases have been directed against
the common order passed in CrI.M.P.Nos.32, 33 and 49 of 2008
in C.C.No.9 of 2007 by the II Additional District
Judge/Special Judge for CBI cases, Coimbatore.

2. The case of the prosecution is that the first
accused along with her husband, fifth accused and one Gopaldas
Lulla have submitted false and fabricated Foreign Bills Export
(FBE) bills 22 to 24/2003 for a total sum of Rs.81,41,185/-
(Rupees Eighty One lakhs forty one thousand one hundred and
eighty five only) in the name of A4 firm and discounted the
same by Canara Bank and credited the amount in the account of
A4 firm, which has been misutilised by the petitioner and her
husband. Out of this amount, a sum of Rs.4,20,000/- (Rupees
Four lakhs twenty thousand only) has been recovered and a

balance of Rs.77,21,185/- (Rupees Seventy Seven thousand twenty one thousand one hundred eight five only) is still outstanding. Under the said circumstances, all the accused have committed offences punishable under Sections 120-B r/w 420, 468 r/w 471, IPC and also under Sections 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

3. The respondent has conducted a detailed investigation and subsequently, filed a final report on the file of the Court-below and the same has been filed in Calendar Case No.9 of 2007. During the pendency of the same, the A4-firm has filed Crl.M.P.No.32 of 2008, A6 has filed Crl.M.P.No.33 of 2008 and A5 has filed Crl.M.P.No.49 of 2008 under Section 239, Cr.P.C., praying to discharge them.

(i) In all the petitions, it is averred that one Krishna Impex and Praansu Knits are partnership firms engaged in export of readymade garments availed export credit facilities from Canara Bank, SSI Branch, Coimbatore. Further, it is averred in all the petitions that A4 firm has remitted the entire amounts and the concerned bank has issued 'no dues certificate'. Under the said circumstances, the prosecution against the petitioners is unwarranted and therefore, these petitions have been filed for getting the relief sought therein.

4. The Court-below after considering the divergent contentions raised on either side has allowed all the petitions by way of holding that there is no mens rea on the part of A4 to A6, since A4 has paid the entire amount. Against the common order, passed by the Court-below, the present criminal revision cases have been filed at the instance of the respondent as criminal revision petitioner.

5. The learned Special Public Prosecutor appearing for the revision petitioner has contended with great vehemence that all the accused are facing charges under Sections 120-B r/w 420, 468 r/w 471, IPC and also under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and the Court-below without considering the gravity of the offences alleged to have been committed by all the accused, simply on the basis of mere repayment has erroneously discharged A4 to A6 and the conclusion arrived at by the Court-below is false and therefore, the common order passed by the Court-below is liable to be set aside.

6. Per contra, the learned counsel appearing for the respondents/petitioners has contended that in the instant case, A4 is a firm and A5 is its partner and A6 is A5's husband and A4 has repaid the entire amount whatever received from the concerned Bank and on that basis, the Court-below has clearly come to a conclusion to the effect that there is no

mala fide intention on the part of the accused to deceive the concerned Bank and if really they are having sinister motive they would not have repaid the entire loan amount. Under the said circumstances, the reason given by the Court-below for allowing all these petitions is perfectly correct and the same does not require any interference.

7. In the counter filed on the side of the respondent in each petition, it has been clinchingly stated to the effect that A5 and A6 along with Gopal Das Lulla have fabricated certain documents so as to obtain certain facilities from the concerned Bank and further, it is stated in the counter that only a part of the amount has been repaid and huge amount has to be settled.

8. In fact, this Court has perused the entire common order passed by the Court-below and the Court-below has given a reason to the effect that since A4 to A6 have repaid the entire loan amount, they have not acted with oblique motive and ultimately, allowed all the petition.

9. The learned Special Public Prosecutor has drawn the attention of the Court to the decision rendered in CrI.O.P.Nos.10710 and 5950 of 2015 (S. Vaidyanathan Vs. The Inspector of Police, CBI) by this Court, wherein a similar situation has arisen and this Court, has relied upon the decision rendered in State of Maharashtra through CBI V. Vikram Anatrai Doshi (2014 (10) Scale 690 : LNIND 2014 SC 836), wherein at paragraph No.23, the Honourable Supreme Court has observed as follows:

"We are in respectful agreement with the aforesaid view. Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposit fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominantly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far

ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible."

10. From a cursory look of the observations made by the Honourable Supreme Court, it is made clear that mere payment of money involved in criminal offence is not at all sufficient to quash criminal proceedings either in IPC offences or in cases of offences punishable under the Prevention of Corruption Act, 1988. In the instant case, all the accused have faced charges not only under Sections 120-B r/w 420, 468

r/w 471, IPC, but also under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Further, in a criminal case, mere repayment of money would not absolve liability of the concerned accused. The Court has to primarily look into as to whether the concerned accused has committed the alleged offences. Further, it is a primordial duty of the concerned accused to repay the money. Simply because, he has repaid the same, he cannot be allowed to escape from clutches of law. Under the said circumstances, and also in view of the firm decision taken by the Honourable Supreme Court, this Court is of the considered view that the conclusion arrived at by the Court-below for discharging A4 to A6 is totally improper.

11. The learned Special Public Prosecutor has also drawn the attention of this Court to the decision reported in 2015 (2) MLJ (Crl) 262 (Ramalakshmi Vs. State rep. by the Inspector of Police) wherein this Court has held that non-disclosure of material facts by the petitioner at the time of availing loan by a firm would also come within the purview of the concerned offence. Therefore, viewing from any angle, the common order passed by the Court-below is not factually and legally sustainable and the same is liable to be set aside.

In fine, these criminal revision cases are allowed and common order passed in Crl.M.P.Nos.32, 33 and 49 of 2008 in C.C.No.9 of 2002 is set aside and all the petitions ie., Crl.M.P.Nos.32, 33 and 49 of 2008, are dismissed.

sd/
ASSISTANT REGISTRAR (CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

glp

To

1. The Additional District Judge/Special Judge
for CBI cases, Coimbatore
2. The Inspector of Police
SPE/CBI/EOW/Chennai
3. The Special Public Prosecutor,
High Court, Madras

Criminal Revision Case Nos.1305 to 1307 of 2008

CO-GJ

JD 20/10/2015