IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10 .03.2015

CORAM

The Hon'ble Mr.Justice R.S.Ramanathan

Crl. R. C. No.1409 of 2013 &

M.P.No.1 of 2013

1. M/s.Sun Biomanure Pvt. Ltd.,
   Plot No.4 - F-1, First Floor,
   Muthulakshmi Complex,
   Kushaldas Street, Saligramam,
   Chennai - 93.

2. Mr.S.Sakthivel
3. Mrs.S.Vijakumari ...Petitioners

vs.

The State, rep. by
The Inspector of Police,
CBI/EOW,
III Floor, Rajaji Bhavan,
Besant Nagar, Chennai - 90. ...Respondent

Criminal Revision Petition filed under Sections 397 and 401 of the Criminal Procedure Code to call for records in Crl.M.P.No.1180 of 2011, in R.C.No.4/E/2010/CBI/EOW/Chennai, on the file of learned II Additional District Judge, Special Judge, (CBI Cases), Coimbatore, and to revise the order of dismissal of discharge petition, dated 05.10.2013, passed by the learned II Additional District Judge (CBI Cases), Coimbatore, in Crl.M.P.No.1180 of 2011, in R.C.No.4/E/2010/CBI/EOW/Chennai.

For Petitioners: Mr.K.K.Shivashanmugam

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor,
for CBI Cases



Orders Reserved on : 24.11.2014

O R D E R

The accused 1 to 3 in R.C.No.4 (E)/2010/CBI/EOW/Chennai, on the file of II Additional District Judge (CBI Cases), Coimbatore, are the petitioners herein.

2. The respondent/Police filed a chargesheet against the petitioners and three others for having committed the offence punishable under Sections 120(B) read with 420, 467, 468 and 471 IPC, and also for offence under the provisions of Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 ('P.C.'Act). Aggrieved by the same, the petitioners filed Petition to discharge them from the abovesaid case, in Crl.M.P.No.1180 of 2011, in C.C.No.13 of 2010, on the file of II Additional District Judge (CBI Cases), Coimbatore. As the said Discharge Petition was dismissed, the present Criminal Revision Petition is filed.

3. It is submitted by the learned counsel appearing for petitioners that the petitioners are not Government Servants, and there is no allegation of graft charges in the complaint filed against the petitioners and no public servant was arrayed as accused for receipt of bribe, and therefore, in the absence of arraignment of any public servant as accused on the ground of receipt of bribe, registration of FIR under P.C. Act is not maintainable. The learned counsel further submitted that the first petitioner Company is a private limited Company and the second and third petitioners are Directors of the first petitioner Company. Even according to the prosecution, the first petitioner applied for loan and the Bank did not accept the third party's collateral security and insisted on the first petitioner to induct the third party, who offered to give his property as security, as Director of the first petitioner Company. Accordingly, the fourth accused, by name Arokiasamy, was inducted as one of the Directors of the first petitioner Company and the loan was sanctioned on the basis of the prime security assets created by the petitioners and also on the basis of the collateral security given by the fourth accused. Even assuming that they were some irregularities or defective title in respect of the collateral security given by the fourth accused/Arokiasamy, the petitioners cannot be prosecuted, as if, they have hoodwinked the Bank, and therefore, the chargesheet filed against the petitioners are liable to be quashed.

4. It is further submitted by the learned counsel appearing for petitioners that a reading of the chargesheet filed against the petitioners would also make it clear that the petitioners are charged for substantive offence under Sections 420, 471 read with 467 and 468 IPC, and they are not charged under the provisions of P.C. Act, and on that ground also, respondent/CBI has no jurisdiction to prosecute the petitioners, and hence, the chargesheet filed against the petitioners is liable to be set aside. The learned counsel relied upon the judgment reported in (2014) 1 Law Weekly (Crl.) 707: 2014 Crl. Law Journal 1394 in re (CBI New Delhi Vs. Jitender Kumar Singh), in support of his contention that, where no charges were framed against the public servant, the Special Court for CBI Cases has no jurisdiction to try the case.

5. Mr.K.Srinivas, the learned Special Public Prosecutor, appearing for respondent/CBI reiterated the averments made in the counter affidavit, and submitted that, as per the chargesheet, the petitioners are accused of offence punishable under Sections 120 (b) read with 409, 419, 420 467, 468, 471 IPC and under Sections 13 (2) read with 13 (1) (c) (d) of P.C. Act, and substantive offence under Sections 420, 471 read with 467 and 468 IPC. The learned Special Public Prosecutor, further submitted that the fifth accused is the then Bank Manager of the Indian Bank, who, in conspiracy with the petitioners, committed the fraud, and therefore, it cannot be contended that no public servant is involved in the offence and no bribery charges are made out. The learned Special Public Prosecutor submitted that the fifth accused is charged for offence under Section 13 (2) read with 13 (1) (c) (d) of P.C. Act, which is a criminal misconduct and the petitioners hatched criminal conspiracy along with accused Nos.4 and 5 and committed the fraud by offering security with defects and with the connivance of the fifth accused, the Bank Manager was persuaded to accept the defective documents as security, and therefore, case has been made out against the petitioners and other accused, and all these aspects were rightly considered by the learned II Additional District Judge, for CBI Cases, Coimbatore. Hence, the learned Special Public Prosecutor submitted that the Civil Revision Petition is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. I am unable to accept the contentions of the learned counsel appearing for petitioners. As rightly submitted by the learned Special Public Prosecutor, appearing for respondent/CBI, fifth accused was the then Bank Manager of the Indian Bank, Veerapandi Branch, Salem, and as per the chargesheet, the petitioners 2 and 3 along with one Arokiasamy/fourth accused, as Directors of the first petitioner-Company approached the Indian Bank with the proposal for obtaining loan of Rs.2.34 crores, and based on the recommendation of the Branch Manager, Circle Office, the Bank sanctioned loan of Rs.2.09 crores with a primary security of hypothecation of shed, equipments, machinery, vehicles, etc., and collateral security of a vacant land, alleged to have owned by fourth accused/Arokiasamy, which was valued at Rs.10.21 crores by the Panel Valuer. The said Arokiasamy, created equitable mortgage of the property by depositing the title deeds, but, the loan amount was not repaid, and when the documents were verified, it was found that fourth accused was not the owner of the property , as he was not the legal heir of the original owner, Rajamanickam Pillai, and the fourth accused had no right or title over the property, over which, the equitable mortgage was created in favour of the Bank.

8. It is further stated in the chargesheet that the accused Nos.1 to 5 entered into a criminal conspiracy to misappropriate the funds of the India Bank, and in pursuance of such conspiracy, the

fourth accused/ Arokiasamy was made as one of the Directors of the first petitioner Company, by virtue of the resolution, dated 20.03.2008, and he gave his property, claiming to be its owner, and the fifth accused, without properly verifying the title deeds produced by the fourth accused and also without verifying the genuineness of the documents produced by him, sanctioned the loan, and therefore, all those accused have committed various offences. The fifth accused, being a public servant, committed criminal misconduct, as per Section 13 (1) (c) (d) of P.C. Act, in connivance and in conspiracy with other accused, all the accused are charged for various offence.

9. It is a settled law that, eventhough the petitioners are not Government servants, and when chargesheet has been laid, stating that the Government servants in collusion and in conspiracy with others committed various offence, others can also be prosecuted along with the public servant, and therefore, the contention of the learned counsel for petitioners that the petitioners/accused 1 to 3 are not government servants, and therefore, they cannot be prosecuted under the provisions of P.C. Act, cannot be accepted.

10. Further, the Investigating Officer filed various documents to the effect that the documents furnished by the fourth accused/ Arokiasamy were not genuine, as he was not the legal heir of the Rajamanickama, who was the original owner of the property, and the fourth accused had no right or title over the property, over which, the equitable mortgage was created in favour of the Bank, and he, in conspiracy with accused Nos.1 to 3, also received the bribe, and considering the statement of witnesses and the documents, the Lower Court has rightly taken cognizance of the case for various offences. It is also seen from the order of the Lower Court that prosecution examined 41 witnesses and scrutinized 479 documents during investigation and the Lower Court on going through the statements of 4, 7, 18, 19, 36 to 38, which would prove that documents filed by the fourth accused regarding his claim of ownership over the property, which was mortgaged, were forged, rightly dismissed the discharge petition.

11. The judgement relied upon by the learned counsel for petitioners has no relevance, and having regard to the facts of that case, as in that case it was held that under Section 3 (1) of P.C.Act, no chargesheet can be filed against the private persons, when no charge has been framed against any private servants. As stated supra, in this case, the fifth accused was public servant at the time of commission of offence, and the petitioners along with fifth accused committed various offences, and therefore, the Trial Court has rightly dismissed the Discharge Petition. Further, the contention of the learned counsel for petitioners that in the chargesheet, the petitioners were charged for substantive offence

under Sections 420, 471 read with 467 and 468 and there was no charge against them under the provisions of P.C. Act also, cannot be accepted.

12. It is seen from the chargesheet that all the accused were charged for offence under Sections 120 (b), 409, 419, 420 467, 468, 471 IPC and under Section 13 (2) read with 13 (1) (c) (d) of P.C. Act, and substantive offence under Sections 420, 471 and 468 IPC, insofar as the petitioners are concerned. As far as fifth accused is concerned, he has been charged for substantive offence under Section 409 and Section 13 (2) read with 13 (1) (c) (d) of P.C. Act, and therefore, all the accused are chargesheeted for offence punishable under the provisions of P.C.Act and the petitioners are charged for IPC offences as well as for offence punishable under the provisions of P.C.Act.

13. Further, the issue, i) whether the petitioners have taken active part in the forgery committed by the fourth accused regarding the fabrication of documents of title or whether the petitioners believed the fourth accused, who offered to give his property, cannot be considered at this stage and it is for the trial Court to consider all these aspects. As witnesses have given statement that documents, which were furnished by the fourth accused were forged, and the fourth accused, as Director of the first petitioner Company offered those properties as collateral security for the loan availed by the petitioners 1 to 3, at this stage, it can only be stated that prima face case has been made out against the petitioners, and roving enquiry cannot be conducted while considering the Petition for discharge. According to me, these aspects were rightly appreciated by the Lower Court, when dismissing the Discharge Petition, and I do not find any reason to interfere with the order passed by the Lower Court.

14. In the result, the Criminal Revision Petition is dismissed. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The II Additional District Judge,
   Special Judge (CBI Cases)
   Coimbatore.

2. The Inspector of Police,
   CBI/EOW,
   III Floor, Rajaji Bhavan,
   Besant Nagar, Chennai - 90.

3. The Public Prosecutor,
   High Court, Madras.

+1 cc to Mr.K.K.Sivashanmugam, Advocate,sr.13892.

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krd 30/3

Pre - delivery order
in
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