IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Crl.R.C.Nos.157 to 160 of 2013

1. V.Murali ...Petitioner in Crl.R.C.No.157 of 2012 (A 42)

2 M.Gnanaoli ...Petitioner in Crl.R.C.No.158 of 2012 (A 46)

3. K.Lalitha
4. M.S.Thamaraiselvi
5.B.Gandhi
6. R.Yasodha ...Petitioners in Crl.R.C.No.159 of 2012 (A 37, 40, 41 & 49)

7. M.Dharmalingam
8. Neelavathi
9.M.Subramani
10.E.Jayakumar
11.T.Subramanian
12.K.Ganesan
13. P.Sampath ...Petitioners in Crl.R.C.No.160 of 2012 (A 31, 32, 33, 36, 45, 47 & 48)

vs.

The State, rep. by
The Inspector of Police,
SPE/CBI/ACB, Chennai. ...Respondent in all Revisions (complainant)

Prayer in Crl.R.No.157 of 2012:-

Criminal Revision Petition, filed under Sections 397 and 401 of Cr.P.C., to call for records and to set aside the order of dismissal passed by the learned XI Additional City Civil and Sessions Judge, Chennai, (for CBI Cases, relating to Banks and Financial Institutions) in Crl.M.P.No.1180 of 2010, in C.C.No.11 of 2006, by order, dated 04.02.2011.

Prayer in Crl.R.No.158 of 2012:-

Criminal Revision Petition, filed under Sections 397 and 401 of Cr.P.C., to call for records and to set aside the order of dismissal passed by the learned XI Additional City Civil and Sessions Judge, Chennai, (for CBI Cases, relating to Banks and Financial Institutions) in Crl.M.P.No.1184 of 2010, in C.C.No.11 of 2006, by order, dated 04.02.2011.

Prayer in Crl.R.No.159 of 2012:-

Criminal Revision Petition, filed under Sections 397 and 401 of Cr.P.C., to call for records and to set aside the order of dismissal passed by the learned XI Additional City Civil and Sessions Judge, Chennai, (for CBI Cases, relating to Banks and Financial Institutions) in Crl.M.P.No.825 of 2010, in C.C.No.11 of 2006, by order, dated 24.01.2012.

Prayer in Crl.R.No.160 of 2012:-

Criminal Revision Petition, filed under Sections 397 and 401 of Cr.P.C., to call for records and to set aside the order of dismissal passed by the learned XI Additional City Civil and Sessions Judge, Chennai, (for CBI Cases, relating to Banks and Financial Institutions) in Crl.M.P.No.253 of 2010, in C.C.No.11 of 2006, by order, dated 24.01.2012.

For Petitioners in Crl.R.C.Nos. 157, 160 of 2013 and for petitioners 2 to 4 in Crl.R.C.No.159/2013	:	Mr.M.Anandaraj
For Petitioner in Crl.R.C No.158 of 2013	:	Mr.S.Sridhar
For 1st petitioner in Crl.R.C.No.159 of 2013	:	Mr.A.E.Chelliah, Senior Counsel for M/s.K.Ramanujam
For Respondent in all Revisions	:	Mr.N.Chandrasekaran Special Public Prosecutor (for CBI)

Orders reserved on :10.10.2014.

C O M M O N   O R D E R

The petitioners are arrayed as accused in C.C.No.11 of 2006, on the file of XI Additional City Civil and Sessions Court, Chennai, (for CBI Cases, relating to Banks and Financial Institutions)/Trial Court. They are charged for offence punishable under Sections 120 (b) read with 420, 468, 467, 471 IPC and Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 (P.C.Act). They filed Discharge Petitions, in Crl.M.P.Nos.253, 825, 1180 and 1184 of 2010, before the aforesaid Court. As those Petitions were dismissed by the abovesaid learned Judge, by orders, dated 04.02.2011 and 24.01.2012 respectively, present Revision Petitions have been filed to set aside the said orders.

2. Mr.A.E.Chelliah, learned Senior Counsel appearing for the first petitioner in Crl.R.C.No.159 of 2013, submitted that, even according to the case of the prosecution, the petitioners have not acted with any criminal intention to cheat or commit fraud on the Bank, called Housing and Urban Development Corporation, Chennai, (HUDCO), and they availed the loan by producing forged salary slips. It was also admitted that entire loan amount was repaid by the first petitioner in Crl.R.C.No.159 of 2013 and also by other petitioners, and therefore, there was no loss, whatsoever, caused to the Financial Institution for the loan advanced to the petitioners. The learned Senior Counsel, therefore, submitted that the petitioners cannot be prosecuted for offence punishable under Sections 420, 468 and 471 IPC, as they have not committed any fraud with any dishonest intention and these aspects were not properly appreciated by the Trial Court. The learned Senior Counsel also submitted that no material evidence was placed by prosecution to prove that the salary slips produced by the petitioners were forged one, and therefore, in the absence of any such evidence, it cannot be stated that the petitioners play fabricated false documents for obtaining loan and thereby, committed forgery. The learned Senior Counsel finally emphazised that entire loan amount was paid by the petitioners, hence, there is no necessity to proceed with prosecution against the petitioners, and by doing so, it would amount to abuse of process of Court, and an exercise in futility, and therefore, the Revisions be allowed. The learned Senior Counsel also relied upon the judgment reported in [2009 2 M.L.J. (Crl.) 699] in re (A.D.Sudhindhra Vs. Inspector of Police, CBI, BS & FC, Mumbai and others) in support of his case. The other counsel appearing for other petitioners argued

on the same line and also adopted the arguments of the learned Senior Counsel.

3. Mr.N.Chandrasekaran, the learned Special Public Prosecutor for respondent-CBI submitted that the respondent has filed counters in all Revisions at the stage of condoning the delay in filing the present Revision Petitions, and that may be read as part of his submissions. The learned Special Public Prosecutor submitted that evidence was let in by the prosecution to the effect that the petitioners forged salary slips to avail loan from the aforesaid Bank, which otherwise, they were not entitled to, and for the purpose of getting loan, they fabricated false documents and by using such false documents, they made the Financial Institution to part with money and therefore, they have committed offence under Sections 420, 467, 468 and 471 IPC. Further, the petitioners were in collusion with accused Nos. 1 to 8, who entered into conspiracy for the purpose of inflating the value of the land to avail enhanced amount of loan and the criminal intention is also made clear by entering into sale deed for the said amount, but, at the same time, produced the agreement of sale for enhanced amount for the purpose of availing loan, and the loan availed, was utilized for other purposes. Therefore, the plea of forgery has been made out, and considering all these aspects, the Trial Court rightly dismissed the Discharge Petitions filed by the petitioners.

4. The learned Special Public Prosecutor for respondent-CBI further submitted that subsequent payment of the loan amount by the petitioners cannot be taken into consideration to quash the prosecution against the petitioners, and the Court should not, at this stage, take into consideration any documents to that effect that loan have been paid by the petitioners. The learned Special Public Prosecutor relied upon the judgments reported in i) A.I.R. (1996) SC 1744 (1) in re (State of Maharashtra Vs Somanath Thapa,) ii) (2013) 10 SCC 686 in re (Central Bureau of Investigation Vs. Jagjit Singh) and iii) (2012) 11 S.C.C. 321 in re (Ashok Sadarangani and another Vs. Union of India and others) in support of aforesaid contention.

5. To appreciate the contentions of both sides, we will have to see the chargesheet filed against the petitioners. Admittedly, the petitioners are employed under various Government Department, and they entered into an agreement with M/s.Sindhu Developers, for the purpose of purchasing plots by availing loan and in that process, they produced some forged salary slips to avail loan for enhanced amount, which they were otherwise, not entitled to, as per their original salary certificate, and by using the forged salary slips,

they availed loan for enhanced amount by creating false agreement of sale, and later, entered into a sale deed for the said amount, and thereby, committed various offences. The charges levelled against the petitioners were stated in Para Nos.23 and 24 of the chargesheet, and therefore, we will have to see whether any offence has been committed by the petitioners, as per the statement of witnesses.

6. As stated supra, the petitioners availed loan from HUDCO by entering into an agreement of sale for huge amount by producing salary slips, which according to the prosecution were forged, and by entering into such agreement of sale for the higher sum, they availed loan from HUDCO, and later, obtained the sale deed for a very lesser amount and thereby, utilized the loan amount availed from HUDCO for other purpose. It is also the specific case of the prosecution that salary slips were forged and the petitioners were not entitled to get those loan amount on the basis of their original salary certificate. It is also seen from the records that witnesses were examined to the effect that the salary slips were forged and those slips were utilized for the purpose of availing loan from HUDCO.

7. In the background of these facts, we will have to see whether the chargesheet filed against the petitioners can be quashed on the basis of the submission of the learned counsel for petitioners that the loan amounts were repaid and there were no loss caused to the Bank.

8. In the judgment reported in [2009 2 M.L.J. (Crl.) 699] supra, this Court, in similar circumstance of the case, quashed the chargesheet filed against petitioners therein by following the judgements reported in i) A.I.R. (2003) S.C. 1386 in re (B.S. Joshi Vs. State of Haryana), ii) (1996) 1 M.L.J. (Crl.) 710 in re (Central Bureau of Investigation Vs. Duncans Agro Industries Ltd.) and (2009) 1 M.L.J. 239 in re (Nikhil Merchant Vs. CBI and others). However, in the judgment reported in (2012) 11 S.C.C. 321 (supra), those cases were considered by the Hon'ble Supreme Court and finally arrived at the conclusion that where the emphasis is more on the criminal intent of the petitioners than on the civil aspect, involved the dues of the Bank in respect of which a comprise was worked out, the prosecution case against the accused cannot be compounded or quashed.

9. In the judgment reported in (2013) 10 S.C.C. 686 (supra), the Hon'ble Supreme Court considered the judgment reported in (2012) 10 S.C.C. 303 in re (Gian Singh Vs. State of Punjab and another) and held that, where specific allegations were made against the accused that he obtained the loan on the basis of forged document with the

aid of the Bank officials and the Bank was induced to delivery property, by believing the forged documents as genuine, such case cannot be quashed on the basis of the settlement between the Bank and accused or on the basis of the repayment of the loan by the accused.

10. In the judgment rendered in Gian Singh Vs. State of Punjab and another, referred supra, the Hon'ble Supreme Court summarized the principles for quashing the chargesheet filed against the accused in Para No.61, which is extracted hereunder :-

> " 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 victims 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 predominatingly 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. "

11. The same principle was considered by the Hon'ble Supreme Court in the judgment reported in (2013) 10 SCC 686 (supra) and held that case falling under the category of offences involving moral turpitude committed by public servants while working in that capacity and though loan was recovered by the Bank, that cannot be a ground to quash the proceeding and the accused has to face trial.

12. As stated supra, the facts of those cases are also similar to the facts of the present case on hand, and, it is the specific case of the prosecution that the petitioners used forged documents for the purpose of availing enhanced loan, and based on the forged salary slips, they had coaxed the Financial Institution to part with the enhanced loan amount, which the petitioners were not otherwise entitled to, and therefore, the petitioners were charged with the offence of forgery punishable under Sections 467, 468 and 471 IPC and also for offence under Section 120 (b) and the issue, Whether the petitioners have committed the aforesaid offences, can be gone into

only during trial. Hence, I do not find any reason to interfere with the orders passed by the Trial Court.

13. In the result, the Criminal Revision Petitions are dismissed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

The XI Additional City Civil and Sessions Judge,
Chennai, (for CBI Cases, relating to Banks
and Financial Institutions)

2 CCs to M/s.K.Ramanujam, Advocate SR.No. 9907

Crl.R.C.Nos.157 to 160 of 2013

RSI (CO)
PSI (12.03.2015)