IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Original Petition Nos.3455 and 3456 of 2015
and M.P.Nos.1 and 1 of 2015

A.Kalyanasundaram ... Petitioner in both the above Crl.O.Ps

vs.

The State rep. By
Inspector of Police
Vigilance and Anti-Corruption
Crime No.10/2009/AC/CB
Coimbatore ... Respondent in both the above Crl.O.Ps

Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to the criminal case in Special C.C.Nos.20 and 21 of 2013 on the file of the learned Special Judge for Cases under the Prevention of Corruption Act, Coimbatore, quash the same by allowing these criminal original petitions.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

COMMON ORDER

These Criminal Original Petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for records relating to Special Calendar Case Nos.20 and 21 of 2013 pending on the file of Special Judge for cases under the Prevention of Corruption Act, Coimbatore and quash the same.

2. The averments made in both the petitions are that the petitioner has served as a Branch Manager of Tamil Nadu Industrial Cooperative Bank Limited (TAICO Bank) between 01.08.2001 and 30.07.2005. During his tenure, he is empowered to sanction Personal Loan to the maximum amount of Rs.1,00,000/- (Rupees One Lakh) to the permanent/approved probationers of the State/Central Government as well as Public Sector Undertakings on production of certificate issued by the Pay Drawing / Pay Disbursing Officer and accordingly, the petitioner has sanctioned loans to 22 persons. The loan amounts

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are now repaid; on 13.11.2006, an inspection has been conducted and in the inspection report dated 05.02.2007, it is observed that the petitioner has failed to follow instructions of the Head Office while sanctioning Personal Loan and therefore, proceedings can be initiated against him under Section 87 of the T.N.C.S.Act, 1983; but the respondent, in contravention of inspection report has registered cases against the petitioner in Crime No.10/2009/AC/CB against the petitioner and 9 others for offences punishable under Section 120 B, 109, 167, 417, 419, 420, 409, 465, 468, 471, 477 A IPC and also under Sections 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act, 1988; after investigation, the respondent has filed two final reports dated 05.07.2013 and the same have been taken on file in Special Calendar Case Nos.20 and 21 of 2013 for the periods started from 20.04.2002 to 17.07.2002 and 20.12.2004 to 15.06.2005 respectively; the Special Judge has taken cognizance without applying judicial mind and the final reports filed in both the cases are totally abuse of process of law. Under the said circumstances, these petitions have been filed so as to quash the entire proceedings in Special Calendar Case Nos.20 and 21 of 2013.

3. On the side of the respondent in each petition, a detailed counter has been filed, wherein, it has been contended inter alia to the effect that the finding given in the inspection report is not binding upon the respondent in initiating criminal proceedings on the basis of offences alleged to have been committed by the petitioner; it is false to aver that the Special Judge, Coimbatore has taken cognizance of the offences alleged to have been committed by the petitioner without applying judicial mind; only with the active criminal conspiracy of the petitioner and others, loans have been disbursed to various ineligible persons and therefore, it is false to aver in the petitions that the petitioner has had no connection whatsoever with the offences mentioned in the final report; there is no merit in the petitions and the same are liable to be dismissed.

4. Before perpending the rival submissions made on either side, it would be apropos to perorate the following admitted facts. It is an admitted fact that during the relevant period, the petitioner has served as Manager of the Tamil Nadu Industrial Cooperative Bank Ltd., (TAICO Bank) and empowered to sanction loan to eligible persons to the tune of Rs.1,00,000/- and accordingly loans have been disbursed to 22 persons and subsequently they repaid the same.

5. The main defence taken on the side of the respondent is that the petitioner with the active connivance of others has sanctioned loans to various ineligible persons. Under the said circumstances, a case has been registered and after investigation, two final reports are filed and the same have been taken on file in the Special Calendar Case Nos.20 and 21 of 2013 and therefore, the petitioner is not entitled to the relief sought for in the present petitions.

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6. The learned counsel appearing for the petitioner has advanced his argument by way of raising the following points:-

(a) During the relevant period, the petitioner has acted as Manager and his role is very very limited in sanctioning loans and after registering a case, inspection has been conducted and in the inspection report, it has been specifically recommended for initiating proceedings against the petitioner only under Section 82 of TNCS Act and the Special Judge, Coimbatore, without considering the recommendation made in the inspection report has taken cognizance of the offences alleged have been committed by the petitioner;

(b) The loan amounts given by the petitioner have been recovered and no loss has occurred;

(c) The petitioner has done only procedural irregularities and the same cannot be a basis for facing criminal charges.

7. In order to controvert the contentions put forth on the side of the petitioner, the learned Additional Public Prosecutor, has meticulously contended that during the relevant period, the petitioner has served as Manager of the Tamil Nadu Industrial Cooperative Bank Ltd., (TAICO Bank) and with the active connivance of the petitioner and others, ineligible persons have been secured and for the purpose of achieving their sinister motive, loans have been disbursed and further some of the witnesses have stated in their Section 161 (3) Statements to the effect that the petitioner has also participated in canvassing persons with regard to disbursement of loans and therefore, the petitioner cannot escape from liability and in the said circumstances, these Criminal Original Petitions are liable to be dismissed.

8. In fact, this Court has perused the final reports filed in both the cases, wherein, specific allegation has been made against the petitioner to the effect that only with the active connivance of the petitioner and others, a criminal conspiracy has emerged and consequently loans have been disbursed to various ineligible persons. Therefore, it is pellucid that specific allegation has been made against the petitioner in final reports with regards to disbursement of loans.

9. It is true that an inspection has been conducted and a report has also been filed, wherein, it is specifically stated that the petitioner has committed certain lapses and therefore, proceedings can be initiated against him under Section 82 of the TNCS Act.

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10. As rightly contended on the side of the respondent, the finding given in the inspection report is not an embargo to initiate criminal proceedings against the petitioner. Even at the risk of jarring repetition, the Court would like to say that necessary materials are found in final reports so as to proceed against the petitioner and further mere recovery or repayment of loans does not absolve criminal liability of the petitioner. Therefore, it is quite clear that the contentions put forth on the side of the petitioner in both the petitions are not factually and legally sustainable.

11. The learned counsel appearing for the petitioner has cited the following decisions:-

(i) In M.Thangavel and Others Vs. Assistant Superintendent of Police, Vigilance and Anti Corruption, Nagercoil, Kanyakumari District and Others [(2014) 2 MLJ (Crl) 663], this court has held that in the absence of evidence to show that the alleged society is receiving or received aid, prosecution of accused in the said Act (Prevention of Corruption Act, 1988) is not valid.

Here, the position is inverse. As narrated earlier, the admitted case of the petitioner is that he has acted as a Sanctioning Authority during the relevant period and also disbursed loans and in the said circumstances, the decision mentioned supra is not applicable to the facts and circumstances of the present case.

(ii) In Satish Mehra Vs. State (NCT of Delhi) and another [(2012) 13 Supreme Court Cases 614], the Honourable Supreme Court has held that where allegations do not disclose prima facie evidence and prosecution of the accused would result in abuse of process, then proceedings can be quashed either at early stage or at later stage.

In the instant case, it has already been pointed out that prima facie evidence is available in abundance, so as to prosecute the petitioner and in the said circumstances, the dictum given by the Honourable Supreme Court cannot be applied in the present case.

(iii) In M/s.GHCL Employees Stock Option Trust Vs. M/s.India Infoline Limited [2013-2-Law Weekly (Crl.) 245], the Honourable Supreme Court has held that the order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case. Further, it is held that Magistrate has to record his satisfaction with regard to the existence of prima facie case on the basis of specific allegations made in the complaint.

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As adverted to earlier, in the final reports, necessary allegations are available, so as to prosecute the petitioner and therefore, the facts and circumstances of the present case are total alien to the facts mentioned in the decisions referred to earlier.

(iv) In Additional Superintendent of Police, CBI, Anti Corruption Bureau, CBI/ACB, Chennai Vs. G.B.Anbalagan and Others [(2014) 4 MLJ (Crl) 279], this Court has held that for constituting cheating, prosecution is required to show that the accused has had a fraudulent or dishonest intention at the time of making promise or representation.

In the present case, the specific contention put forth on the side of the prosecution is that the petitioner and others have had conspiracy and in pursuance of their oblique intention, various ineligible persons have been secured and subsequently disbursed loans. Therefore, replete evidence is available in the present case so as to proceed against the petitioner and in the said circumstances, the decision mentioned supra is not applicable to the facts of the present case.

(v) In Central Bureau of Investigation Vs. Narendra Lal Jain and Others [(2014) 5 Supreme Court Cases 364], it is observed that a criminal liability of the respondent to pay the amount to the concerned Bank has been settled in pursuance of institution of a civil suit and therefore initiation of criminal proceedings or pendency of the same is totally unwarranted.

It has already been pointed out that loans advanced have been recovered subsequently and that itself pave the way for ignoring criminal conspiracy and other criminal acts alleged to have been committed by petitioner and others. Therefore, the view expressed by the Honourable Supreme Court cannot be applied in the present case.

(vi) In Rishipal Singh Vs. State of Uttar Pradesh and Another [(2014) 7 Supreme Court Cases 215], the Honourable Supreme court has held that in a complaint, even when uncontroverted, not disclosing alleged offences, criminal proceedings are totally unwarranted.

In the instant case, as mentioned earlier, the specific contentions put forth on the side of the respondent/prosecution is that during the relevant period, the petitioner has acted as Manager and empowered to sanction loans to maximum extent of Rs.1,00,000/- and by virtue of the said capacity/powers, the petitioner and others have secured ineligible persons and disbursed loans on the strength

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of bogus certificates. Therefore, viewing from any angle, it is highly impossible to come to a conclusion that the prosecution/respondent has unnecessarily initiated proceedings against the petitioner and under the said circumstances, the relief sought for in both the petitions cannot be granted and the same are liable to be dismissed.

12. In fine, these petitions are dismissed. Consequently, connected M.P.Nos.1 and 1 of 2015 are also dismissed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To :
1.The Inspector of Police
Vigilance and Anti-Corruption
Crime No.10/2009/AC/CB
Coimbatore

2.The Special Judge for Cases
(Prevention of Corruption Act), Coimbatore.

3. The Public Prosecutor, High Court, Madras.

+2ccs to Mr.N. Manokaran, Advocate, S.R.No.41003 & 41005

+1cc to the Government Pleader, S.R.No.41324

KSJ(CO)
EU(26/08/2015)

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