

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2015

Delivered on : 22.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Revision Case No.909 of 2012
and M.P.No.1 of 2015

S.Ramadoss ...Petitioner/Accused 7

vs.

State rep. By
Inspector of Police
Central Bureau of Investigation
Bank Security & Fraud Cell
Bangalore ... Respondent/Complainant

Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code against the order in Criminal M.P.No.3295 of 2010 in CC No.34/2005, dated 20.03.2012 passed by XI Additional City Civil and Sessions Court for CBI Cases, Chennai.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.L.Prabahar

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

ORDER

This Criminal Revision Case has been directed against the order dated 20.03.2012 passed in CrI.M.P.No.3295 of 2010 in Calendar Case No.34/2005 by the XI Additional City Civil and Sessions Court [CBI Cases relating to Banks and Financial Institutions].

2. The Revision Petitioner as Petitioner has filed CrI.M.P.No.3295 of 2010 in Calendar Case No.34 of 2005 under Section 227 of the Code of Criminal Procedure, 1973 praying to discharge him from the proceedings of Calendar Case No.34 of 2005, pending on the file of the trial court.

3. It is averred in the petition that the petitioner has been arrayed as 7th accused in Calendar Case No.34 of 2005. The case of the prosecution is that the first accused is a company by name M/s.TTG Industries Ltd.,; the second accused by name V.Ravi Srinivasan is its Managing Director; the third accused by name K.Manoharan is an Authorised Signatory of the 1st accused; the 4th accused by name V.Kannan is the younger brother of the 2nd accused; the 5th accused by name R.Ramesh is the Director of M/s.Southern Powertech Equipments (P) Ltd., M/s.Stirling Dynamics Pvt. Ltd., M/s.TTG Consolidates (P) Ltd., M/s.Abhijaya Finance Pvt Ltd., and M/s.Abhijaya Investments Pvt. Ltd.,; the 6th accused by name R.Balasubramaniam is the Director of M/s.Southern Powertech Equipments (P) Ltd., M/s.TTG Consolidates (P) Ltd., and M/s.Abhijaya Investments Pvt., Ltd.,; the 7th accused is the present petitioner acted as Senior Manager In-charge of the Advances & Foreign Exchange Department at Central Bank of India, Chennai Main Branch from 08.09.1997 to 10.09.2000; the 8th accused, deceased G.V.G.Rao has functioned as Chef Manager, In-charge of the Central Bank of India, Chennai Main Branch. During the relevant period, all the accused hatched conspiracy and in pursuance of the same, they have done misconduct for obtaining undue pecuniary advantage from the Bank in favour of M/s.TTG Industries Limited and others. The further case of the prosecution is that without obtaining approval of the competent authority, Inland Letters of Credit facilities have been created and thereby supplied invoices and Hundi bills. The further averments made in the petition are that the petitioner has acted well within his limit after obtaining necessary legal opinion. The petitioner has had no connection with outstanding amounts and he has been falsely implicated. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

4. In the counter filed on the side of the respondent, it is averred that concerned case has been registered by CBI, Bank Securities and Fraud Cell, Bangalore. During the course of investigation, the involvement of all the accused has come to light. In the final report, it has been specifically stated that in pursuance of the criminal conspiracy, the present petitioner and deceased G.V.G.Rao, dishonestly abused their official position and issued two Bank Guarantees and Letters of Credits. The accused 2 and 3 have submitted applications for operating Inland Letters of credit, by way of enclosing false proforma Invoices issued by M/s.Southern Powertech Equipments (P) Ltd., by the 5th accused and Stirling Dynamics Pvt. Ltd. Infact, the accused have caused loss to the tune of Rs.4,48,79,000/-. Similarly, two Bank Guarantees have been issued in favour of M/s.First Leasing Company of India Ltd., and

M/s.TTG Industries Ltd., for purchasing windmills and the Bank has made payment of Rs.2,28,50,000/-. The other Bank Guarantee of Rs.1,93,50,000/- has been issued without request by TTG Industries Ltd., Since all the accused have committed offences mentioned in the final report, in pursuance of criminal conspiracy, at this stage, the Petitioner cannot be discharged.

5. The trial court, after considering the divergent contentions raised on either side, has dismissed the petition. Against the dismissal order, the present Criminal Revision Case has been preferred at the instance of the petitioner.

6. The learned Senior counsel appearing for the petitioner has contended that during the relevant period, the petitioner has acted as Senior Manager, In-charge of the Advances and Foreign Exchange Department at Central Bank of India, Chennai Main Branch and within limits, he and the deceased G.V.G.Rao [Chief Manager] have acted and advanced money to the companies mentioned in the final report and further the first accused has discharged the entire outstanding amounts and the concerned Bank has also given "no dues" certificates and since the petitioner has acted well within his limit and that too after obtaining necessary legal opinion, he cannot be arrayed as one of the accused in Calendar Case No.34 of 2005. Under the said circumstances, the present petition has been filed, but the trial court, without considering the nature of documents relied upon on the side of the revision petitioner as well as the role alleged to have been played by him has erroneously dismissed the petition and further no loss has occurred to the Central Bank of India and therefore, the order passed by the trial court is liable to be set aside.

7. In support of the contentions put forth on the side of the Revision Petitioner, the following documents are relied upon:-

(a) The letter dated 12.06.1998 issued by Chief Manager, Chennai Main Branch, Zonal Office, wherein, it is stated that:

"Figures in bracket indicate limits with the consortium. Our share of fund based and non fund based is at 60%. Bifurcation of limits under loan delivery system at 80:20 (rounded off). "

(b) The letter dated 18.03.1997 from Advances Department, Zonal Office, Chennai, wherein, it is stated that:

"In the light of the discussion we had at the consortium review meeting at Z.O and looking to the genuine need of the company, we recommend for opening of Inland L/C on DA terms within the overall sanctioned limit of Foreign L/C on DA

terms under usual terms and conditions. The Branch has already opened 4 Inland DA LCs for Rs.1.60 crores which fall due for payment in May/June '97. We request you to kindly confirm."

(c) The letter dated 26.03.1997 regarding Interchangeability of LC facility under DA terms A/c TTG Industries Ltd., wherein is mentioned as follows:-

"Please furnish your clarifications for the following :

1.What is the margin money collected at the time of opening of LC.

2. What is the arrangement for building up margin.

Kindly expedite."

(d) The letter dated 11.04.1997, wherein it is mentioned as follows:-

"In respect of Inland DA L/Cs opened within the limit of Foreign DP L/Cs, we would like to clarify as under:-

1) A Margin of 15% as applicable to foreign DP L/C has been maintained.

2) The company has assured us that the payments will be met on due dates and there will not be any devolvement.

Please let us have your confirmation."

(e) The letter dated 28.04.1997, wherein, it is stated as follows:-

"Please refer to your letter ZO:ADV:MNO:96-97:301 dt 18.09.96 permitting Times Bank Ltd., to issue Bank Guarantee for Rs.550 lakhs favouring Bellary Steel Alloys Ltd. One of the conditions stipulated was when the guarantee is issued, 60% of the guarantee amount to be reserved for the L/C facilities enjoyed with us. In other words, a sum of Rs.3.3 crores will be reduced from the LC limit of Rs.6 crores and the operative L/C limit will be only Rs.2.7 crores.

We enclose a letter received from the company explaining that the guarantee to be issued in favour of Bellary Steel Alloys Ltd. Has been negotiated at Rs.2.5 crores only as against the originally envisaged limit of Rs.5.5 crores.

Under the circumstances the operative L/C limit has been reduced as under:-

	(Rs. in crores)
L/C limit (original)	6.00
Less: 60% of guarantee to be issued	1.50

Operative L/C limit	4.50

"

(f) The letter dated 09.05.1997 from Credit Management Department (S&E), Central Office, Bombay, wherein, it is stated like thus:-

"Central Office vide their letter No. dt.. permitted issue of guarantee for Rs.5.50 crores favouring Bellary Steel & Alloys Ltd., on the following terms and conditions:-

(a) 60% of our share i.e., in the guarantee proposed to be reserved in the LC limit

(b) The advance payments so received should be paid direct to our account towards adjustment of LC devolvement.

We are now informed by our Madras Main Branch that as against the original guarantee of Rs.550 lakhs., the company has indicated that they will be availing Rs.250 lakhs only for such guarantee. Accordingly, the operative L/C limit has been reduced from Rs.600 lakhs to Rs.450 lakhs (60% of Rs.250 lakhs). As there is an Out of order position in the CC account, we have advised our Madras branch to obtain a suitable undertaking from Times Bank/company and ensure that advance payments are received into our account and CC accounts are regularised. In respect of fresh L/Cs opened, branch should impound 10% of each credit received into the account towards meeting the commitment under L/C. "

(g) The letter dated 20.10.1997 issued by S.Kothandaraman, Advocate, Chennai, wherein, it is stated as follows:-

"We forward herewith a specimen copy of the guarantee to be issued in favour of M/s.First Leasing Company of India Ltd., at the request of M/s.TTG Industries Ltd., one of our valued constituents. The guarantee amount is Rs.1,93,50,000/-.

We shall thank you to let us have your

opinion on this guarantee at an early date."

8. In order to remonstrate the contentions put forth on the side of the Revision Petitioner, the learned Special Public Prosecutor has contended that the specific case of the prosecution is that the present petitioner and other accused have hatched a criminal conspiracy so as to cheat the concerned Bank and in pursuance of their conspiracy, they caused heavy loss to the concerned Bank and further Prosecution Witness Nos.11, 16, 19, 20, 21 have stated about the misconduct and irregularities done by the present accused and others in dealing with huge amounts and the trial court, after considering the prima facie evidence available on record, has rightly dismissed the petition. Therefore, the dismissal order passed by the trial court need not be set aside.

9. On the basis of the divergent submissions made on either side, the court can deduce the following aspects:-

(a) During the relevant period, the present petitioner and one deceased G.V.G.Rao have acted as Senior Manager and Chief Manager in Central Bank of India, Chennai Main Branch.

(b) The remaining accused have obtained the amounts from Central Bank of India, Chennai Main Branch by way of submitting the documents mentioned in the Final Report.

The only point that has to be decided in the present Criminal Revision Case is as to whether prima facie evidence is available so as to proceed further against the petitioner.

10. The consistent case of the prosecution is that in pursuance of criminal conspiracy, all the accused have joined together and the present petitioner and the deceased G.V.G.Rao have advanced money to the remaining accused beyond sanction limit for obtaining Inland Letters of Credits on DA basis and also without obtaining prior approval of the competent authority.

11. It is an admitted fact that the present petitioner and other accused are said to have committed offences punishable under Section 120-B r/w.420, 467, 468 and 471 IPC and Section 13 (2) r/w.13(1)(d) of Prevention of Corruption Act, 1988.

12. The trial court has relied upon the statements of LWs.3 to 8 and 17.

13. As pointed out earlier, at this stage, the only duty casts upon the court is to find out as to whether prima facie materials are available so as to proceed further against the Revision Petitioner.

14. One A.Kripanidhi has been examined as L.W.11 and he

gives statement with regard to alleged transactions made in the final report. L.W.16 viz., P.Rajagopal has given statement as follows:-

"As per practice and procedure, Bank Guarantees are issued from our bank only for existing customers with satisfactory record. For issuing any Bank Guarantee, the customer has to submit an application to the bank, along with the copy of contract or agreement based on which, the Bank Guarantee was required to be issued from the bank. In the absence of the above documents the bank was not expected to act and issue any Bank Guarantee. However, it was the duty of the Branch Officials to obtain legal opinion, wherever necessary before issuance of any Bank Guarantee, since by issuing the Bank Guarantee the bank was inviting responsibility and risk.

I am now shown the Bank Guarantee Register maintained at our Chennai Main Branch for the period 1997-99. At page 5 of the register contain entries relating to issuance to Bank Guarantee No.62/39 for Rs.1,93,50,000/- on 22.10.1997, favouring M/s.First Leasing Company of India Ltd., on the application of M/s.TTG Industries Ltd., Chennai-6. It is seen recorded in the register that, copy of referred agreement and beneficiary's requisition letter have not been received at the branch. As per the Guarantee register, the issuance of this guarantee was recommended by then Sr.Manager, Sh.Ramadass, who has since gone on VRS and was approved by then Chief Manager, Sh.G.V.G.Rao, who has since expired. I do not know the circumstance under which this Bank Guarantee was issued from the branch in the absence of the Deferred Payment Sale Agreement regarding the transaction and advance payment received by M/s.TTG Industries Ltd., from M/s.First Leasing Company of India Ltd., Chennai. "

One H.S.Khandeparkar has been examined as L.W.3. After stating the entire transaction, he stated like thus:-

" I am now shown our Zonal Office-Madras letter No.304 dated 19.09.1995 conveying the Board's sanction of the enhanced limits to M/s.TTG Industries Limited is consortium with Karur Vysys Bank Limited in the ratio of 60:40. The said letter shows that our Board vide agenda item No.95-96/23 dated 11.09.1995 had

sanctioned CC (Hyp.) limit of Rs.540 lakhs, OD against BD limit of Rs.600 lakhs, LC (Foreign DA) limit of Rs.600 lakhs, LC (DP) Inland/Foreign limit of Rs.120 lakhs and Letter of Guarantee of Rs.600 lakhs as the 60% share of Central Bank of India favouring M/s.TTG Industries Limited. The above sanction by the Board clearly shows that there was no sanction limit for Inland LCs on DA terms. The Madras Main Branch conducting the account of TTG Industries Limited and the Madras Zonal Office should have obtained Central Office approval for inter-changeability of the sanctioned foreign DA LC limit for opening of Inland LC on DA terms in the account of TTG Industries Limited. If the Madras Main Branch had permitted Inland LC on DA terms to the above party, against the sanctioned foreign DA LC limit, the said action was unauthorized if it was done without the concurrent of the competent sanctioning authority. "

15. From the cumulative reading of the statements of the Prosecution Witnesses, the court can easily come to a conclusion that if the present petitioner and deceased G.V.G.Rao have dealt with the amounts mentioned in the final report unauthorizedly and that too without concurrence of the competent sanctioning authority, their action would come within the purview of criminal action. The learned Senior counsel has also referred to the format of Guarantees and also the word "notwithstanding" found therein.

16. It is seen from the records that the concerned counsel by relying upon the word "notwithstanding" has given legal opinion to make transactions with the companies mentioned in the final report. Simply because the concerned Advocate has given such kind of legal opinion, now the court cannot come to a conclusion that the present accused has acted well within his limit in making the transactions mentioned in the final report. For the purpose of showing that all transactions made by the petitioner are bound by rules or with the approval of zonal office, some more documentary and oral evidence are required. Further, the documents relied upon on the side of the Revision Petitioner should be marked through concerned witnesses on the side of the Prosecution subject to cross-examination on the part of the accused. Unless such process is done, now it is very difficult to rely upon the documents referred to on the side of the Revision Petitioner.

17. As adverted to earlier, the only thing the court has to find out is as to whether prima facie evidence is available to proceed further against the Revision Petitioner. In fact, the trial court has relied upon some statements of relevant witnesses and this court has also pointed out some statements of witnesses. On the basis of cumulative reading, this court is of the considered view that sufficient prima facie materials are available so as to proceed further against the Revision Petitioner.

18. It is true that all outstanding amounts have been settled in favour of the Bank and that itself is not at all sufficient for coming to a conclusion that there is no criminal conspiracy amongst all the accused. Further it is a settled law that an offence of criminal conspiracy under Section 120-B cannot be decided at this stage and the same can be decided only in trial.

19. Further, the consistent case of the prosecution is that without necessary sanction as well as necessary approval, the transactions mentioned in the final report have been made by the accused. Since the consistent case of the prosecution is to that effect, both oral and documentary evidence are very much required for deciding the alleged culpability of the accused and therefore, at this stage, it is not feasible to discharge the petitioner from the proceedings of Calendar Case No.34 of 2005.

20. The trial court, after considering the fact that prima facie materials are available so as to proceed further against the Revision Petitioner, has rightly dismissed the petition filed in CrI.M.P.No.3295 of 2010. In view of the discussion made earlier, this court has not found any force in the contentions put forth on the side of the Revision Petitioner and therefore, the present Criminal Revision Case deserves to be dismissed.

In fine, this Criminal Revision Case is dismissed. The order passed in CrI.M.P.No.3295 of 2010 in Calendar Case No.34 of 2005 by the XI Additional City Civil and Sessions Court for CBI Cases, Chennai is confirmed. Consequently, connected M.P., is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

nvsri
To

1.The XI Additional City Civil and Sessions Court for CBI Cases,
Chennai.

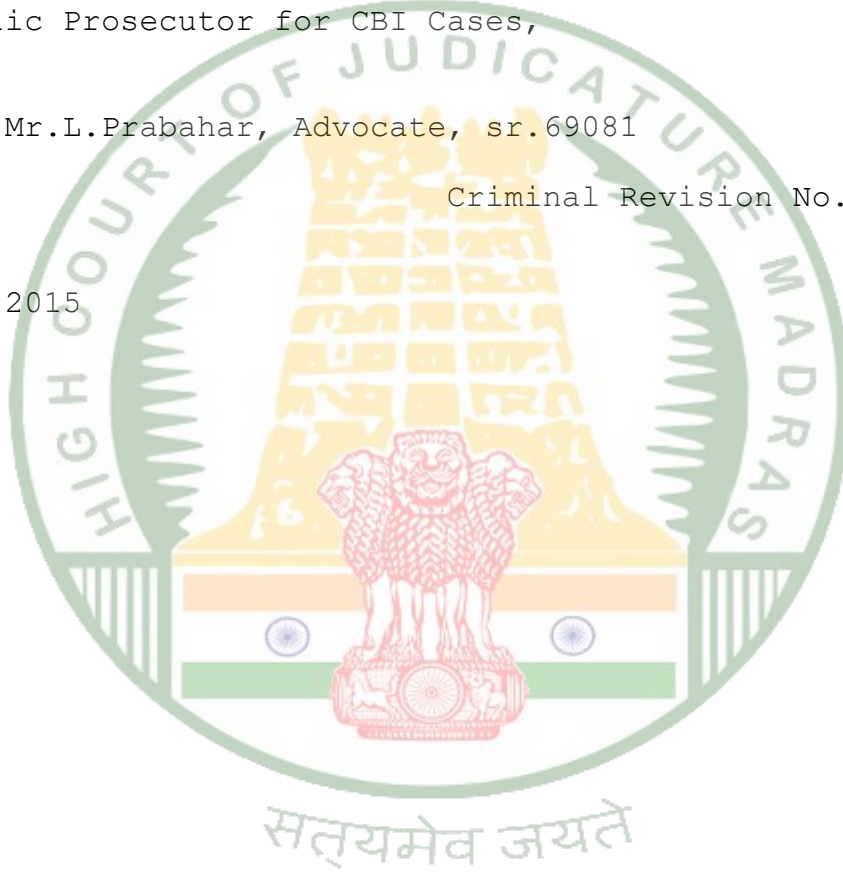
2.The Inspector of Police
Central Bureau of Investigation
Bank Security & Fraud Cell
Bangalore

3.Mr.K.Srinivasan,
Spl.Public Prosecutor for CBI Cases,
Chennai.

+2 ccs to Mr.L.Prabakar, Advocate, sr.69081

Criminal Revision No.909 of 2012

tsi co
kra 30.12.2015



WEB COPY