IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20-08-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Crl.O.P.No.4317 of 2015

K.N. Subramanian,M/53 Yrs
S/o. Kandappa,Divisional Manager
Madurai Circle Office, Canara Bank
Madurai   Petitioner

Vs.

State rep by
Inspector of Police
CBI/SPE/ACB Chennai
RC.MA1/42.(A)/2005   Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.11 of 2008 and to quash the charge sheet and acquit the petitioner/accused No.1 from the offences mentioned in C.C.No.11 of 2008 pending on the file of Honourable XI Additional City Civil & Sessions Judge for CBI cases, relating to Banks and financial institution at Chennai -1.

For petitioner :: Mr. A. L. Somasundaram
for M/s. Lakshmi Priya Associates

For respondent :: Mr. K. Srinivasan,
Spl.P.P. For CBI cases.

ORDER

This criminal original petition has been filed under Section 482 of the Code of Criminal Procedure, 1973('Cr.P.C.' in short) praying to call for records pertaining to Calendar Case No.11 of 2008 pending on the file of the XI Additional City Civil & Sessions Judge for CBI cases relating to Banks and financial institutions, Chennai and quash the same.

2. It is averred in the petition that the petitioner has served in various branches of Canara Bank in different levels and now he is working as Divisional Manager, Madurai Circle Office, Canara Bank from May 2007. He served as Chief Manager, Canara Bank, Kellys Branch, Chennai during the period from 04-08-2002 to 31-08-2003. During that period Account No.3778 has been opened by N.S. Krishna Kumar, proprietor of M/s. Sri Ram Trading Company, T. Nagar, Chennai. The said N.S. Krishna Kumar has approached Canara Bank, Kellys Branch for financial assistance and introduced by one

N.S. Madanlal, partner of M/s. Bharathy Traders. The Current Account No.3778 has been opened on 23-10-2002 by one John Nelson. As per bank procedure, emergency discretionary power register is to be maintained and the said register has to be signed only by Credit Manager. The petitioner has never issued any order reducing the margin to 10%. From the record it is evident that without showing the discretionary register, and without getting the petitioner's concurrence, Manager-credit on his own discounted and reduced the margin intentionally. After two months from the date of opening of current account, the parties have applied for bill purchasing facility and sent covering letter dated 17-12-2002 and the same has been discounted on 18-12-2002. Likewise, the letter dated 19-12-2002 has been discounted on 20-12-2002 and the letter dated 20-12-2002 has been discounted on 21-12-2002 and further the letter dated 24-12-2002 has been discounted on 26-12-2002. The petitioner has put his writing only on covering letter dated 17-12-2002, stating, "Pls. discount by maintaining margin of 25%". If the Credit Manager discounted the bills by maintaining a margin of 25% as per order of the petitioner, the amount for four bills would be upto Rs.18.45 lakhs only. But, without maintaining the stipulated margin, the amount for four bills increased upto Rs.20.52 lakhs. The petitioner has not exercised any power beyond the permitted limit. It is the duty of the Credit-Manager to verify the Valuation Report given by the party. One Mr.Ramasamy has verified all lorry receipts and all the bills are pending with the Senior Manager Sulochana Nagarajan and she sanctioned secured demand bill purchase limit for Rs.30 lakhs on 14-01-2003. The respondent without conducting proper investigation has filed a final report against the petitioner and the same has been taken on file in C.C.No.11 of 2008. The petitioner has also filed Crl.M.P.No.1135 of 2013 to discharge him from the offences mentioned in the charge sheet and the same has been dismissed on 16-09-2014. The petitioner has no connection whatsoever with the alleged offences and under the said circumstances, the present petition has been filed for getting the relief sought for therein.

3. In the counter filed on the side of the respondents it is aware that the petitioner and others have committed the offences mentioned in the final report. As per the delegation of powers for loans and advances (H.O. Circular No.126/2002), the Chief Manager (A1), the petitioner can exercise his power only upto 25% of Rs.75 lakhs to discount the bills i.e., Rs.18.75 lakhs under secured demand bill per party. But during 18-12-2002 to 20-12-2012, bills have been discounted to the tune of Rs.20.52 lakhs, under discretionary powers. Thus the limit of Rs.18.75 lakhs has been exceeded by the petitioner. It is false to aver that the petitioner has no connection whatsoever with the alleged offences and there is no merit in the petition and the same deserves to be dismissed.

4. The learned counsel appearing for the petitioner has raised the following points so as to substantiate the contentions mentioned in the petition:

(i) Discount has been given properly,

(ii) after knowing the evil design of the other accused, the petitioner has given a complaint,

(iii) for the purpose of recovering the amount in question, separate proceedings have been initiated in Debt Recovery Tribunal,

(iv) one Sulochana Nagarajan has given a favourable reply.

(v) no preliminary enquiry has been conducted.

5. In order to repudiate the contentions put forth on the side of the petitioner, the learned Special Public Prosecutor has contended that already for similar relief, Crl.M.P.No.1135 of 2013 has been filed by thepetitioner and the same has been dismissed by the Trial Court and therefore, the present petition is not legally maintainable. Further, the petitioner is also having connection with the alleged offences committed by all the accused and under such circumstances, the present petition deserves to be dismissed.

6. Basing upon the divergent submissions made on either side, the Court has to look into as to whether the relief sought for in the present petition can be granted in favour of the petitioner ?

7. It is an admitted fact that the petitioner and others are facing charges punishable under Section 120 -B read with 420 IPC and also under Sections 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988.

8. At this juncture, the Court has to look into the statement of the approver by name S. Narasimha Raghavan wherein it has been clearly stated that in granting discount the petitioner has exceeded his limit.

9. The entire contentions put forth on the side of the petitioner is based upon the explanation of one Sulochana Nagarajan, wherein it is stated that the petitioner by utilising his official position has discretionary power to enhance the percentage of discount.

10. It is also equally an admitted fact that the approver by name Narasimha Raghavan is one of the staff of Canara Bank who in fact has given the statement against the petitioner. Since the Court is having two kinds of statements, the same have to be decided only in trial.

11. It is true that on 19-07-2003, the petitioner has given a complaint and that itself cannot be a basis for completely disbelieving the case of the prosecution. Further, it is seen from the records that with regard to the amount in question separate proceedings have been initiated befroe the Debt Recovery Tribunal and that itself would not pave the way for quashing the present proceedings and further failure to conduct preliminary enquiry is not fatal to the case of the prosecution.

12. As stated earlier, the petitioner and others are facing charges under Section 120B read with 420 of the IPC and also under Section 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988.

13. At this juncture, the Court has to look into Section 120B of IPC. The essential ingredients of Section 120B are, (a) there should be an agreement between the persons who are alleged to conspire; (b) the agreement should be (i) for doing any illegal act or (ii) for doing by illegal means, an act which may not itself be illegal. Further, conspiracies are not hatched in the open, by their nature, they are secretly planned. The lack of direct evidence relating to conspiracy has no consequence. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion open to public view. In considering the question of criminal conspiracy it is not always possible to give affirmative evidence about the date of the formation of the conspiracy, about the persons who took part in the formation of the conspiracy, about the object which the conspirators set before themselves as the object of the conspiracy and about the matter in which the object of hte conspiracy was to be carried out. All this is necessarily a matter of inference. The essence of criminal conspiracy is an agreement to do an illegal act. Such an agreement can be proved either by direct evidence or by circumstantial evidence or by both. It is not necessary that there should be express proof of the agreement, far from the acts and conduct of the parties the agreement can be inferred. But mere suspicion is not enough to frame charges against the accused.

14. From the close reading of Section 120B and also standard of proof, the Court can easily discern that the alleged conspiracy need not be not open and the same can be proved and also decided at the time of trial. Under the said circumstances, the Court cannot come to a conclusion that the petitioner has had no connection whatsoever with the alleged offences.

15. Even at the risk of jarring repetition, the Court would like to point out that the main charge framed against all the accuse including the petitioner is under Section 120B, IPC. Simply because the petitioner has given a complaint and DRT proceedings have been initiated, at this stage, Court cannot come to a conclusion that he is an innocent person. Further as per the statement given by the approver, prima facie case is made out against the petitioner. Therefore, viewing from any angle, the contentions put forth on the side of the petitioner cannot be accepted and further, lot of materials are available to proceed further against him and therefore, the present petition deserves to be dismissed.

In fine, this criminal original petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registra

glp
To
1. The Inspector of Police
CBI/SPE/ACB Chennai

2. The XI Additional City
Civil & Sessions Judge for CBI cases,
relating to Banks and financial institution
Chennai -1

3. The Public Prosecutor, High Court, Madras.

+ 1 cc to M/s. Lakshmi Priya, Advocate Sr.44395

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KJI(CO)
EU 10.09.15