

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2014

Date of decision: 24.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Criminal Revision Case No.723 of 2013

R.Balasubramaniam

... Petitioner

vs.

The Inspector of Police,
CBI (BS & FC),
Bangalore.

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 of the Code of Criminal Procedure praying to set aside the order dated 2.5.2013 passed in CrI.M.P.No.2191 of 2012 in C.C.No.34 of 2005 by the XI Additional Special Judge (CBI Cases relating to Bank and Financial Institutions), Chennai.

For Petitioner : Mr.B.Kumar, Senior Counsel,
for M/s.Ramachandran

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

O R D E R

The revision petitioner is A.6 in C.C.No.34 of 2005 on the file of the XI Additional Special Judge for CBI Cases, Chennai. The revision petitioner filed Criminal M.P.No.2191 of 2012 in C.C.No.34 of 2005 under Section 239 of Cr.P.C. to discharge him from the array of the accused and that petition was dismissed by the learned Additional Special Judge by order dated 2.5.2013 and aggrieved by the same, this revision is filed.

2. The gravaman of the charge is that the petitioner during the period 1997 - 1999 was the Director of M/s.Southern Powertech Equipments (P) Ltd., M/s. TTG Consolidates (P) Ltd., and M/s. Abhijaya Investments Pvt.Ltd., and was holding 10,125 shares with M/s. TTG Industries Ltd., which is arrayed as A.1. Though the petitioner has nothing to do with M/s. TTG Industries Ltd., in connivance with the other accused issued false purchase orders of

M/s. TTG Industries Ltd., and by issuing such false purchase orders, loan was issued to A.1 and wrongful loss was caused to the Central Bank of India, Chennai Main Branch. It is further stated that, in the purchase orders, the petitioner A.6 signed on behalf of TTG Industries Ltd., and he was not an authorised signatory of M/s.TTG Industries Ltd., and therefore, he has committed various offences, namely, punishable under sections 120-B r/w 409, 420, 465 of the IPC and section 13(2) r/w 13(1)(d) of PC Act 1988.

3. The petitioner filed a petition in Criminal M.P.No.2191 of 2012 before the learned XI Additional Special Judge, Chennai, to discharge him stating that even according to the prosecution, he is nothing to do with M/s.TTG Industries Ltd., and no evidence was produced by the prosecution that he was the incharge or responsible for the day-to-day administration and management of M/s.TTG Industries Ltd., and he cannot be vicariously liable. It was also contended that the account with the Central Bank of India was settled by M/s.TTG Industries Ltd., and therefore, there cannot be any prosecution as against the petitioner. That was not considered by the trial Court and the petition was dismissed and aggrieved by the same, the present revision is filed.

4. Mr.B.Kumar, learned Senior Counsel appearing for the petitioner submitted that during investigation, admittedly, the petitioner who has been arrayed as A.6 was not enquired and his signature was not obtained and his admitted signatures were not at all collected and sent for examination by hand writing expert for comparison with the disputed signatures in the various purchase orders wherein the petitioner is alleged to have signed on behalf of M/s.TTG Industries Ltd., as per the evidence of prosecution witnesses and therefore, in the absence of any such evidence, namely, comparing the admitted signatures with that of the disputed signatures by an expert concerned, it cannot be stated that the signatures found in the purchase orders were that of the petitioner and the witnesses who spoke about the petitioner's signature in the purchase orders signed on behalf of M/s.TTG Industries Ltd., did not state the manner in which and how they were acquainted with the signature of the petitioner and therefore, having regard to section 47 of the Indian Evidence Act, their statement cannot be relevant and admissible in evidence and therefore, the prosecution has to be quashed as against the petitioner. In short, the learned Senior Counsel submitted that LW 40, 42 and 45 spoke about the various purchase orders alleged to have been signed by the petitioner on behalf of M/s. TTG Industries Ltd., and they have not spoken about the manner in which they were acquainted with the signature of the petitioner and therefore, having regard to section 47 of the Indian Evidence Act, the mere statement that those signatures found in the purchase orders were that of the petitioner as spoken to by the witnesses cannot be accepted and the charge cannot be framed on that basis. In support of his contention,

the learned Senior Counsel relied upon the following judgments:-

- 1 Suresh Budharmal Kalani alias Pappu Kalani v. State of Maharashtra reported in AIR 1998 SUPREME COURT 3258
- 2 V.R. Nedunchezian v. State by Deputy Superintendent of Police CB CID (Head Quarters), Chennai, reported in 1999-1-L.W.(Cri.) 358
- 3 Pawan Kumar versus State of Haryana reported in 2004 Supreme Court Cases (Cri) 109
- 4 Rahim Khan v. Khurshid Ahmed and others reported in AIR 1975 SUPREME COURT 290

The learned Senior Counsel relied upon the passage in Paragraph 6 of the judgment reported in AIR 1998 SUPREME COURT 3258 supra wherein the Hon'ble Supreme Court held that at the time framing charge, the Court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may adduce in the trial, which would commence only after the charges are framed and the accused denies the charges. He therefore, submitted that the evidence of LW 40, 42 and 45 stating that the signatures found in the purchase orders were that of the petitioner cannot be legally translated into evidence as per section 47 of the Indian Evidence Act as they have not stated during investigation how they were acquainted with the signature of the petitioner and in the absence of such details, their statements are not legally admissible and on the basis of such legally inadmissible evidence, charge cannot be framed. He also relied upon the passage in Paragraph 7 of the judgment reported in 2004 Supreme Court Cases (Cri) 109 supra, wherein the Hon'ble Supreme Court held that in the absence of any evidence to prove that entry in the Hotel Register was made in the presence of PW.6, the evidence of PW.6 cannot be relied upon when he did not state that he knew either the hand writing or signatures of the accused persons. He also relied upon the judgment reported in AIR 1975 SUPREME COURT 290 supra. He therefore submitted that in the absence of any legally admissible evidence, charges cannot be framed on the basis of the statement of witnesses who have not stated the manner in which and how they were acquainted with the signature of the petitioner and therefore, the charge against the petitioner is liable to be quashed.

5. On the other hand, Mr.K.Srinivasan, learned Special Public Prosecutor for CBI Cases appearing for the respondent/State submitted that at the time of framing charge, the Court has to prima facie come to the conclusion that there are materials to frame charge and Court is not bound to see whether conviction can be sustained on the basis of evidence and the relevancy. The reliability and admissibility of the statement of LW 40, 42 and 45 can be considered during trial after framing charge and at the time of framing of charge, Court should not conduct a roving enquiry whether the materials obtained during investigation will lead to any conviction or not. He therefore submitted that when witnesses have stated that the signatures found in the purchase orders were that of the petitioner, that statement has to be prima facie accepted by the Court while framing charge and it is for the defence to cross-examine those witnesses about the manner in which they were acquainted with the signatures of the petitioner and the relevancy and admissibility cannot be gone into at the time of framing charge.

6. Having heard the arguments of the learned Senior Counsel for the petitioner and the learned Special Public Prosecutor for the respondent, the point for consideration arises in this case is whether the Court can go into the admissibility or relevancy of the material collected during investigation at the time of framing charge.

7. It is not in dispute that A.1 - M/s. TTG Industries Ltd., is a company, represented by its Managing Director A.2. A.3 is the authorised signatory of A.1. A.4 is the younger brother of A.2 and was the Director of M/s.Southern Powertech Equipments (P) Ltd., M/s. Stirling Dynamics Pvt.Ltd., M/s.Abhijaya Finance Pvt.Ltd., M/s.Abhijaya Investments Pvt.Ltd., and M/s.TTG Consolidates (P) Ltd.,. A.5 was 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., A.6 was the Director of M/s.Southern Powertech Equipments (P) Ltd., M/s. TTG Consolidates (P) Ltd., and M/s. Abhijaya Investments Pvt.Ltd., and one G.V.S.Rao is no more and he was employed as Assistant Manager of the Central Bank of India, Chennai Main Branch. A.7 was the Senior Manager, incharge of the advances and foreign exchange departments. A reading of the charge sheet makes it clear that all the accused in conspiracy with each other and in connivance with each other entered into a criminal conspiracy with an intention of defrauding the Central Bank of India, and created forged documents and the petitioner who had nothing to do with M/s. TTG Industries Ltd., signed purchase orders on behalf of the first accused and therefore, he is guilty of offence punishable under Sections 120-B r/w 420, 467, 468 and 471 of the IPC and section 13(2) r/w 13(1) (d) of PC Act 1988. It is also admitted that LW 40, Mr.M.Radhakrishnan has stated that purchase orders were signed by the petitioner who was the Director of M/s.Southern Powertech Equipments

(P) Ltd., and the petitioner was not the authorised signatory of M/s.TTG Industries Ltd.,. Similarly, LW 42 and LW 45 also deposed about the involvement of the petitioner by stating that though he was not the authorised signatory of M/s.TTG Industries Ltd., but he signed purchase orders on behalf of M/s.TTG Industries Ltd.,. No doubt, these witnesses did not state during investigation that they had acquaintance with the signature of the petitioner as per section 47 of the Indian Evidence Act.

8. In these circumstances, we will have to see whether the charge can be framed against the petitioner on the basis of the statement of the above witnesses.

9. Before going into the veracity of the statement of the witnesses referred to above, it is better to appreciate law relating to factors to be considered while framing charge.

(i) In State v. Ramesh (1977) 4 SCC 39 : AIR 1977 SC 2018, it is observed as follows:-

"Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment, which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused not exactly to be applied at the stage of deciding the matter under Sections 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction."

(ii) In the judgment reported in AIR 1980 SC 52 : 1979 Cr LJ 1390 in the matter of Superintendent & Remembrancer, Legal Affairs v Anil, it is further clarified as follows:-

"At the stage of framing charges, the

prosecution evidence does not commence. The Magistrate has, therefore, to consider the question as to framing of charge on a general consideration of the materials placed before him by the investigating police officer. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence."

(iii) In the judgment reported in (1989) 1 SCC 715: 1989 SCC (Cr) 285 in the matter of Sgtree Attyachar Virodhi Parishad v. Dilip Nathumal, it is further held that -

the Court need not undertake an elaborate inquiry in sifting and weighing the materials. Nor is it necessary to delve deep into various aspects. All that the Court is to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime.

(iv) The Hon'ble Supreme Court also considered this aspect in (1996) 4 SCC 659: AIR 1996 SC 1744:1996 Cr L J 2448 in the matter of State of Maharashtra v. Somnath and held that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

(v) In the judgment reported in (2000) 2 SCC 57 : 2000 Cr LJ 944 in the matter of State of M.P. v. S.B. Johari, it is held that exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified.

(vi) In the judgment reported in In the

judgment reported in AIR 1980 SC 52 : 1979 Cr LJ 1390 in the matter of Superintendent & Remembrancer, Legal Affairs v Anil, it is held that the standard of test and judgment, which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not necessary for framing of charge and even a strong suspicion founded upon materials before the Magistrate, may justify the framing of charge against the accused.

(vii) In the judgment reported in (1977) 4 SCC 39 : AIR 1977 SC 2018 in the matter of State v. Ramesh, while considering discharge of the accused under sections 227 and 228 of the Code, it is held as follows:-

"Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not."

(viii) In the leading case of R.S.Nayak v. A.R.Antulay (1986) 2 SCC 716, the Apex Court after analysing the terminology used in three pair of section viz., secs.227 and 228, secs.239 and 240; and sec.245(1) and (2) held that despite the differences there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of a prima facie cases is to be applied.

The ratio of the above decision has been followed in Sanghi Brothers v Sanjoy (2008) 10 SCC 681.

(ix) In State v. L.Muniswamy (1977) 2 SCC 699 it was noted that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the

accused. The court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into.

10. Bearing these principals of law, we will have to see whether the present revision case is to be allowed.

11. Section 47 of the Indian Evidence Act reads as follows:-

"47. Opinion as to handwriting, when relevant.—When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact."

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

12. Mr.B.Kumar, learned Senior Counsel for the petitioner submitted that LW 40, 42 and 45 did not state in their statement during investigation that they have seen the petitioner writing or signing any document or they have received documents purported to be written or signed by the petitioner or in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to them. Therefore, in the absence of such evidence, the mere statement of those witnesses that the signatures found in the various purchase orders were that of the petitioner cannot be a relevant fact and they were not competent to give evidence and such evidence cannot be relied upon as it is not legally admissible evidence and therefore, those statements were to be eschewed and admittedly, there is no material against the petitioner to connect with the case and therefore, the prosecution has to be quashed against the petitioner.

13. In the judgment reported in AIR 1998 SUPREME COURT 3258 supra, the Hon'ble Supreme court held that at the stage of framing charge, the Court is required to confine its attention only to those

materials collected during investigation which can be legally translated into evidence and this was emphasised by the learned Senior Counsel by contending that the statement of those witnesses cannot be legally translated into evidence as they have not spoken about their acquaintance with the signature of the petitioner as per Explanation to Section 47 of the Evidence Act. Therefore, even though, they have stated that the signatures found in the purchase orders were that of the petitioner that cannot be a basis for framing of charge. He also submitted that in the judgment reported in 2004 Supreme Court Cases (Cri) 109 supra, the Hon'ble Supreme Court held that evidence of PW.6 cannot be accepted as he was not aware of the hand writing of the accused persons nor the accused made entry in the presence of PW.6 and therefore, his evidence cannot be believed to sustain conviction.

14. According to me, as stated supra, while framing charge, the Court need not go into appreciation of evidence or probative value of the evidence and the Court has to prima facie accept the statement of the witnesses and come to the conclusion whether any prima facie case has been made out against the accused on the basis of the statement of witnesses. Further, while framing charge, the Court has to consider only the evidence which if not rebutted or unchallenged by way of cross-examination can be sufficient enough to convict the accused ultimately and Court is under no obligation to make an elaborate enquiry by sifting and weighing the material to find out a case against the accused beyond a reasonable doubt which is required to do at the time of the final hearing.

15. In the judgment reported in 1999-1-L.W.(Cri.) 358 supra, Mr.JUSTICE M.KARPAGAVINAYAGAM (as he then was), after considering the various Supreme Court's judgments held in Paragraph 46 as follows:-

46. It is manifest from the reading of the above decisions that the charges can be framed against any accused person only in those discerning few cases where the Court comes to the conclusion that the prosecution has shown a prima facie case against the accused and there is evidence before the Court which is capable of being converted into legal evidence later on during the subsequent proceedings after the framing of the charges. As shown earlier, it is observed in catena of authorities that the prosecution must show a prima facie case against the accused in order to enable the court to frame a charge against him. If the evidence before the Court is of such type which if unrebutted and unchallenged by way of cross-examination would not be sufficient enough to convict the accused ultimately, then the court would not be justified

in framing the charge against the accused. The Court at that stage is under no obligation to make an elaborate enquiry by sifting and weighing the material to find out a case against the accused beyond a reasonable doubt which is required to do at the time of the final hearing. The trial Court Judge at that preliminary stage is required to find out whether there is any material which may lead to the inference that the accused has committed an offence. Thus, the charge can be framed by the Court against an accused, if the material placed before it raises a strong suspicion that the accused has committed an offence. In other words, the Court would be justified in framing the charges against an accused, if the prosecution has sown the seed in the form of the incriminating material which has got the potential to develop itself into a full fledged tree during trial."

Therefore, to borrow the words of the learned Judge, in the last sentence of the Paragraph, the Court would be justified in framing the charges against an accused, if the prosecution has sown the seed in the form of the incriminating material which has got the potential to develop itself into a full fledged tree during trial.

16. In Sarkar Law of Evidence, 18 Edition, at page 1305, it is quoted as follows:-

"As rightly stated in Taylor (s.1863 citing Moody v. Rowell, 1835, Pick 419) "the witness need not state in the first instance how he knows the handwriting, since it is the duty of the opposite party to explore on cross-examination the sources of his knowledge, if he is dissatisfied with the testimony as it stands. Still, the party calling the witness may interrogate him, if he thinks proper, as to the circumstances on which his belief is founded."

17. Therefore, when the witness says that the signature is that of the signature of the accused, there is no necessity for the witness to state during investigation, the manner in which he was acquainted with the signature and it is for the Public Prosecutor to call for explanation or for the defence to elicit in cross-examination about the same. Further, under section 47 of the Indian Evidence Act, the opinion of the person who has acquainted with the signature of another person is only relevant fact and at the time of framing charge, court need not consider the relevancy or

admissibility of the statement and the Court has to form a common opinion whether any prima facie case has been made out on the basis of materials collected during investigation and if the court is able to form a suspicion against the accused that is sufficient as held by the Hon'ble Supreme Court as stated above.

18. In the judgment reported in AIR 1994 KARNATAKA 112 in the matter of Shankerappa v. Sushilabai, it is held as follows:-

14. ... In Shyam Pratap v. Beninath Dubey (AIR 1942 Pat 449), Fazal Ali, J, stated:

"A witness need not state in' the first instance how he knows the handwriting which he is examined to prove since it is the duty of the opposite party to explore on cross-examination the sources of his knowledge, if he be dissatisfied with the testimony of the witness as it stands to the effect that the witness was acquainted with the handwriting of the writer. (1904) ILR 28 bom 58, Rel. on."

Phipson on Evidence (12th Edn. 1976) does not states the law on that matter in terms followings:

" The genuiness of a party's handwriting, or mark, may be proved by the opinion not only of experts, but of the opinion of non-experts; and this is so even where the writer himself or the attesting witness is actually in Court and might be called
.....

A statement that the witness is acquainted with the witness is generally sufficient in chief, it being for the opponent to cross-examination as to means and extent. Such knowledge may be acquired : (1) by having at any time seen the party write, through the value of its opinion will, of course, vary with the frequency and recereness of the occasion and the attention paid to the matter by the witness or; (2) by the receipt of the written communications purporting to be in his handwriting in reply to documents addressed to him by or on behalf of the witness; through the evidence will be strengthened by the communications having been acted or as genuine between the parties; or (3) by having observed, in the ordinary course of business, documents

purporting to be the party's handwriting: a method which applies also to the Proof of ancient handwriting."

The treatise proceeds to say that the non-expert's knowledge must not, however, have been acquired for the express purpose of qualifying him to testify at the, particular trial. The manner of acquisition of knowledge entitling a non-expert evidence to testify under Section 47 is broadly similar. What emerges is that it may not be necessary for the witness to state in examination-in-chief as to the mode in which the knowledge of the handwriting was acquired, it being open to the cross-examining counsel, if he challenges the statement of the witness, to probe into the matter in the cross-examination.

19. Therefore, considering the above judgments and the law laid down by the Hon'ble supreme court, the arguments of the learned Senior counsel that statement of LW 40, 42 and 45 cannot be taken into consideration as they have not spoken about their acquaintance with the signature of the petitioner and therefore, the evidence cannot be taken into consideration for framing charge, cannot be accepted. Further, it cannot be stated that the statement of those witnesses cannot be translated into legal evidence. As stated supra, if the statement of those witnesses remain unrebutted, the conviction can be sustained and therefore, such statement can be considered as evidence and at the time of pronouncing the judgment, the court has to consider relevancy, probative value by taking into consideration of section 47 of the Indian Evidence Act and those cannot be considered at the time of framing charge.

20. The other contention of the learned Senior Counsel that the entire liability was discharged and there is need to frame charge, cannot also be accepted, having regard to the judgment reported in (2013)10 SCC 686 in the matter of CBI versus Jagit Singh.

21. In the result, I do not find any merit in the revision case. The revision is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asvm

To

1.The XI Additional Special Judge
(CBI Cases relating to Bank and
Financial Institutions), Chennai.

2.The Inspector of Police,
CBI (BS & FC),
Bangalore.

3.The Special Public Prosecutor,
High Court, Madras for CBI Cases

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