HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE NO.235 OF 2015

ORDER:

1. This revision case is filed by the petitioner-Accused No.1 challenging the order dated 21.11.2014 passed in Crl.M.P.No.382 of 2013 in C.C.No.9 of 2011 on the file of the Special Judge for CBI Cases, Visakhapatnam.

2. Brief facts of the case are as follows:

It is alleged that the petitioner, former Branch Manager, Union Bank of India, Pasumarru Branch, Chilakaluripet, Guntur District, disbursed loans to the tune of Rs.92.73 lakhs during the period from 10.10.2003 to 20.12.2003 without receiving corresponding subsidy from the State and Central Government and also margin money of the members. The loan was sanctioned by the Field General Manager, Union Bank of India, Chennai on the proposal submitted by the petitioner and recommended by the Regional Manager, Union Bank of India, Vijayawada. The then Chief Vigilance Officer-N.K.Agarwal, Union Bank of India gave a written complaint, basing on which, a case was registered for the offence under Sections 120-B and 420 IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act against the petitioner-A1 and A2 and investigation was taken up. After completion of the investigation, charge sheet was filed against A1 to A6 for the above said offences. While so, the petitioner-A1 filed the above petition in Crl.M.P.No.382 of 2013 under Section 239 Cr.P.C. seeking to discharge him from the above said offences. The trial Court dismissed the said application. Aggrieved by the same, the petitioner-A1 filed this revision case.

3. Heard and perused the material available on record.

4. In the charge sheet, the following allegations were made against the petitioner:

a. The petitioner disbursed loans to the tune of Rs.92.73 lakhs during the period from 10.10.2003 to 20.12.2003 without receiving corresponding subsidy from the State and Central Government and also members' margin money.

b. The petitioner submitted proposals recommending sanction of loan to the Martur Sericulture Integrated Rural Development Society, Pathepuram, and as per his recommendations, the Field General Manager, Chennai sanctioned loan.

c. The Assistant Director, Agriculture vide his letter dated 20.9.2003 informed that the loan should be released after Joint inspection and satisfaction of both the parties and after taking permission from the Commissioner of Sericulture. But the petitioner without following the above instructions disbursed loan of Rs.39 lakhs by issuing 3 pay orders in favour of M/s Sudha Enterprises. There is nothing in the name of Sudha Enterprises at the given address.

d. The petitioner had drawn one Memorandum for creation of E.M. of land Ac.68.73 cents. The declaration for creation of E.M. of Ac.68.73 cents is impersonated. The owners of the land gave in writing that they had not executed any mortgage to the bank.

e. The petitioner-A1 vide letter dated 31.10.2003 confirmed to Regional Office, Vijayawada that the E.M. was created on 11.10.2003 (though the Gift deed was registered on 14.11.2003). He also informed in the limit proposal dated 26.8.2003 that the MSIRDS had already purchased Ac.5.00 cents of land in R.S.No.945/C2 at Pathepuram to construct the sheds. However, the said land was purchased on 17.11.2003, E.M. was created on 18.11.2003.

f. The petitioner issued a DD bearing No.760/18315 on 19.11.2003 for Rs.8,46,600/- favouring Siri Enterprises to be drawn at Union Bank of India, Guntur Branch. The same D.D. was sent to Union Bank of India, Main Branch, Guntur for collection by Syndicate Bank, Guntur. There was an endorsement on the back of the DD favouring M/s Vignesh Enterprises. An amount of Rs.8,46,600/- was credited to the account No.385 through D.D.No.18315 dated 20.11.2003 drawn on Union Bank of India, Guntur. The account was closed on 21.6.2004 and the balance at the time of closure of the account was Rs.6/-. M/s. Siri Enterprises does not have any Bank account in Syndicate Bank, Brundavangardens Branch, Guntur.

5. The petitioner raised the following grounds in this revision:

(I) The FIR was registered against the petitioner while he was working as Branch Manager of Union Bank of India, Pasamarru, Guntur District from 11.7.2001 to 22.12.2003. The other accused are private business people. A2 is the President of Marturu Sericulture Integrated Rural Development Society (MSIRDS), Pathepuram, Santha Mauguluru Mandal, Prakasam District. On 30.4.2007 at about 13.24 hours, a written complaint was faxed to the Superintendent of Police, CBI, Visakhapatnam by the 2nd respondent-the then Chief Vigilance Officer, N.K. Agarwal, Union Bank of India, Central Office alleging certain irregularities said to have been committed by M/s. Marturu Sericulture Integrated Rural Development Society. The said complaint was referred to the Inspector of Police, CBI, Visakhapatnam, who registered the same as Crime No.6A/2007/CBI/VSM for the offence punishable under Sections 120-B, 420 IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act against A1 and A2. During the course of investigation, the investigating officer had examined 31 witnesses and collected various documents and filed charge sheet under Section 173 Cr.P.C. against the petitioner and others.

(II) The investigating officer did not choose to examine the main complainant 2nd respondent, who is the then Chief Vigilance Officer, as witness. L.W.2-Poduri Devakinandam Sarma, who is said to have conducted departmental vigilance investigation from 21.8.2006 to 26.8.2006 at Union Bank of India, Pasumarru Branch, Guntur District in respect of the irregularities said to have been committed by M/s. Marturu Sericulture Integrated Rural Development Society, conducted the said enquiry without putting the petitioner on notice and the petitioner was not given any opportunity of hearing. L.W.2 submitted his investigation report dated 9.9.2006 to UBI Head Office, Mumbai and the said report was not brought on record. It is submitted that the main ingredients of the charges alleged against the petitioner are broadly divided into the following points. They are :

i. The petitioner is alleged to have recommended the loan proposal to regional office, Vijayawada with regard to sanction of loan to M/s. Marturu

Sericulture Integrated Rural Development Society;

ii. The petitioner is alleged to have disbursed amounts to M/s Marturu Sericulture Integrated Rural Development Society without receiving the corresponding/matching subsidy and margin money from the farmers;

iii. The petitioner is alleged to have disbursed a loan of Rs.39,00,000/- by issuing three pay orders in favour of M/s. Sudha Enterprises;

iv. There was impersonation of creating mortgage as security towards sanctioned loan.

It is submitted that basically it is sericulture cocoon breeding project formulated and developed by Sericulture department, State/Government of A.P. in consultation with Central Silk Board, Bangalore. Various Government authorities at various levels had inspected, recommended the feasibility of the project, economic viability of the project and promoted the project in favour of M/s. Marturu Sericulture Integrated Rural Development Society. After completion of the above said stages, the petitioner being the employee of the bank, as mandated by the Bank, had taken up the proposal as a matter of financial upliftment of 150 farmers belonging to poor OC, BC, SC and ST communities. Since the project had been scrutinized and approved by the State and Central Government naturally, the petitioner recommended the said project. After the said recommendation by the petitioner, the Regional Office of UBI, Vijayawada, inspected, verified and scrutinized and upon being satisfied in all aspects, the regional office recommended the sanction of the proposal to Zonal Office, Chennai.

(III) It is submitted that as per Rc.No.1650 dated 4.6.2003 of Commissioner of Sericulture, Hyderabad, the Assistant Director, Ongole had released Rs.35,49,750/-as the first instalment of matching subsidy of the loan itself. Further, vide letter in Rc.No.362/2003/B, dated 15.7.2003 addressed to Regional Manager of UBI, Vijayawada gave commitment that the remaining part of subsidy i.e., Rs.1,41,99,000/- will be released as per the progress of the project. Hence, after sanction of the loan in the month of October, 2003, the petitioner had released the loan on 10.10.2003 as such. The petitioner had not committed any offence.

(IV) It is also submitted that the Regional Office of UBI, Vijayawada vide their sanction advise reference in RO:SADV:275/03, dated 8.10.2003, had not stipulated any margin money to be collected from farmers. The society invested the margin money in the project in the form of land development and farm development, preparation of land. The petitioner never committed any irregularity.

(V) It is further submitted that the parties offered their lands as security for the loan and submitted their original title deeds. The title deeds were scrutinized by the Bank's panel advocates and vouched their genuineness. Their legal opinions did not raise any doubt about the validity of the documents and ownership of the landowners and that as the land owners came with the original documents and created equitable mortgage, there is no reason to the petitioner to suspect the genuineness of the documents. The persons, who committed impersonation, were not arrested in spite of availability of their photographs.

(VI) It is also submitted that the president of A2-society submitted quotations and its authentication and requested in writing to release the amounts in favour of M/s. Sudha Enterprises by way of pay orders to get iron and cement for the construction of rearing sheds in that particular area. As per the banking procedure the pay orders were released in favour of Sudha Enterprises and the same was acknowledged by A2. The said pay orders were collected by the banker of Sudha Enterprises through clearing.

(VII) It is not the case wherein the petitioner caught red handed while accepting illegal gratification. The inventory report prepared by CBI during the course of house search of the petitioner unequivocally proved the modest life style of the petitioner. The allegations against the petitioner are not at all criminal in nature.

(VIII) In order to substantiate his case, the petitioner relied upon the following the documents:

a. D-81-letter No.B/37/(296)/AP/2002-07-TS, of Central Silk Board Bangalore to the Commissioner, Sericulture, Government of A.P.;

b. D-83-Copy of Memorandum of Commissioner, Sericulture, A.P. Hyderabad, dated 4.6.2003;

c. D-193- Copy of Inspection report of Union Bank of India Pasumarru Branch, dated 11.8.2003;

d. D-195-Copy of Assistant Director of Sericulture Ongole, Prakasam, dated 15.7.2003;

e. D-204 Copy of RO UBI PSD.336/03, Loan sanction document of Union Bank of India, dated 9.9.2003;

f. D-74 copy of Rc.No.Society/2001/TS of Regional Joint Director of Sericulture, Chittoor, dated 28.2.2001;

g. D-76 Copy of Rc.No.25/OS/TLR of Inspector of Sericulture, dated 3.10.2001;

h. D77 Copy of Rc.No.362/2001 of Express Memorandum of AD of Sericulture, Ongole dated 21.5.2001;

i. D-80 Copy of letter No.CSB/37(296)/AP 2002-07-TS of Central Silk Board, Bangalore, dated 28.3.2003;

j. D-177 Copy of letter No.Society/2001/TS dated 18.7.2001 of Regional Joint Director, Chittoor, dated 18.7.2001;

k. D-179 Copy of Rc.No.1650/2001-TM-1 of Commissioner of Sericulture, Hyderabad, dated 25.6.2002;

l. D-191 Copy of Office Note GMO CR.10856 of General Managers Office, UBI, Chennai, dated 3.10.2003;

m. D-190 Copy of RO PSD 471/03 of Regional Office, UBI, dated 14.11.2003;

n. D-213 copy of AP/MSIRD/8.12.2003 of the President, MSIRDS, dated 8.12.2003;

o. D-83 Copy of Rc.No.1650/TM1/2001 of Commissioner of Sericulture, Hyderabad, dated 4.6.2003;

p. D-108 Copy of Inter Office letter of Branch Manager, UBI to AGM, Regional Office, Vijayawada, dated 1.11.2003;

q. D-206 copy of letter No.OP10.10.03/1/27 of President, MSIRDS; dated 10.10.2003;

r. D-207 Copy of M.No.07/204/26 OP/MSIRD 10.10.03/2/26 of President, MSIRDS, dated 10.10.2003;

s. D-209 Copy of Letter No.OP/MSIRD 167/2003/2/32 of President, MSIRDS, dated 16.10.2003;

t. D-212 copy of Letter No.OP.No.MSIRD/18.11.03/2/38 of President, MSIRDS, dated 18.11.2003.

u. D-227 copy of quotation of M/s Sudha Enterprises, Chilakaluripeta, dated 6.10.2003;

v. D-228 copy of Bill No.45 of M/s. Sudha Enterprises, Chilakaluripeta, dated 10.10.2003;

w. D-229 copy of Quotation of M/s. Sudha Enterprises, Chilakaluripeta, dated 13.10.2003;

x. D-235 copy of Quotation of M/s Siri Enterprises, Guntur, dated 3.11.2003;

y. D-236 Copy of quotation of M/s Siri Enterprises, Guntur, dated

3.11.2003;

z. D-237 Copy of quotation of M/s. Sudha Enterprises, Chilakaluripeta, dated 17.11.2003;

6. The case of the 2nd respondent based on the following grounds:

(I) The petitioner addressed a letter to the Assistant General Manager, Regional Office, Vijayawada dated 5.7.2003 informing that A2-society approached him for financing the unit, which although out of service area, stating that it is beneficial for the branch. The investigation disclosed that the petitioner sent pre-sanction inspection report-cum-proposal dated 26.8.2003 giving the particulars of the proposal, report on farmers, inspection of plantations, value of securities and support from Sericulture Department and benefits to the bank and he recommended for sanction of Rs.1.10 crores.

(II) Though it is a fact that the above proposal of the petitioner was recommended by the Regional Manager L.W.5-A. Sudhakar to the Field General Manager, Union Bank of India, Chennai on 9.9.2003, and after seeking certain clarifications from the Regional Office, sanction for loan of Rs.107.25 lakhs was given on 3.10.2003 certain conditions were imposed by the sanctioning authority i.e., (i) Disbursement to be made directly to the suppliers/dealers along with the margin money from the members/farmers and matching State and Central Government subsidy; (ii) Bills/stamped receipts should be certified by the Inspector and Assistant Director of Sericulture Department, Ongole and kept on record; (iii) Use of funds will be supervised by the Inspector and Assistant Director of Sericulture Department, Ongole and (iv) Branch Manager/RDO should visit the unit along with the government officials on monthly intervals and branch should ensure the submission of progress report of the project certified by the Assistant Director of Sericulture during the implementation stage. However, without receiving the corresponding/matching subsidy and members margin money, the petitioner disbursed the loan amount to the tune of Rs.92,73, 275/- between 10.10.2003 and 20.12.2003 ignoring the instructions of the Assistant Director of Sericulture that the loan should be released after joint inspection and satisfaction of both the parties and after taking permission from the Commissioner of Sericulture

Department. Out of this, an amount of Rs.23 lakhs was drawn by way of self cheque bearing No.25771, dated 18.11.2003 by third party i.e., Siva Rama Prasad/A5.

(III) The claim of the accused that the margin money was invested in the project in the form of land development and farm development, preparation of land etc., is false. As per his reports 11.8.2003 and 1.11.2003, plantation was completed in 150 acres and 50 rearing sheds are at base level and 50 sheds are at roof level and the condition of crop was good. But no mulberry plantation took place at Arepalli during the Joint Inspection of MRO, Rompicherla Mandal and Assistant Director, Sericulture Department, Guntur, on 31.1.2004 (document No.172). Further, the investigation discloses that apart from allowing withdrawal on the basis of self cheques, in pursuance of criminal conspiracy, the petitioner-accused also released funds in the name of M/s. Sudha Enterprises, a non-existing firm on 10.10.2003 for Rs.15,99,595/- on 20.10.2003 for Rs.14,97,750/- and Rs.7,98, 800/- (excluding commission) by way of pay orders and subsequently, these amounts were withdrawn by the other accused, their representatives or by making payments to other institutions.

(IV) The petitioner conspired with the other accused and facilitated in creation of equitable mortgage in respect of Ac.68.73 cents at Arepalli by impersonation of the actual owners Shri Sure Anjaneyulu and Shri Sure Venkata Narasaiah, who denied to have mortgaged their property to Union Bank of India. The petitioner should have verified the genuineness of the persons, who created the equitable mortgage instead of relying only on the legal opinion etc. However, without insisting for customer documents, the petitioner allowed the impersonators to create equitable mortgage.

(V) The evidence collected during the course of investigation prima facie establishes the commission of offence against the petitioner as a co-conspirator along with other accused. The final report under Section 173 Cr.P.C. was filed for conducting trial against the accused for the offences punishable under Section 120-B, 420 IPC and 13(2) r/w 13(1) of Prevention of Corruption Act. The petitioner was dismissed from service on 25.2.2008 for cause of violation of rules and regulations on the same set of facts.

7. The learned Special Public Prosecutor for CBI, supports the order passed by the trial Court. He further submitted that there is prima facie evidence on record to prove that the petitioner has conspired with the private persons and in pursuance of the same, he gave false pre-sanction and post-sanction reports and disbursed the loans without complying with the stipulated terms and conditions and in violation of extant rules and he also facilitated the creation of equitable mortgage on the basis of false and fictitious documents. He further submitted that the reasons assigned by the learned Principal Special Judge for dismissing the discharge petition cannot be said to be either erroneous or illegal.

8. The main grounds that were urged by the petitioner are that he made recommendations to uplift 150 poor farmers to the said project and after his recommendations, the Regional office, Union Bank of India, Vijayawada had inspected, verified, scrutinized and satisfied in all aspects and thereupon, the Regional Office recommended the sanction of the proposal to the Zonal Office, Chennai and further, the petitioner never committed any offence as to the impersonation of anybody. There is no prima facie case to proceed against him.

9. Further, it is the case of the petitioner that the primary charge sheet filed by the prosecution does not disclose any allegations against him and therefore, he may be discharged from the case, whereas it is the case of the prosecution that they filed a supplementary charge sheet subsequently with the allegations against A1 to A7 and that the evidence collected during the course of investigation prima facie establishes the commission of offence.

10. Learned Counsel for the petitioner while placing reliance on the documents (a) to (z) mentioned above, contended that no case is made out against the petitioner herein. This Court is of the view that when such documents are introduced by the petitioner-accused for seeking discharge, it is highly difficult for this Court to ascertain the authenticity, admissibility and relevancy of the same, without there being proper trial. The petitioner is always at liberty to raise all the points during the course of trial. The trial Court will be in a position to decide the admissibility, authenticity and relevancy of the documents concerned.

11. The trial Court has dismissed the petition on the ground that huge amounts of

the public/bank were involved in the alleged misappropriation of funds of the bank to third parties, and as per the charge sheet filed by the prosecution along with the petitioner/accused herein there are six other accused charge sheeted in this case and the trial has to be conducted against all the accused charged by the prosecution and at this stage, it would be erroneous to discharge the petitioner/accused herein without conducting the trial along with the other accused as the case has arisen for the misappropriation of the funds of Union Bank of India, Pasamarru Branch of Guntur District where and at what time, the petitioner/accused was discharging his duties as Branch Manager and certainly, the question as to his involvement in commission of the alleged offence against him by the prosecution is to be decided.

12. The scope of this revision is very limited whereunder it can only be examined whether the order impugned herein suffers from any legal infirmity or irregularity. Further, basing on the material placed before this Court, the facts, as to whether the petitioner has played active role regarding the fabrication of documents of title or whether the petitioner made believed the private persons, who offered to give their property or whether he misappropriated the amounts by way of illegal gratifications, which are question of facts, cannot be adjudicated in this revision, but these facts can only be adjudicated after a full fledged trial.

13. It is pertinent to note that unless there is a prima facie case apparent on the face of the material available on record so as to proceed with the trial against the petitioner, the question of subjecting the petitioner to the examination under section 239 Cr.P.C may not be arisen. The material available on record shows a prima face case against the petitioner and others to proceed with the trial and as such, the approach of the trial Court in dismissing the petition filed by the petitioner, does not suffer from any illegality or irregularity.

14. Apart from that, the offences alleged in the instant case are involving the moral turpitude and besides that, in a case of this nature wherein huge amounts of public/Bank were involved, in case the application of this nature by one of the accused, is entertained, it would not only affect the fair trial of the case but also it would break the link in the chain of events leading to arising of criminal liability of all the persons involved in the above crime.

15. After perusing the order under revision, this Court is of the view that all the contentions raised by the learned Counsel for the petitioner herein, had been considered and answered by the trial Court on a sound footing.

16. In these circumstances, this Court is of the considered view that the order of the Court below does not suffer from any illegal or irregularity and thereby, it does not call for any interference by this Court. Therefore, the present revision is liable to be dismissed.

17. Accordingly, the Criminal Revision Case is dismissed. However, the trial Court shall decide the case on its own merits, without being influenced by the observations made in this order.

Justice Raja Elango

Dated: 6. 10.2015
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HONOURABLE SRI JUSTICE RAJA ELANGO

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