THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 2562 of 2014

JUDGMENT:-

Aggrieved by an order dated 15.12.2014 passed in Crl.M.P.No. 950 of 2014 in C.C.No.17 of 2009 on the file of the I Additional Special Judge for CBI Cases, Hyderabad, wherein an application filed for discharge was dismissed, the petitioner herein, who is accused No.14 in the above C.C., preferred the present Criminal Revision Case under Sections 397 and 401 Cr.P.C.

The allegations in the charge sheet are as under:

A.1 was working as Branch Manager of Indian Overseas Bank (IOC), Basheerbagh Branch, Hyderabad. A.2 to A.7 availed housing loans to purchase plots at M/s. Sarojini Devi Nilayam, KPHB colony, Kukatpally, Hyderabad and Pooja Residency, S.R.Nagar, Hyderabad. A.9 to A.12, who are the employees of BHEL, also availed housing loans through A.1. The averments in the charge sheet show that A.2 to A.7 furnished false documents and obtained housing loans whereas A.9 to A.12 also furnished fake salary slips and availed housing loans. A.8, who is the C.E.O. of M/s. Vardhan Mutually Aided Co-op. Thrift Society (for short "the Society"), by abusing his official position connived with A.9 to A.12 and is alleged to have cheated IOB, Basheerbagh Branch, Hyderabad by receiving housing loans to a tune of Rs.50.44 lakhs. A.8 opened a current account in the name of the Society with Laxmi Vilas Bank, Malkajgiri Branch, and with the permission of the said bank, discounted two cheques issued in favour of the builders. After discounting the cheques, A.8 is alleged to have deposited these banker cheques into his bank account and siphoned off the entire amount by giving self cheques. All the accounts have become NPAs causing loss to the IOB to a tune of Rs.50.44 lakhs. The charge sheet further discloses that A.1 entered into criminal conspiracy with A.2 to A.7, A.13 to A.15 and A.17 in obtaining the housing loans.

In so far as the petitioner is concerned, he is said to have constructed a building at Pooja Residency, Plot No.495/2 RT, S.R.Nagar, Hyderabad, during the period 2000-2001. A.7 is alleged to have obtained housing loan of Rs.7.00 lakhs from IOB, Basheerbagh Branch, showing purchase of G.3 flat at Plot No.495/2RT, S.R.Nagar, Hyderabad, by submitting a fabricated sale deed bearing No.1588/2001 alleged to have been registered at the office of the S.R.O., S.R. Nagar. A.1, who is the then Branch Manager, is said to have sanctioned housing loan basing on the said document after obtaining legal opinion. A.7 is also alleged to have obtained loan from Canara Bank, Nallakunta Branch, in respect of the same house by changing the boundaries of the same building and submitting a fabricated sale deed bearing No.1587/2001. The averments in the material filed along with the charge sheet also show that A.7 falsified the sale deed showing as if he purchased the same flat by changing the number as G.1 flat and availed housing loan of Rs.8.75 lakhs from HDFC Bank, Basheerbagh Branch, Hyderabad. The petitioner who is the builder executed all the three documents. Thus, A.7 in collusion with A.14 obtained three loans in respect of the same flat by changing the boundaries and flat numbers.

The learned counsel for the petitioner mainly submits that the petitioner is not shown as an accused in the first information report and even accepting the allegations to be true, no offence is made out. According to him, there is no material connecting the petitioner with the crime. The petitioner is only a builder and if any fraud is committed by A.7 in obtaining loans by creating false documents, the petitioner cannot be made liable along with A.7. The learned counsel further submits that since the proceedings against A.15 to A.17 are already quashed by this Court and as the petitioner stands on the same footing as that of the said accused, the petitioner ought to have been discharged. He relied upon the statement of L.W.21 to prove the execution of three sale deeds in respect of G.1, G.2 and G.3 flats and also the statement of L.W.26, the Deputy Commissioner of Municipal Corporation of Hyderabad, Circle-5, Hyderabad, to show the existence of three flats in the ground floor.

On the other hand, the learned counsel for the CBI strenuously opposed the revision contending that the inspection of the area by the officers reveal that there was only one flat and the petitioner got executed three sale deeds by changing the number of the original flat with an intention to cheat the IOB and to cause wrongful loss to the Bank. According to him, the role of the petitioner is quite apparent on the face of the record.

The short question that falls for consideration is, whether any offence is made out against the petitioner?.

Before proceeding further, it would be appropriate to refer to the statements of some of the witnesses recorded by the CBI during the course of their investigation.

L.W.17, who is working as an Assistant Manager (Recoveries) in HDFC Bank, Basheerbagh Branch, Hyderabad, stated that on 30.08.2005 he along with his team and an Advocate Commissioner visited Pooja Residency at S.R. Nagar, Hyderabad. A.7 was present in the house which is situated in the parking area of the flat. It was noticed that there was only one flat in the area and the flat was marked as G.1, G.2 and G.3. After showing the orders of the Court, the Advocate Commissioner asked A.7 about the location of G.1. Then, A.7 is alleged to have pointed towards one room which is painted and marked as G.1. L.W.17 further stated that A.7 did not attend to the remaining construction and showed some vacant place in the parking area belonging to G.1. During September 2005 and March 2007, L.W.17 again visited the premises. By that time, A.7 changed the identity of the flat and stated that the flat which he showed as G.1 earlier is not G.1, but it is 001 and he sold the same to some others. L.W.7 threatened the officers with dire consequences if any action is taken against him. The statement of L.W.17 discloses that he did not find Flat G.1, G.2 or G.3 in the said apartment. He called the inmates of all the flats and caused enquires about flat G.1. All the inmates of the flats in one voice stated that there were no flats with the numbers G.1, G.2 and G.3.

L.W.2, who is working as Manager (Recoveries) in IOB, Basheerbagh Branch, Hyderabad, stated that one V.N.S.C. Bose (A.7) availed housing loan to an extent of Rs.7.00 lakhs during August, 2001 for purchase of flat No.G.2 in Pooja Residency, S.R.Nagar, Hyderabad. When he committed default in payment of instalments, the bank declared his account as NPA and initiated action to recover the loss. L.W.2 further stated that during the said process, it was learnt that A.7 took loans from different banks by mortgaging the same flat. To ascertain the truth, he visited Pooja Residency along with his staff and noticed 10 flats in the entire apartment. In the ground floor i.e., parking area, only one flat was existing and the said flat was marked as G.1, G.2 and G.3. When he asked A.7 about the location of G.2 flat, A.7 is said to have shown a room in the existing parking area and referred to it as G.2. The measurements of the flat shown as G.2 were not matching with the plan submitted at the time of taking the loan.

L.W.24, who is the approved valuer for the IOB, stated that as per the request of IOB, Basheerbagh Branch, he has deputed his assistant, V. Pradeep, to conduct survey, verification and valuation of flat G.2 at Pooja Residency, S.R.Nagar, Hyderabad, on 18.06.2006. On 19.06.2006 he went to the residential building at G.2 at Pooja Residency and verified the measurements and value of the property.

L.W.21 was working as Sub-Registrar, Office of the S.R.O., S.R.Nagar, Hyderabad. His statement show that three sale deeds were executed in favour of A.7 by the builder showing existence of three different flats in the ground floor as G.1, G.2 and G.3. L.W.2 also spoke to these facts.

L.W.25, who was working as Town Planning Supervisor, Municipal Corporation of Hyderabad, Circle-5, Hyderabad, spoke about the original sanction plan issued for construction of a house at Pooja Residency. According to him, the said plan contains the signatures of one Sandra Muniswamy as the land owner. His evidence is to the effect that the building was constructed in total deviation to the approved Municipal plan.

The main argument of the learned counsel for the petitioner is that as per the development agreement executed between A.13 and A.14, the builder got 55% share in Pooja Residency and merely because A.7 obtained housing loan on three registered sale deeds executed by the petitioner in his favour, without the knowledge of the petitioner, it is not just and reasonable to fasten the petitioner with criminal liability.

A perusal of the statements of the witnesses referred to above would show that though there was only one flat located in the ground floor, A.7 obtained loans, showing existence of three flats. The registered sale deeds of these flats were executed by the petitioner knowing that there is only one flat which was also not tallying with the plan submitted at the time of availing the loan. The said finding gets ample support from the statement of L.W.17 wherein he refers to A.7 obtaining loan showing existence of flat G.1 and when the same was inspected, he found that there was only one flat and it was marked as G.1, G.2 and G.3. His enquiries with the residents of the apartment revealed that there were no such flats as G.1, G.2 and G.3. Similarly, L.W.16, who was working as Branch Manager, Canara Bank, Nallakunta Branch, Hyderabad, stated that A.7 availed housing loan of Rs.6.93 lakhs for purchasing flat G.3 in Pooja Residency, S.R.Nagar, Hyderabad. A.7 availed another loan of Rs.1.9 lakhs for betterment of the same flat. As A.7 failed to pay the instalments, he furnished a letter requesting their office to settle the housing loan for one time settlement. However, A.7 did not make a single payment towards one time settlement. On the request of CBI, Hyderabad, he furnished a letter pertaining to the loan taken from SBI, Rajbhavan Road, Hyderabad, statement of account, account opening form, etc. His statement clearly discloses that flat G.3 was not in existence.

The next question that falls for consideration is, whether the petitioner, who is A.14, can be made liable for the acts of A.7.

The statement of L.W.21, who is the Sub-Registrar in the office of S.R.O., S.R.Nagar, Hyderabad, shows execution of three sale deeds vide documents bearing Nos.1587/2001 dated 07.08.2001, 1588/2001 dated 07.08.2001 and 21/2002 dated 08.01.2002 in respect of G.1, G.2 and G.3 respectively. A perusal of the said documents show the owner of the land as S.Muniswamy and the builder of the flats as K.Srinivas, the petitioner herein. The three sale deeds, which are placed on record, contain the signatures of the petitioner under column “Vendors”. Therefore, no explanation is forthcoming as to how the petitioner executed three registered sale deeds when there was only one flat with three rooms. The approved permission given by the Municipal Authorities was also for only one flat in the ground floor. Therefore, the argument of the learned counsel for the petitioner that the petitioner is only a builder and as such he is not aware about the fraud played by A.7 in obtaining loan by producing three different sale deeds, cannot be accepted. As stated earlier, the averments and the material on record prima facie establish the role of the petitioner in the commission of offence. He executed three sale deeds showing existence of G.1, G.2 and G.3 in favour of A.7 which is contrary to the approved plan and the rules. The said sale deeds were used for obtaining loans. The record further reveal that number of disputed questions of fact are involved which can be decided only during the trial.

Since a prima facie case is made out against the petitioner for the offences alleged, I see no reason to interfere with the order under challenge. As the issue involves disputed questions of fact, the same has to be decided during the course of trial.

Accordingly, the Criminal Revision Case is dismissed. Consequently, miscellaneous petitions, if any, pending in the revision shall also stand dismissed.

C. PRAVEEN KUMAR, J

11th February, 2015
cbs

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