THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Revision Case No. 2438 of 2012

Order:

This Criminal Revision Case is directed against the orders, dated 19.10.2012, passed in Crl.M.P.No.489 of 2012 in C.C.No. 3 of 2008 by
the I Additional Special Judge for CBI Cases, Hyderabad, whereby and whereunder the discharge petition filed by the revision petitioner was dismissed.

2. The facts, in brief, are that the petitioner/A1 herein was the Chief Manager of Indian Overseas Bank, Main Branch, Hyderabad, during the period from August, 2001 to December, 2004. The C.B.I. filed a charge sheet against the petitioner/A1 herein and other accused alleging that the petitioner/A1 along with non-petitioner/A-2, who is the Senior Manager of the Bank, conspired with the other accused deliberately and accepted false loan documents including lapsed L.I.C. bonds and thereby, caused monetary loss to the Bank to an extent of Rs.57.18 lakhs. The petitioner/A1 herein and non-petitioner/A2 filed a petition in CrlMP No.489 of 2012 in CC No.3 of 2008, under Section 239 Cr.P.C., seeking their discharge on the ground that they failed to notice the bogus nature of firms and also the documents and that they have not entered into any conspiracy with any of the accused and there is no dishonest intention in accepting the documents furnished by the other accused for the loans advanced to them and that there is no *prima facie* material to show their involvement and, therefore, they have to be discharged. The C.B.I. resisted the application on the ground that there is evidence to show that A1 and A2 have conspired with the other accused deliberately and accepted false loan documents and granted advances and as there is *prima facie* material, they are not entitled for discharge. On these

allegations and counter allegations, the learned trial judge dismissed the application holding that there is *prima facie* material against A1 and A2 to frame charges. Aggrieved by the dismissal of the discharge petition, the present revision is filed by the petitioner/A1.

3. Heard both sides and perused the material on record.

4. The main contention of the learned counsel for the revision petitioner/A1 is that the trial Court has failed to notice that there is no dishonest intention on the part of the petitioner/A1 and he has discharged his duties bonafidely. He further contended that there is no pecuniary gain to any of the accused on account of the alleged transactions and, therefore, the conspiracy alleged against the petitioner/A1 has no legs to stand. He further contended that in a departmental enquiry, the petitioner/A1 was found not guilty and on that count also he is entitled for discharge.

5. On the other hand, learned Additional Public Prosecutor submitted that the very fact that lapsed L.I.C. bonds and firms with bogus nature were accepted for advancing loan would *prima facie* reveal the conspiracy and, therefore, at this stage, the contention of revision petitioner that he has no dishonest intention cannot be accepted. He further submitted that both the officials have in fact accepted the false I.T. returns submitted on behalf of the other accused for getting loan from the Bank and all these aspects have to be decided only after full-fledged trial.

6. Now the point that arises for consideration in this revision is whether the order of the Court below is legal, correct and proper?

7. **POINT**:

Admittedly, the petitioner/A1 was worked as Chief Manager and non-petitioner/A2 was worked as Senior Manager in Indian Overseas

Bank, Main Branch, Hyderabad, during the relevant period. It is also admitted that they have processed and sanctioned housing loan and term loan in respect of A.5, Teja Industries and Jai Ganesh Machinery and Equipment. The allegation against them is that they have sanctioned loans due to conspiracy with the other accused.

8. From the record, it is clear that even lapsed L.I.C. policies and false I.T. returns were produced before the Bank as collateral security for the loans advanced to them. Whether A1 and A2 have processed the loan application with such false documents due to conspiracy or without any dishonest intention is a matter of evidence that cannot be decided in an application under Section 239 Cr.P.C. As per the record, prosecution appears to have examined 20 witnesses and produced 95 documents in respect of the allegations levelled against A1 and A2 and other accused. At the stage of 239 Cr.P.C. examination, the Court has to examine whether there is *prima facie* material or not and it cannot go deep into the matter as to the correctness of the documents or the statement of witnesses. Therefore, the trial Court has rightly dismissed the application and I do not find any illegality or irregularity in the impugned order passed by the learned trial Court Judge.

9. Learned counsel for the revision petitioner lastly requested to dispense with the presence of the petitioner/A1 before the trial Court as he has to come all the way from different State. He submitted that the petitioner/A1 will cooperate with the Court below for trial of case and his presence may be dispensed with for every hearing date.

10. Considering the facts of the case and the fact that the petitioner is a bank officer belonging to different State, I feel that the request of the learned counsel for the revision petitioner/A1 can be considered.

11. Accordingly, the presence of the petitioner/A1 before the trial Court for every adjournment is dispensed with, but he shall appear

before the trial Court as and when directed by the trial court when it feels his presence is necessary at the time of examination of any of the witnesses.

12. With the above observation, this Criminal Revision Case is dismissed.

13. As a sequel thereto, the miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

M.S.K. JAISWAL, J.

Date: 01.07.2015
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