IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Criminal Revision Case No.1933 of 2013

Between :-

Sankararaman Padmanabhan .. Petitioner

And

State of A.P.,
Rep.by Public Prosecutor,
Central Bureau of Investigation,
Kendriya Sadan, Sultan Bazar,
Hyderabad .. Respondent

DATE OF JUDGMENT PRONOUNCED: 24th July, 2015

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local Newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copies of Judgment may be marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

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

Criminal Revision Case No.1933 of 2013

ORDER:-

This Criminal Revision Case is filed by the petitioner/A.3 under Section 397 read with 401 Cr.P.C., questioning the correctness of the order of the learned I-Additional Special Judge for CBI Cases, Hyderabad, in Crl.M.P.No.1952 of 2007 in C.C.No.20 of 2007, dated 19-10-2012.

2. The facts, in brief, are that the petitioner/A.3 and the non-petitioner/A.1 filed a petition under Section 239 Cr.P.C., for discharging them for the alleged offences punishable under Sections 120-B, 420 and 471 IPC., and under Section 13(2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988. By impugned order, the learned trial Judge held that the material placed on record is sufficient for framing the charges and there were no grounds to discharge the petitioner/A.3 and the non-petitioner/A.1 and consequently dismissed the petition. Hence, the revision.

3. The contention of the learned Counsel appearing for the petitioner/A.3 is that a bare perusal of the charge sheet does not disclose that the petitioner/A.3 has committed any act whereby he is said to have committed the acts of cheating as alleged by the Investigating Agency. He further contended that the material placed on record does not, *prima facie,* show the involvement of the petitioner/A.3, hence, the learned trial Judge ought to have discharged the petitioner, but erroneously dismissed the petition.

4. On the other hand, learned Special Standing Counsel for CBI submits that if the entire charge sheet and the material produced along with that is perused, *prima facie*¸ it is made out that there was a deep-seated conspiracy in between all the accused including A.3 and the matter of conspiracy can be deciphered only during the course of trial whereby it can be brought on record as to what is the specific role played

by the accused. Learned Standing Counsel further submits that there is a specific allegation against the petitioner/A.3 facilitating the acts of all the accused in cheating the bank in obtaining loan based on false, fabricated and fictitious documents. The learned trial Judge has rightly considered the material on record and dismissed the petition, which does not warrant any interference.

5. The non-petitioners - A.1 and A.2 and the petitioner/A.3 are the bank officials of the Indian Overseas Bank, and the other accused are connected with M/s.Pragathi Industries, Teja Industries and Jai Ganesh Machinery and Equipment. The allegation is that all the accused conspired together to cheat the Indian Overseas Bank, Main branch, Hyderabad and in furtherance of their conspiracy they have used forged documents for processing the loan applications and thereby caused monetary los to the Bank to an extent of Rs.25,26,020/-.

6. As noticed from the above, the non-petitioner/A.1 is the Chief Manager, the non-petitioner/A.2 worked as Manager (Advances) and the petitioner/A.3 worked as a Senior Manager (Advances), in Indian Overseas Bank, Main Branch, Hyderabad during the period from 2001 to 2004, and during their tenure, they have processed and sanctioned the housing loan and term loan in respect of one Smt.Shekeela Begum, A.5, Teja Industries, and Jai Ganesh Machinery and Equipment.

7. The contention of the petitioner is that there is no dishonest intention on the part of the petitioner/A.3 in processing and sanctioning the loan and that apart, it is A.1 who is the sanctioning authority and not the petitioner/A.3.

8. Learned trial Judge rightly observed that the question of the petitioner/A.3 having any dishonest intention in processing and sanctioning the loans based on false, forged and fabricated documents is a matter which has to be elicited during the course of trial. The specific allegation is that due to the acts of omissions and commissions on the part of the Chief Manager and Senior Manager (A.1 and A.3), huge amounts of loans were sanctioned, and thereby the bank sustained loss. The prosecution intends to prove its case by examining 25 witnesses and

have already filed 95 documents.

9. Learned Counsel appearing for the petitioner/A.3 submits that the documents that were filed such as I.T.Returns, LIC Surrender Value Certificates and proof of income, have been accepted as per procedure. The allegation is that these documents were not genuine and were either forged or false documents. The further allegation is that the petitioner/A.3 being a Senior Manager was required to scrutinize the documents meticulously and process the applications.

10. It is further contended that the petitioner/A.3 conducted pre-sanction inspection and submitted an appraisal note based on the documents submitted by the borrower, observations made during the inspection, legal opinion and valuation report as submitted by the bank's approved valuator and lawyer. The allegation against the petitioner is that this important job of the petitioner/A.3 was not performed diligently and carefully. Had the petitioner/A.3 acted *bona fidely*, several of the irregularities in the documents which were processed by him would have been noticed by him.

11. Learned Counsel further submits that the petitioner/A.3 was a Chartered Accountant and his nature of work was to evaluate the documents based on the field inspection. The question as to whether the petitioner/A.3 has accepted the documents produced *bona fidely* or was there any conspiracy in between all the accused for sanctioning loan to people who have submitted false, forged or fabricated documents is a matter to be gathered during the course of trial.

12. Learned Counsel appearing for the petitioner vehemently submits that the petitioner/A.3 is only a Senior Manager and the ultimate sanctioning authority of the loan is the non-petitioner/A.1 who was the Chief Manager. *Prima facie* there is no substance in this submission for the reason that the petitioner was not an ordinary employee of the Bank but was a Senior Manager dealing with the advances of the Bank and by 2001, even according to the petitioner/A.3 himself, he has put in more than 22 years of service in the Bank. To say that such a Senior Manager would have acted only on the basis of the documents produced without

properly evaluating them or ascertaining the truthfulness or otherwise thereof cannot be countenance at this stage. Learned Counsel further submits that there was Internal Departmental Enquiry against the petitioner/A.3 and by Order dated 13-01-2010, the disciplinary proceedings terminated against the petitioner/A.3 by imposing the punishment of reduction in the basic pay of one stage in the time scle of pay till the date of his retirement.

13. Learned Counsel submits that the allegations in departmental enquiry could not be proved and as is well-known the nature of evidence to substantiate a criminal charge will be more than that in a departmental proceedings. This submission of the learned Counsel has no substance for the reason that in the departmental enquiry conducted, it is not as though the petitioner/A.3 was exonerated of the charges and was found not to have committed any acts of omissions or commissions. The departmental enquiry was in respect of the same allegations as contained in the present prosecution. The proceedings that were shown by the learned Counsel appearing for the petitioner/A.3 clearly shows that the disciplinary authority has found that the petitioner/A.3 has failed to ascertain and obtain the details as incorporated in the loan proposals. It was also found that the lapses on the part of the petitioner/A.3 had enable the borrower - Teja Industries to fulfil the margin requirement in a fraudulent manner. The disciplinary authority further found that the petitioner/A.3 had confirmed availability of the machinery in the pre-sanction inspection report, dated 22-01-2004, but, however, in the appraisal note, dated 23-01-2004, the petitioner/A.3 included the said machinery as the machinery intended to be purchased and recommended for sanction. The disciplinary authority found the appraisal note of the petitioner/A.3 to be misleading. The disciplinary authority also found that the petitioner/A.3 recommended for substitution of three machineries without ascertaining why M/s.Shiva Enterprises was substituted for supply of the machinery when Teja Industries was the original supplier. It was also found that the petitioner/A.3 did not ascertain as to who made the payment to the supplier M/s.Shiva Enterprises and how the payment was

made. The justification of the petitioner/A.3 for recommending substitution of the machinery was found to be not acceptable. The disciplinary authority further found that the petitioner/A.3 failed to enquire as to how the Unit acquired stocks without corresponding payment from the OCC account. The disciplinary authority also found that the advances sanctioned to M/s.Pragathi Industries have become non-performing asset and it is difficult to recover the amount to a tune of Rs.70.07 lacs since the said loan is not backed by any worthwhile security. Having observed so, the disciplinary authority has imposed the punishment of reduction of one stage in the basic pay of the time scale.

14. The above findings of the disciplinary authority which are relied upon by the petitioner/A.3 himself to show that he is not at all responsible for the sanction of loans *prima facie* falsifies his contention.

15. Learned Counsel appearing for the petitioner has relied upon a decision of our High Court reported in **M.V.SUBBA LAXMI v. THE STATE**[1]. A perusal of the said authority does not show that it is applicable to the facts of the present case. That was the case wherein the appellant therein was convicted for having committed the offences punishable under Sections 468, 471 and 477-A IPC. The appellants were the bank officials. The allegation was that they have passed the vouchers without proper verification. This Court held that at best that act of the bank officials would attract departmental action for dereliction of duty and also can be proceeded against in civil Court for recovering the amounts, but their conviction does not sustain. In the instant case, the culpability or otherwise of the petitioner/A.3 and other bank officials is yet to be established.

16. At the cost of repetition, it may be stated that at the stage of framing charge what is all that is required is that there should be *prima facie* material to sustain the charge and it is a matter of proof as to whether the person in the dock has committed any offence or not. In the face of the material that is produced on record and considering the nature of the allegations, it cannot be said that there is absolutely no material

whatsoever even for framing the charge against the petitioner/A.3. The learned trial Judge has appreciated the material on record in proper perspective and held that the petitioner/A.3 is not liable to be discharged. The said order is based on the material on record warranting no interference. There are no merits in the petition and the same is liable to be dismissed.

17. In the result, the Criminal Revision Case is dismissed and the learned trial Judge is directed to proceed with the trial of the case, however, without insisting for the presence of the petitioner/A.3 for each and every adjournment, unless the same is necessary for any specific purpose.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

July, 2015

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[1] 1997 (1) ALD (Crl) 360 (AP)