IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4486 OF 2015

Kailash Pati S/O. Mahabir Prasad Kedia ...... Petitioner
V/s.
C.B.I. and anr. ...... Respondent

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Mr. Gautam Tiwari a/w. Mr. Daljit Singh Bhatia and Mr. Gautam Khaithan i/by. Probus Legal, Advocate for the petitioner.

Mr. Sandeep Shinde, Advocate for respondent no.1.

Mr. S.H. Yadav, APP for State.

Coram :- Smt. R.P. SondurBaldota, J.

6th January, 2016.

P.C. :-

1). This petition filed under Article 227 of the Constitution of India and under Section 482 Criminal Procedure Code, is directed against the order dated 26th October, 2015 passed by the Sessions Court, Mumbai and the order dated 15th May, 2014 passed by the Court of Metropolitan Magistrate, 3rd Court at Esplanade, rejecting the petitioner's application for discharge.

2). The petitioner is accused no.1 in C.C. No. 391/PW/2009 for the offences punishable under Sections 120B, 409, 420, 465, 467, 468 and 471 Indian Penal Code. He is the Managing Director of M/s. Kedia Castle Dellon Industries Ltd ("KCDIL") and Kedia Distilleries Ltd ("KDL"). The charge against the petitioner is that, in the year 1995, he entered into criminal conspiracy with Shri. Pradeep Kumar Deora (A-2) and Shri. Sandeep Kumar Mansingka (A-3), the object of which was to cheat the Bank of India, Lease Finance Branch, Mumbai by producing forged and false documents such as Proforma Invoices and bills of M/s. Braham Shakti Borewells mentioning therein supply of lease equipments and to induce the bank to deliver a sum of Rs.6,28,49,448/- to M/s. KCDIL and M/s. KDL.

3). The details of the prosecution case are that, KCDIL availed of lease finance facility from Bank of India in the sum of Rs.3,06,00,000/- to acquire equipments for it's factory at Village Kumhari, Dist-Durg being (i)Thermax Boiler to be used for production of steam for the manufacture of alcohol., (ii)Processing tanks with pumps and motors for processing Mahuva Flowers (2 Nos.)., and (iii)Fermentation Tanks (2 Nos.). At the relevant time, it had submitted to the Bank, the Proforma Invoices of M/s. Thermax Ltd., Pune and M/s.

Brahma Shakti Borewells, Burhanpur (MP) as prospective suppliers with the value of equipments shown as 3.06 crores. Later, it was represented to the Bank that, KCDIL intended to receive Thermax Storage Cello System instead of Thermax Boiler. This change was accepted by the bank and the agreement of lease finance facility altered accordingly. Thereafter, the bank disbursed total amount of Rs.3,03,51,648/- to KCDIL and its suppliers. Out of that, a sum of Rs.35,63,800/- was paid to M/s. Brahma Shakti Borewells, Rs.40,00,000/- to KCDIL towards reimbursement of advance paid by it to M/s. Brahma Shakti Borewells. Similarly, three payments of Rs.1,17,27,150/-, Rs.29,00,167/- and Rs.7,66,531/- were made to M/s. Thermax Ltd. Pune and Rs.74,00,000/- to KCDIL towards reimbursement of the advance paid by it to M/s. Thermax Ltd. Pune.

4). The firm of M/s. Brahma Shakti Borewells, a partnership firm had stopped it's business in the year 1990 and on that ground it's Sales Tax registration had been cancelled on 25th May, 1990. Despite the fact, accused no.3 Sandeep Mansingka opened an account in Mumbai with Andhra Bank in the name of the firm with a Mumbai address by declaring himself as it's sole proprietor. The bankers cheque in the sum of Rs.35,63,900/- issued in favour of M/s. Brahma Shakti Borewells was deposited in that account and the proceeds of the cheque were utilised to obtain a pay-order in the sum of Rs.35,00,000/- in the name of KCDIL. The cheque in the sum of Rs.40,00,000/- favouring KCDIL in lieu of reimbursement of the advance amount paid to M/s. Brahma Shakti Borewells was received by KCDIL on the basis of a fake receipt of advance. The amount of Rs.40,00,000/- was subsequently transferred by KCDIL to the account of KDL.

3). The Thermax Storage Cello System with accessories which was meant for KCDIL factory at Kumhari as per the lease agreement was not delivered to that factory but was diverted to the proposed factory of KCDIL at Alwar, Rajasthan. The lot of two Storage Cello Systems of Thermax make alongwith its accessories were also transferred from Thermax factory at Pune to the factory at Alwar, Rajasthan. They could not even be installed and were found lying at the factory at Alwar.

4). KCDIL had used the entire amount received from the Bank for purchase of equipment from M/s. Brahma Shakti Borewells to pay off the creditors of itself and KDL.

5). KDL had also obtained Lease Finance Facility for supply at Bhillai, Durg of the equipments being, (I)M.S. Cooker (20 tons capacity), (II)Grinding Mills with motors, pipings, valve, etc.(6 Nos.), (III)M.S. Grin Conversion Vessels with accessories (5 Nos.) and (IV)M.S. Molasses storage Tanks (5000 MT capacity). For that purpose, it had produced

Proforma Invoices of M/s. Brahma Shakti Borewells showing the value of equipments as Rs.3.24 crores. In this case also, the mode of disbursement of the amount by the Bank was directly to the suppliers with reimbursement to KDL of any advance paid to the supplier after proof of payment. After execution of the lease agreement, the bank disbursed an amount of Rs.3,24,91,800/- to the supplier by way of cheque, which cheque was deposited by accused no.3 in the account opened in the name of M/s. Brahma Shakti Borewells. The proceeds of the cheque were utilised for obtaining 10 pay orders in the name of different companies to clear the outstanding liabilities of M/s. KDL and KCDIL .

6). The petitioner had filed an application before the trial Court for discharge on the ground that no *prima-facie* case exists against him and there is no chance of the prosecution succeeding to secure a conviction against him. It was also contended that, for the crime committed by the Company, there can be no vicarious liability of the Chairman or the Managing Director of the Company. Further, the entire transaction was a purely commercial transaction and no criminality could be attributed to the two companies. The Bank had filed a suit for recovery of its due from the two Companies. The petitioner claimed that the suit instituted by the Bank for recovery of its monies has already been compromised.

7). The trial Court, by its order dated 15th May, 2014 dismissed the application holding that, there was sufficient material on record to proceed for trial against the petitioner alongwith the other accused. The petitioner then challenged the order of the trial Court by approaching the District Court vide Criminal Revision Application No. 900 of 2014. The Sessions Court confirmed the order of the trial Court by dismissing the Revision Application on 26th October, 2015.

8). Mr. Tiwari, the learned Advocate appearing for the petitioner, during his submission raises an entirely different contention to support discharge. He seeks to submit, apart from referring to various health issues of the petitioner, that the petitioner had infact been forced by the Board of Directors by its Resolution dated 5th December, 1995 into signing the lease finance documents. This submission needs to be only stated to be rejected. The petitioner is the Managing Director/Chairman of the two companies and cannot be allowed to contend that, he had been forced by the resolution of the Board of Directors of which he himself was a part.

9). The other argument of Mr. Tiwari is that, there can be no substance in the argument of prosecution that the equipments referred to above were either not purchased from the suppliers named or not installed at the addresses disclosed. He argues that, some of the reports of inspection by the officers of the Bank, indicates that the equipment was lying at the addresses disclosed. This argument also needs to be rejected in view of the details of the prosecution case noted above.

10). Perusal of the orders of the Courts below shows that both the Courts have meticulously gone through the entire material on record before arriving at the conclusion as regards the sufficiency thereof. Both the Courts have concluded that, the material is such that the petitioner and the other accused persons must be put to trial. In the circumstances, in the limited scope of enquiry by this Court into the two orders, which orders are concurrent in their *prima-facie* findings, in my opinion, there is no scope to consider the challenge to the dismissal of the application for discharge of the petitioner. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)