

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

(Reserved on : 07.10.2016 ; Pronounced on : 08.11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.387 of 2016

Sundaramurthy Palaniappan @ S Palaniappan

...Petitioner

Vs.

State Rep. by
Addl. Superintendent of Police,
CBI/ACR in RC 38/A/2010
SPE:CBI/ACB/Chennai

...Respondent

Prayer: Criminal Revision Petition filed under Section 397 read with 401 Cr.P.C. against the order dated 12.01.2016 in Crl.M.P.No.5391 of 2014 in C.C.No.2 of 2012 on the file of XI Additional Sessions / Special Judge for CBI Cases relating to banks and Financial Institutions, Chennai.

For Petitioner : Mr.R.Ravindran

For Respondent : Mr.K.Srinivasan, Spl.P.P. for CBI

J U D G M E N T

This petition is filed under Section 397 (1) of Cr.P.C., to set aside the order dated 12.01.2016 in CrI.M.P.No.5391 of 2014 in C.C.No.2 of 2012, passed by the learned XI Additional Sessions / Special Judge for CBI Cases, relating to banks and Financial Institutions, Chennai.

2. The petitioner is the 15th accused, who has preferred the present Criminal Revision Petition against the order dated 12.01.2016 in CrI.M.P.No.5391 of 2014 in C.C.No.2 of 2012, passed by the learned XI Additional Sessions / Special Judge for CBI Cases, relating to banks and Financial Institutions, Chennai.

3. The case of the prosecution in C.C.No.2 of 2012 is that the respondent, on completion of investigation in Crime No.RC 38 (A)/2010 CBI, ACB, Chennai, has filed the final report u/s. 173(2) Cr.P.C. Against T. Devakumar (A1), B. Sivaganesan (A-2), O. Sridhar (A-3), R.Sundaravadively (A-4), C.Sivagami (A-5), G.Charat Chandran (A-6), Fr. Paulraj Lourdsamy (A-7), R.Rajkumar (A-8), M.Suresh Kumar (A-9), A.Sivakumaran (A-10), S.Ellapan (A-11), E.Chokkanathan (A-12), B.Sivasundaram (A-13), C.Gokulnathan (A-14) and also S.Palaniappan (A-

15) u/s. 120-B r/w 409, 420, 468, 468 r/w 471 IPC and u/s. 13(1)(d) of Prevention of Corruption Act, 1988, before the XI Additional Special Judge for CBI cases Chennai, on 24.01.2015 and cognizance of the same was taken vide C.C.No.2/2012.

4. The brief allegation in the charge sheet is that the aforesaid accused entered into a criminal conspiracy having the common objection of sanction / obtaining disbursement of various loans dishonestly and fraudulently to ineligible borrowers, in violation of established norms / procedures / guidelines of Indian Bank governing the loans; by exceeding prescribed financial power limits of A-3 and without having any genuine purpose / bona-fide in the borrowing of loans ensuring and monitoring end use and thus, dishonestly and fraudulently cheat the Indian Bank, by using the forged loan documents as genuine and causing loss to the Indian Bank because of misappropriation of the funds of customers, entrusted with the bank officials and having dominion over the funds of the customers and bank funds by corrupt or illegal bank officials / part-time Non Official Director at Indian bank, MRC Nagar Branch and also at Indian Bank, Sterling Road Branch, Chennai, to obtain undue pecuniary advantage of the private persons besides themselves.

5. In furtherances of the aforesaid criminal conspiracy, G.Charat Chandran (A-6), while functioning as Part-time Non Official Director of Indian Bank by abusing his official position as such, introduced A-1, A-2, A-3, A-4 & A-15 and exerted his undue influence over the bank officials in the matter of issue of loans to A-1, A-2 and their associates and also signed as introducer in the opening form of bank accounts namely, Current Account No.829884272 in the name of All India Christian Liberation Front with T.Devakumar (A-1) as its Chairman on 02.04.2009; Current Account No.836286331 in the name of St. Thomas Apostle Trust, represented by its Founder / Chairman, Shri T. Devakumar (A-1) on 18.06.2009 and for the SB Account No.830113544, in the name of B. Sivaganesan (A-2) on 05.04.2009 with Indian Bank, MRC Nagar Brach, Chennai and the same were authorized by O.Sridhar (A-3) noted by R.Sundaravadivelu (A-4). There is no ID proof document for the opening of the aforesaid account in the name of B.Sivaganesan (A-2). There is no signature of the Branch Officials in the account opening form and the columns relating to 'Bank Use' is also kept blank.

6. The case of the prosecution against the petitioner / A15 is that

while he was functioning as the Branch manager / Chief Manager, Indian Bank, Sterling Road Branch, Chennai, during 2010, he entered into a criminal conspiracy with T. Devakumar (A1), private person and Founder Chairman of St. Thomas Apostle Trust, G.Charat Chandran (A-6), part time Non-Official Director of Indian Bank during 2009-10, Raj Kumar (A-8) and M.Suresh Kumar (A-9) partners of M/s. Raj Enterprises, the object was to cheat Indian Bank in the matter of Open Cash Credit (OCC) limit of sum of Rs.20,00,000/- and term loan of sum of Rs.60,00,000/- vide Account no.886676854 and 891588824 in favour of M/s. Raj Enterprises without any credit appraisal report and original sale deed of the property, it was mortgaged to the bank as collateral security. The petitioner / accused had not deliberately verified the credentials of the M/s.SS Engineering Products, the supply of the machineries, knowing fully well that M.Suresh Kumar (A-9) was a partner in both M/s.Raj Enterprises and M/s. SS Engineering products. The petitioner / accused had deliberately failed to verify the credentials and genuineness of the accused with the previous banker (i.e. Indian Bank, MRC Nagar Branch) where the Raj Kumar (A-8) and M. Suresh Kumar (A-9) had borrowed a loan of Rs.20,00,000/- for the same purpose. Investigation revealed that the petitioner / accused sanctioned the said facilities to M/s. Raj Enterprises, knowing fully well that BIS certification

was in the name of St. Antony's Aqua Industries to manufacture Woodpecker brand of drinking water. Investigation also revealed that the petitioner accused had facilitated the diversion of the said funds by M/s.Raj Enterprises to discharge their other liabilities.

7. Aggrieved by the charge sheet submitted by the prosecution, the petitioner / A15 filed discharge petition CrI.M.P.No.5391 of 2014 before the trial court. After hearing both side, the trial court has passed the order on 12.01.2016 dismissing the discharge petition filed by the petitioner / A15 in C.M.P. No.5391/2014.

8. The allegation in that petition in C.M.P.No.5391/2014 on the file of XI Additional Sessions / Special Judge for CBI cases Chennai, is that the sanction was accorded prior to the conclusion of the disciplinary proceedings and as such the sanction order is illegal and is against the settled principle law.

9. Aggrieved with the order passed by the learned XI Additional Sessions / Special Judge for CBI Cases, Chennai, the petitioner / 15th accused has preferred the present Criminal Revision Application before this

Court.

10. The main reason for filing the discharge application in CrI. M.P. No.5391 of 2014 under Section 239 Cr.P.C. filed by the petitioner before the learned XI Additional Sessions / Special Judge for CBI Cases, Chennai is that

- i. the primary contention of the petitioner was that the sanction accorded was mala fide and without application of mind on the facts of the case.
- ii. the sanction was accorded even prior to conclusion of the disciplinary proceedings against the petitioner.
- iii. the sanction was accorded based on the copy of the FIR complaint and statement and witness recorded by the prosecution, provided under section 207 Cr.P.C.

Out of 47 witnesses only 28 witnesses were annexed along with the final report. Even that 28 witnesses have not spoken about the complicity of the petitioner in an alleged conspiracy. Therefore, he filed the petition before the trial court to discharge the accused from the Crime No.RC 38(A) of 2010, CBI, ACB, Chennai in C.C.No.2 of 2012.

11. The main objection of the prosecution in that said petition filed before the trial court was that the sanction authority had issued sanction

order based on the materials collected during the investigation, which was independent of the departmental proceedings. The records collected during the investigation under Section 173 of Cr.P.C. and also the records supplied to the petitioner / 15th accused under Section 207 of Cr.P.C. that there is a prima facie enough materials to proceed further and at the time of framing of charge, probative value of records cannot be gone into as per the law laid down by the Apex Court in various decisions. It has been in accordance with the test of existence of prima facie is that there is a ground for presuming that the accused had committed offences. It can be stated that the prima facie case has been made out against the accused, even if the court thinks that the accused might have committed offence, it can frame charges.

12. Considering the petition and counter affidavit filed by the parties before the trial court and considering the representations made by the counsel for the parties and considering all the records placed before it, the trial court had come to the conclusion that there was a prima facie materials to frame charge against the accused and the said petition was dismissed. Aggrieved by the said order passed by the learned XI Additional Sessions / Special Judge for CBI Cases, Chennai, the petitioner is now before this

Court by challenging the order.

13. The learned counsel for the Revision Petitioner would submit that the sanctioning authority while according sanction has not applied his mind. The sanctioning authority accorded the sanction even prior to the conclusion of the disciplinary proceedings against the petitioner. Hence, sanctioning authority could not have seen findings of the disciplinary proceedings against the petitioner. Further he would submit that lenient punishment was imposed on the petitioner as the entire amount was recovered under SARFAESI proceedings. However, he would submit that there is no incriminating materials against the petitioner / 15th accused. Before framing charge, the petitioner had filed petition in Criminal M.P.No.2682 of 2013, under Section 311 of Cr.P.C. to examine the sanctioning authority, as his request for consideration by the trial court permitted him to examine the sanctioning authority on summons as such the sanctioning authority was examined as PW1. He has been unable to demonstrate before the learned trial judge that the sanction accorded by him to prosecute the petitioner was thorough proper application of mind to the facts of the case, where he has submitted that without considering the points raised by the petitioner before the trial court, dismissed the

application to discharge the accused. He has referred the case in C.B.I vs. Ashok Kumar Aggarwal reported in 2014 CRI. L.J. 930 for the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law. In this case, the petitioner has failed to show the same hence order of the trial court has to be set aside for non compliance of the above said legal preposition laid down by the Apex Court in various decisions.

14. The learned Special Public Prosecutor would submit that the charges were framed against the accused, including the petitioner / A15 by the trial court on 04.03.2016 and witnesses have been examined by the prosecution. The trial is in progress without any substance, the petitioner / 15th accused has filed this petition to protract the case. Even on merits the disciplinary proceedings and criminal proceedings are entirely different from each other and there is no requirement that the sanction can be accorded only after the disciplinary proceedings or that the accused should be heard before according sanction. Further, he would submit that the repayment of loan amount was having impact on the offence committed by the accused

as it is settled by the Hon'ble Supreme Court in several decisions. However, he would submit that the payment is made after registration of the cases and that will not absolve criminal offence of the accused, who committed serious offence of breach of trust. Further he would submit that he is not questioning the competency of the issuance of the certificate by the PW1. The main contention is the sanctioning authority has not applied his mind at the time of granting sanction. The main reason is that the disciplinary proceedings was not concluded. However, he would submit that reading of the evidence by PW1 and Exhibits P1 and D1 had clearly proved that there is prima facie materials to proceed against the petitioner / 15th accused. However, as laid down by the Supreme Court in various decisions, the Apex Court has absorbed that strong suspicion against the accused is sufficient for framing charges and further in other decisions also the Apex Court has absorbed this based on existence of prima facie case. It can be stated that the prima facie has been made out against the accused, however, if the Court thinks that the accused might have committed an offence, it can frame charges. At the stage of framing the charges probative value of the materials on record cannot be gone into. Where the learned Public Prosecutor for supporting his arguments has referred the decision of this Court in CrI.R.C.No.1138 of 2016 dated 22.09.2016 wherein the learned

Judge has referred case in Central Bureau of Investigation vs. Ashok Kumar Aggarwal reported in AIR 2014 SC 827, the very same judgment was referred by the learned counsel for the Revision Petitioner.

15. Considering the above said facts and circumstances of the cases and also this court borne in mind, the fact that the petitioner / A15 is said to be a Branch Manager / Chief Manager. There are enough materials to implicate him in this case and further it cannot be ignored that the FIR registered against him and the allegations leveled against the accused in the charge sheet of the present case and other documents along with statement of witnesses provided to the petitioner / A15 under Section 207 Cr.P.C. including the sanction order by the sanctioning authority, this Court gives the irresistible conclusion that there are enough materials to bring to the role played by the petitioner / A15.

16. So far as the contention raised on behalf of the petitioner regarding the non application of mind of the sanctioning authority is concerned, it is seen from the records that before framing charge, the petitioner had filed petition in Criminal M.P.No.2682 of 2013, under Section 311 of Cr.P.C. to examine the sanctioning authority, as his request was

considered by the trial court and permitted him to examine the sanctioning authority on summons as such the sanctioning authority was examined as PW1 and marked as Exhibit P1 the sanctioned order. On careful perusal of the evidence of PW1, the sanctioning authority and EXhibit P1, sanctioned order, clearly reveals that PW1 had applied his mind at the time of granting sanction order, Exhibit P1. So far as the contention regarding the sanctioning authority accorded sanction even prior to the conclusion of the disciplinary proceedings against the petitioner is concerned. It is will settled proposition that the disciplinary proceedings or findings given in the disciplinary proceedings are nothing to do with the criminal proceedings. Therefore, the contention raised by the counsel for the appellant in this regard is not sustainable under law. Further it is pertinent to note that charges have been framed and trial has been commenced some of the prosecution witnesses have been examined. Looking at from any angle, the view taken by the trial court in dismissing the CrI.M.P.No.5391 of 2014, in C.C.No.2 of 2012, dated 12.01.2016, is justified.

17. In the considered opinion of this Court, the impugned order does not suffer from any material irregularity and there is no illegality or error in the order passed by the trial court. Consequently, the Criminal Revision

Petition fails.

18. In fine, the Criminal Revision Petition is dismissed, thereby, confirming the order passed by the learned trial judge in Crl.M.P.No.5391 of 2014, in C.C.No.2 of 2012 dated 12.01.2016, for the reasons assigned in this Criminal Revision Petition.

08.11.2016

Index: Yes/No
Internet: Yes/No
pvs

To

1. The XI Additional Sessions /
Special Judge for CBI Cases , Chennai
2. The Addl. Superintendent of Police, CBI/ACR in RC 38/A/2010
SPE:CBI/ACB/Chennai
3. The Special Public Prosecutor, CBI Cases,
High Court, Madras.

P.VELMURUGAN,J.

pvs

**Pre-Delivery Judgment made
in
Crl.R.C.No.387 of 2016**

08.11.2016