

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 15.07.2016
Orders delivered on : 03.08.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.R.C.Nos.1032 & 1033 of 2010
and
M.P.Nos.1 & 1 of 2010

1.Mrs.Vasumathi Marimuthu Petitioner in Crl.R.C.1032/10
2.Mr.R.Marimuthu Petitioner in Crl.R.C.1033/10

Vs.

1. State rep. by
Inspector of Police,
CBI/ACB/Chennai,
Chennai-600 006.
2. The Manager,
IDBI Bank Ltd.,
No.115, Anna Salai,
P.B.No.805, Saidapet,
Chennai-600 015. Respondents in both Crl.RCs.
(R2 impleaded as per the order of
the Court dt 31.3.2011 in M.P.1/2011)

Common Prayer : Criminal Revision Cases filed under Sections 397 & 401 of the Criminal Procedure Code, against the orders dated 28.07.2016 made in Crl.M.P.Nos. 2106 & 1011 of 2009 in C.C.No.15945 of 2003, respectively, passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.K.Kalyanam
for Mr.P.Chandrasekar

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor
for CBI (For R1)
Mr.P.Sukumar (For R2)

ORDER

These Criminal Revision Cases have been filed by the petitioners against the orders dated 28.07.2016 made in Crl.M.P.Nos. 2106 & 1011 of 2009 in C.C.No.15945 of 2003, respectively, passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, in and by which, the

discharge petitions filed by the petitioners under Section 239 of Cr.P.C, were dismissed.

2.The petitioner in Crl.R.C.1032 of 2010 is the wife of the petitioner in Crl.R.C.1033 of 2010. They have been arrayed as A1 & A2 respectfully in C.C.No.15945 of 2016 pending on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai. The chargesheet has been filed against the accused persons for the alleged offences under Sections 120-B r/w 420, 467, 468 r/w Section 471 IPC.

3.Since the issues involved in both the Revisions are one and the same, these Revisions are disposed of by way of this Common order. For the sake of convenience, the petitioners are hereinafter referred to as per their ranking in C.C.No.15945 of 2016, viz., A1 & A2.

4.The brief facts of the prosecution case are as follows:-

4-1.M/s.Trans India Resorts Limited (in short 'TIRL') is a public limited company incorporated in the year 1991, with the objective of developing modern resorts. Smt.Vasumathi Marimuthu/A1 is the whole time Director of TIRL, looking after its day-to-day affairs and her husband Marimuthu/A2 is the Chief Promoter of TIRL. TIRL proposed to set up two holiday resorts at Ooty and Kodaikanal, at an estimated cost of Rs.23.22 crores. The project was to be financed by promoters equity of 1.6 crores, public issue of partially convertible debentures for Rs.9.6 crores and internal time share rentals of Rs.12.02 crores. On behalf of TIRL, A1 applied for Bridge loan of Rs.4 crores to IDBI Bank/2nd respondent herein, on 05.08.1994, suppressing the fact that on behalf of TIRL, A1 & A2 had already availed a short term loan of Rs.2 crores from State Bank of Travancore, against public issue of TIRL. On 12.08.1994, the Deputy Manager of IDBI Bank viz., one Mr.T.Prakash forwarded the loan proposal of TIRL, for sanction of bridge loan for Rs.1.20 crore, to the Manager of the IDBI Bank viz., one K.P.Ramakrishnan. Then, the said K.P.Ramakrishnan recommended for sanction of Rs.1 crore. In order to avail the bridge loan of Rs.1 crore, on certain conditions, on behalf of TIRL the accused 1 & 2 pledged 1670483 IHFD shares of individuals & other companies, amounting to Rs.1,67,04,830/-, as security, along with 17 notarised share pledge agreements. According to the prosecution, out of the said 17 share pledge agreements, 7 agreements are forged and fabricated. The said share pledge agreements were produced before the notary Mr.Radhakrishnan and the signature of Radhakrishnan was obtained by accused Manivannan/A4, a staff of TIRL, in a fraudulent manner. The 4th accused Manivannan obtained the false Notary Certificates from approver Mr.Radhakirshnan, in

connivance with accused 1 & 2 represented by TIRL. Subsequently, the accused persons failed to repay the loan amount.

4-2. According to the prosecution, the accused 1 to 4 entered into a criminal conspiracy to commit criminal misconduct and cheat the IDBI Bank. The said acts of the accused persons prima facie constitute the offence punishable under Section 120(B) r/w 420, 467, 468 r/w 471 IPC. On source information, a case in RC MA1-1999-A-0016 was registered by the 1st respondent-police on 17.06.1999 for the above said offences. After completion of investigation, chargesheet has been filed against the accused 1 to 4 and the same was taken on file as C.C.No.15945 of 2003 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai. Thereafter, the petitioner herein / A1 & A2 had filed discharge petitions before the Trial Court; but, the said discharge petitions were dismissed by the Trial Court vide impugned orders. Aggrieved over the same, the present revisions have been filed by the petitioners.

5. The learned counsel appearing for the petitioners submitted that the case has been registered against these petitioners by the 1st respondent-Police only on a source information. The crux of the allegations made by the prosecution is that the petitioners herein have availed bridge loan to the tune of Rs.1 crore from IDBI Bank and at the time of availing loan, 17 share pledge certificates of IHFD were given by the petitioners, as security for the loan amount, to the IDBI Bank; that out of 17 share pledge certificates, the signatures in 7 share pledge agreements did not belong to the persons indicated in the said 7 agreements. It is the submission of the learned counsel for the petitioner that the 7 share certificate produced along with the disputed share pledge agreements to the Bank are genuine, valid, issued by IHFD as borne out in the statutory registers and are enforceable/valuable security. Even according to the prosecution, only the signatures in the disputed 7 share pledge agreements alone did not belong to the persons indicted in the said agreements.

6. It is the further contention of the learned counsel for the petitioner that admittedly, the offence is alleged to have taken place during the year 1994; but the case was registered only in the year 1999 i.e., after a lapse of five years, that too only on a source information, and the chargesheet was filed only in the year 2003, resulting in grave prejudice to the petitioners by the reason of the unexplained inordinate delay. In this regard, it is the submission of the learned counsel for the petitioners that, even according to the prosecution, the persons, whose signatures were found in the disputed 7 share pledge agreements, did not lodge any complaint and the Bank (IDBI) also did not lodge any complaint

against the petitioners. The case came to be registered by the 1st respondent-Police only on a source information; in fact, initially the case was registered not only against the petitioners herein, but also against one T.Prakash, Deputy Manager of IDBI, who had forwarded the loan proposal and one K.P.Ramakrishnan, Manager of IDBI, who recommended for sanction of loan of Rs.1 crore; but, since no sanction was granted by the concerned authorities to proceed against them, the chargesheet was filed only as against the petitioners herein/A1 & A2 and one Manivannan/A4; in fact, no departmental proceedings were initiated against the said Prakash and Ramakrishnan, (bank officials) by the IDBI Bank.

7.The learned counsel for the petitioners has also submitted that it is also not the case of the prosecution that these petitioners have forged the signatures in the disputed 7 share pledge agreements; in fact, the entire transaction to avail the loan was done by the staff of the company. Further, one Viswanathan, Chartered Accountant, who is the whole time Director of TIRL, was in-charge of the affairs of the Company and he was exclusively looking after all the financial dealings of the TIRL. The petitioners herein were unaware of the alleged forgery and fabrication of the share pledged agreement.

8.That apart, the learned counsel for the petitioners has also submitted that loan amount is only to the tune of Rs.1 crore; whereas as security to the loan amount, the petitioners had offered their property worth about Rs.14 crores in Ooty and the property at Kodaikanal worth about Rs.10 crores. The value of the shares pledged itself is worth about Rs.1.40 crore only. Further, the learned counsel for the petitioner submitted that the petitioners herein have also settled the loan amount with the IDBI Bank, in a DRT proceedings. Thus, the learned counsel for the petitioners submitted that the matter has been settled, there is no sufficient ground to frame charges against the petitioners; hence, the Trial Court ought to have allowed the discharge petitions filed by the petitioners.

9.In this regard, the learned counsel for the petitioners has also relied upon the judgment reported in (2012) 10 SCC 303 (Gian Singh VS. State of Punjab), wherein it has been held as follows_

"the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is

appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings."

Further, the learned counsel for the petitioner has also relied upon the judgment reported in (2008) 9 SCC 677 [Nikhil Merchant Vs. CBI], and submitted that the continuation of the prosecution, after the compromise arrived at between the parties, would be a futile exercise. For the same proposition of law, the learned senior counsel for the petitioner has also relied upon the following judgments_

- i) (2014) 5 SCC 364 (CBI Vs. Narendra Lal Jain)
- ii) CDJ 2008 SC 1745 (Manoj Sharma Vs State & others)
- iii) CDJ 2012 MHC 841 (V.Sekar & others Vs. State)
- iv) CrI.O.P.24756 & 26871 of 2008, dated 23.12.2008, (A.D.Sudhindhra & others vs. Inspector of Police, CBI, Mumbai and anothers), rendered by a learned single judge of this Court.
- v) (2014) 15 SCC 29 (State of Maharashtra Vs. Vikram Anantraï Doshi)
- vi) (2013) 10 SCC 686 (CBI Vs. Jagjit Singh)
- vii) CrI.O.P.No.10710 & 5950 of 2015, dated 18.08.2015, (S.Vaidyanathan and others Vs. Inspector of Police, CBI, Chennai).

Thus, by relying upon the above said decision, the learned counsel for the petitioners sought for setting aside the impugned orders and consequently, to discharge the petitioners from the case.

10.Opposing the submissions made by the learned counsel for the petitioners, the learned Special Public Prosecutor for CBI submitted that only if the charges framed against an accused are groundless, he/she can be discharged from the case; but, in the instant case, there are materials to show that the seven share pledge agreements were forged by the accused persons. Further, the submission of the learned counsel for the petitioners that the petitioners have settled the loan amount to the Bank, cannot be a ground for discharging the petitioners/accused. The learned Special Public Prosecutor would further contend that in the instant case, the statements of the witnesses would show that the petitioners/accused have availed the loan by submitting forged and fabricated seven pledge agreements. Admittedly, the petitioners are the persons who are in-charge of the management and day-to-day affairs of the Company. In this regard, the learned Special Public Prosecutor has also invited the attention of this Court to the statements of the witnesses namely Muralidharan, Senthilnathan & Ganesh and submitted that the said witnesses had stated that their alleged signatures in

the disputed share pledge agreements did not tally with their signatures. The learned Special Public Prosecutor by inviting the attention of this Court to the Report of the Handwriting Expert, submitted that there is material to show that the signatures in the disputed 7 share pledge agreements did not belong to the shareholders concerned. Further, if at all the matter is settled, it could be settled only for the offence under Section 420 IPC; so far as the offences under Sections 120B, 467 & 468 IPC are concerned, the said offence cannot be compounded.

11. Further, the learned Special Public Prosecutor has also relied upon the judgment reported in (2012) 9 SCC 460 [Amit Kapoor Vs. Ramesh Chander] and submitted that only if the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. But, in the instant case, the statement of the witnesses and other materials available on record would show that the petitioners have committed the offence; therefore, no infirmity could be found in the order passed by the Court below. Thus, the learned Special Public Prosecutor sought for dismissal of the revision.

12. The learned Standing Counsel for the Bank has also submitted that the Bank has not given any complaint as against the petitioners herein. He has also admitted that the loan amount has been settled in a DRT Proceedings.

13. Heard the submissions made on either side and perused the materials available on record.

14. The petitioner Smt. Vasumathi Marimuthu/A1 is the whole time Director of TIRL, looking after its day-to-day affairs and her husband Marimuthu/A2 is the Chief Promoter of TIRL. They availed bridge loan from the Bank by pledging the 17 share pledge agreements. It is the case of the prosecution that out of the 17 share pledge agreements, the signatures in 7 share pledge agreements did not belong to the persons indicated in the documents. Hence, on source information, the case was registered against the petitioners herein, a staff of TIRL as well as bank officials. But, subsequently, since the concerned authorities did not give consent to proceed against the bank officials, the chargesheet was filed only as against the petitioners herein and one Manivannan/A4. Even according to the prosecution, the share certificates are not forged and only the signatures found in the 7 share pledge agreements did not belong to the persons whose names were indicated in the share certificates. Whereas, according to the petitioners, the disputed 7 share pledge agreements are

genuine, valid, issued by IHFD as borne out in the statutory registers and are enforceable/valuable security.

15. Further, according to the learned counsel for the petitioners, the loan amount was also settled with the Bank in a DRT proceedings; therefore, according to the petitioner, there is no ground to frame charges against the petitioners herein. In this regard, the learned senior counsel has also relied upon number judgements.

16. But, according to the prosecution, the compromise arrived at between the parties will not absolve the accused from the criminal liability, because there is a specific allegation against the petitioners that signatures found in 7 share pledge agreements did not belong to the persons, whose names were indicated in the said agreements.

17. But, on a perusal of the chargesheet, it is seen that it is the case of the prosecution that A1 & A2 alone forged the signatures found in the 7 share pledge agreements. But, I find from the materials placed on record that it is not the case of the prosecution in the charge-sheet that the share certificates submitted by the petitioners to the Bank herein are not genuine. But, it is the case of the prosecution that the signatures found in the share pledge agreement in respect of 7 shares out of 17 shares did not belong to the persons indicated therein; whereas according to the petitioners, entire transaction to avail the loan from the Bank in the name of the petitioners was done by the staff of the company and they are no way responsible in respect of signatures found in the share pledge agreements. Though the learned Special Public Prosecutor submitted that there is material to show that the signatures in the disputed 7 share pledge agreements did not belong to the persons indicted therein, absolutely, there is no material to connect the petitioners herein with the alleged forgery of signatures. Moreover, the Bank has also not given the complaint against the petitioner and the persons, whose names were found in the disputed seven pledge agreements, have also not given any complaint. The present case has been filed only on the basis of the source information. Apart from the ground of settlement arrived at between the petitioners and the Bank, no other materials are also available to frame charges against the petitioners herein. In this regard, it would be appropriate to place a reference in the judgment reported in (2008) 9 SCC 677 [Nikhil Merchant Vs. CBI], wherein it has been held by the Hon'ble Supreme Court as follows:-

"29. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under Sub-section (2) of Section 320 Cr.P.C. with the leave of

the Court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in B.S. Joshi's case (supra) becomes relevant.

30. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi's case (supra) and the compromise arrived at between the Company and the Bank as also clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise."

In (2012) 10 SCC 303 (Gian Singh Vs. State of Punjab and another), the larger Bench of the Hon'ble Supreme Court has held as follows—

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or

(ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victims family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal

proceeding.

62.In view of the above, it cannot be said that B.S. Joshil, Nikhil Merchant² and Manoj Sharma³ were not correctly decided. We answer the reference accordingly. Let these matters be now listed before the concerned Bench(es).

18.Considering these factual aspects the case as well as taking note of the fact that the matter has already been settled as the loan amount has already been settled with the Bank before the DRT Proceedings, I am of the opinion that the continuation of the criminal proceedings against the petitioners is going to be only a futile exercise in this matter, particularly in the circumstances where there is no material to frame charge against the petitioners. Therefore, I am of the opinion the revision deserves to be allowed.

In fine, the Criminal Revision Cases are allowed and the impugned orders are set aside. The petitioners are ordered to be discharged from the offences alleged against them.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.
2. The Public Prosecutor,
Madras High Court.

+1cc to Mr.K.Srinivasan, Advocate, S.R.No.43980
+3cc's to Mr.P.Chandrasekar, Advocate, S.R.No.44010
+2cc's to Mr.P.Sukumar, Advocate, S.R.Nos.444608 & 44607

Cr1.R.C.Nos.1032 & 1033 of 2010
and
M.P.Nos.1 & 1 of 2010

MP 1(CO)
CA(09/08/2016)