IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2016

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THE HONOURABLE MR. JUSTICE A.SELVAM

Crl.R.C.No.658 of 2011

R.Kannan .. Petitioner/A-1

Vs.

State rep.by
The Inspector of Police,
SPE/CBI/BS & FC/Bangalore
R.C.No.8(E)/2008 .. Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, 1973 to call for and examine the records of the proceedings of the XI Additional City Civil and Sessions Judge, CBI Cases relating to Banks and Financial Institutions, Chennai - 600 001 in Crl M.P.No.527 of 2010 in C.C.No.45 of 2009 and the order dated 25.03.2011 and set aside the order of the lower Court, discharge the petitioner from the offences, for which, charges were framed by the Court.

For Petitioner : Mr.A.V.Soma Sundaram
for M/s.Lakshmi Priya Associates

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI cases

ORDER

This Criminal Revision Case has been directed against the order dated 25th March, 2011 passed in Crl M.P.No.527 of 2010 in Calendar Case No.45 of 2009 by the XI Additional City Civil and Sessions Judge (CBI Cases relating to Banks and Financial Institutions), Chennai.

2.The revision petitioner herein as petitioner has filed the petition in Crl.M.P.No.527 of 2010 in Calender Case No.45 of 2009 under Section 239 of the Code of Criminal Procedure, 1973 praying to discharge him from the proceedings of Calendar Case No.45 of 2009, wherein the present respondent has been shown as sole respondent.

3.It is averred in the petition that the petitioner has joined as a 'Clerk - cum - Cashier' in Union Bank of India on 17.01.2006. In the year 1984, he has been promoted to the post of Assistant Manager, Scale - I and posted as Branch Manager in the year 1998. In the year 2000, he has been promoted to Middle Management and posted as Chief Manager, Mount Road Branch, Chennai in the year 2006 in Scale - IV. The management has given encomium and also appreciation letters. The petitioner has protected the interest of the bank by way of insisting to create equitable mortgage in respect of the property which situates in Viajayaraghavachari Road, abutting Anna Salai. The petitioner has obtained legal opinion from lawyer and also visited the site. The petitioner after ascertaining that there is no encumbrance in respect of the said property, has decided to obtain equitable mortgage. The petitioner has taken all steps to comply with the terms and conditions of sanctioned order. The management has taken only disciplinary proceedings and no action is taken so far. No evidence is present with regard to undue pecuniary advantage. The petitioner has not acted dishonestly. The respondent has unnecessarily filed a final report against the petitioner and the same has been taken on file in Calendar Case No.45 of 2009, wherein the petitioner has been shown as first accused. The petitioner has simply recommended the concerned loan facilities. No documents have been received at the time of investigation against the petitioner. Under the said circumstances, the present petition has been filed for getting the relief sought for therein.

4.The material averments made in the counter affidavit filed on the side of the respondent can be summarised as follows:

The respondent has registered a case against the petitioner and others on 25.09.2008 under sections 120-b r/w 420, 467, 468 and 471 of the Indian Penal Code and also under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. During the relevant period, the petitioner has served as Chief Manager, Union Bank of India, Mount Road, Chennai. The second accused, viz., K.Ravi Verma has acted as Deputy General Manager, Union Bank of India, Regional Office, Chennai. The third accused viz., Anuraag Jain has served as a Director of M/s.National Medicine Private Limited, T.Nagar, Chennai. The fourth accused viz., K.Manjula is nothing but an Ex-Director of the said company. The said company has been enjoying credit facilities with Standard Chartered Bank, proposed a take over and got credit facilities sanctioned from Union Bank of India, Mount Road Branch, Chennai. The credit facilities have been sanctioned by the said Ravi Verma. The present petitioner viz., R.Kannan has made his recommendation. As per bank's sanction letter dated 12.10.2006, the credit facilities have to be backed by hypothecation of entire stock, current assets and book debts of the company and equitable mortgage over the immovable property situates in old

D.No.25/11, Veeraragavachari Road, T.Nagar, Chennai. However, the said property has already been mortgaged for getting housing loan facilities sanctioned by Citi Bank. After the sanction of credit facilities by the bank, the said company wanted to get immediate disbursement from bank for clearing the liability with Standard Chartered Bank and offered two properties situate at T.Nagar, Chennai. As per the recommendation made by the petitioner, sanction stipulations have been modified to the extent that Standard Chartered Bank liability of Rs.425 lakhs can be disbursed subject to condition of creation of interim security of properties held by Standard Chartered Bank as mortgaged as well as issuance of no dues certificate by Standard Chartered Bank. At the request of the company, on 31.10.2006, the petitioner has issued Pay Order favouring Standard Chartered Bank for an amount of Rs.4.25 crores along with forwarding letter for the full and final settlement of cash credit (H) dues of Rs.425 lakhs with M/s.National Medicine subject to the conditions that interim security has to be created with the title deeds from Standard Chartered Bank and No Dues certificate is obtained from Standard Chartered Bank. The petitioner has also issued a confirmation letter to the Standard Chartered Bank for taking over the letter of guarantee of Rs.25 lakhs issued by Standard Chartered Bank. The pay order proceeds have been collected by Standard Chartered Bank and credited to the account of M/s.National Medicine Private Ltd., However, the said company instead of closing the account and getting No Dues certificate and title deeds of interim security from Standard Chartered Bank, has withdrawn the entire amount of Rs.425 lakhs. The said company has got the title deeds and created mortgage over the same on 06.12.2006 and a charge has also been registered with ROC on 22.12.2006. The company has enjoyed the entire cash credit facility of Rs.600 lakhs from the Union Bank of India. The said company with an intention to cheat the bank, has availed cash credit facility of another for a sum of Rs.480 lakhs from State Bank of India by way of offering the same charged company's assets. The petitioner while functioning as Chief Manager, Union Bank of India, Mount Road Branch, Chennai from 31.05.2006 to 19.05.2007 has entered into criminal conspiracy with other accused and thereby caused loss to the bank. The petitioner knows the very well fact that the property offered by the said company is also under dispute. Under the said circumstances, there is no merit in the petition and the same deserves to be dismissed.

5.On the basis of the divergent contentions raised on either side, the Court below has dismissed the petition. Against the dismissal order, the present Criminal Revision Case has been preferred praying to quash the charges framed against the petitioner.

6.The learned counsel appearing for the revision petitioner/petitioner has repeatedly contended that during the relevant period, the revision petitioner/petitioner has served as Chief Manager, Union Bank of India, Mount Road Branch, Chennai and after ascertaining necessary documents as well as legal opinion given by a panel lawyer, he simply forwarded his recommendation to higher officials and higher officials after scrutinising the recommendations given by the revision petitioner/petitioner, has sanctioned cash credit facilities to the company mentioned in the final report and in fact, necessary equitable mortgage has also been obtained from the debtor and since the revision petitioner/petitioner has simply forwarded his recommendation to higher officials, he cannot be mulcted with liability. But the respondent has erroneously filed a final report against the petitioner and the same has been taken on file in Calendar Case No.45 of 2009 and the present petition has been filed under Section 239 of the Code of Criminal Procedure, 1973 and after dismissal of the same, charges have been framed. Under the said circumstances, the present Criminal Revision Case has been filed for quashing the charges framed against the revision petitioner/petitioner in Calendar Case No.45 of 2009 and further, the Court below without considering the role alleged to have been played by the revision petitioner/petitioner, has erroneously dismissed the petition and therefore, the dismissal order passed by the Court below is liable to be set aside.

7.The learned Special Public Prosecutor, appearing for the respondent has also equally contended that the revision petitioner/petitioner and other accused have contrived themselves so as to cheat the Union Bank of India. Under the said circumstances, the revision petitioner/petitioner has given false recommendations by way of flouting the existing terms and conditions of the bank and thereby caused heavy loss to the bank and the Court below after considering the nature of offences alleged to have been committed by the revision petitioner/petitioner, has rightly dismissed the petition and therefore, the dismissal order passed by the Court below does not call for any interference.

8.On the basis of the divergent submissions made on either side, the Court has to analyse as to whether on the basis of the averments made in the petition, the charges framed against the revision petitioner/petitioner in Calendar Case No.45 of 2009 are liable to be quashed?

9.Before pondering the rival submissions made on either side, the Court has to narrate the following admitted facts. It is an admitted fact that during the relevant period, the petitioner has served as Chief Manager, Union Bank of India, Mount Road Branch, Chennai. It is also equally an admitted fact that only on the basis of recommendation, necessary cash credit facilities have been extended to the company mentioned in the final report. The final report filed on the side of the respondent has been taken on file in Calendar Case No.45 of 2009. During pendency of the same, the present petition has been filed under Section 239 of the Code of Criminal Procedure, 1973 and the Court below after considering the rival submissions, has dismissed the petition. After dismissing the petition, the Court below has framed various charges against the petitioner and other accused. Further in Calendar Case No.45 of 2009, so many prosecution witnesses have been examined.

10.The main contention put forth on the side of the revision petitioner/petitioner is that as a Chief Manager, the revision petitioner/petitioner has forwarded his recommendation to higher officials after verifying necessary documents and also legal opinions given by a panel lawyer and the revision petitioner/petitioner has had no connection whatsoever with the offences mentioned in the final report.

11.The entire contention put forth on the side of the revision petitioner/petitioner is based upon the legal opinion alleged to have been given by a panel lawyer, wherein it is mentioned as follows:

> "M/s.National Medicines (P) Limited rep.by its Director Mr.Anuraag Jain son of Mr.Mathanlal Jain posses CLEAR, VALID, ABSOLUTE AND MARKETABLE TITLE to the schedule mentioned property of 3 grounds and 200 sq.ft. of land with building subject to the Citi Bank loan of Rs.72,19,191/- as on August, 2006. The documents are original and not duplicate or fake. No minor interest involved. The documents are not affected by acquisition proceedings. Forty Six years search was done at the related Sub Registrars office of the property mentioned above. M/s.National Medicines (P) Limited rep.by its Director Mr.Anuraag Jain after discharge of Citibank loan of Rs.72,19,191/- as on August 2006 can create a valid and enforceable equitable mortgage in favour of Union Bank of India, and such a mortgage will be valid and enforceable."

12.The main allegation made against the petitioner and other accused on the side of the respondent is that all the accused have had a conspiracy so as to cheat Union Bank of India, Mount Road Branch, Chennai. Under the said circumstances, the petitioner has extended his aidance to other accused for getting cash credit facilities, even though the properties in respect of which equitable mortgage created has already been subjected to encumbrance.

13.As pointed out earlier, the entire argument put forth on the side of the revision petitioner/petitioner is based upon legal opinion and also correspondence. Since the main allegation put forth on the side of the respondent is that all the accused have hatched a conspiracy so as to cheat the Union Bank of India, Mount Road Branch, Chennai, it is needless to say that the offence of conspiracy can be decided only at the time of trial.

14.At this juncture, the Court has to look into the statement given by one Kaliyaperumal. In fact, this Court has perused the entire statement given by him and ultimately found that on various occasions the said Kaliyaperumal has indicated the mistakes as well as lapses committed by the present revision petitioner/petitioner.

15.The Court below after considering the fact that prima facie materials are available against the petitioner so as to proceed, has dismissed the petition. As pointed out earlier, the present petition has been filed under Section 239 of the Code of Criminal Procedure, 1973 and after dismissing the same, necessary charges have been framed against the revision petitioner/petitioner and other accused. The first and foremost charge framed against the revision petitioner/petitioner and other accused is under Section 120-b r/w 409, 420 of the Indian Penal Code and also under Sections 13(2) r/w 13(1)(d) of Preventions of Corruption Act, 1988; second charge framed against the present revision petitioner/petitioner is under Section 13(2), 13(1)(d) of Prevention of Corruption Act, 1988; third charge framed against him is under Section 409 of the Indian Penal Code; fourth charge framed against him and other accused is under Section 420 of the Indian Penal Code and the fifth charge framed against the fifth accused is under Section 420 of the Indian Penal Code. Since prima facie materials/evidence are available against the present revision petitioner/petitioner, the Court below has framed the charges as mentioned supra. Further this Court cannot come to a conclusion that the Court below without having sufficient materials/evidence, has unnecessarily framed charges against the revision petitioner/petitioner and other accused.

16.The learned Special Public Prosecutor appearing for the respondent has drawn the attention of the Court to the decision reported in (2012) 9 Supreme Court Cases 460 (Amit Kapoor V. Ramesh Chander and another), wherein at paragraphs - 11, 12 and 13, the Hon'ble Supreme Court has observed as follows:

> "11.Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court

is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

12.It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

13.In exercise of its jurisdiction under Section 228 and/or under Section 482, the court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The court has to consider the record and documents annexed with by the prosecution."

Further in paragraphs 17 and 19, it is observed as follows:

"17.Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. One the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

19.At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in State of Bihar V. Ramesh Singh...."

17.From a close reading of the observations made by the Hon'ble Supreme Court, it is made clear that framing of a charge is not an empty formality, but it is an exercise of jurisdiction by a trial Court on the basis of prama facie materials available against the accused. Further, at the time of framing charge, a strict proof is not required and at the same time, strong suspicion itself is sufficient.

18.In the instant case, as mentioned supra, the specific allegation of the respondent is that all the accused have hatched a conspiracy so as to cause a heavy loss to the Union Bank of India, Mount Road Branch, Chennai. Further the main defence taken on the side of the revision petitioner/petitioner is only on the basis of opinion given by a panel lawyer and other connected communications. Since the main allegation put forth on the side of the respondent is that all the accused have hatched conspiracy with a view to cheat the Union Bank of Indina, Mount Road Branch, Chennai and since the Court below has framed necessary charges against all the accused on the basis of prima facie materials, it is not feasible at this stage to quash the charges framed in Calendar Case No.45 of 2009. Further, on the side of the prosecution some of the witnesses have been examined. On that score also, the relief sought in the present Criminal Revision Petition is not legally maintainable. Therefore, viewing from any angle, the contentions put forth on the side of the revision petitioner/petitioner cannot be accepted and altogether, the present Criminal Revision Case deserves to be dismissed.

19.In fine, this Criminal Revision Case is dismissed. The order of dismissal passed in Crl M.P.No.527 of 2010 in Calendar Case No.45 of 2009 by the XI Additional City Civil and Sessions Judge (CBI Cases relating to Banks and Financial Institutions), Chennai is confirmed. Connected M.P.No.1 of 2011 is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The XI Additional City Civil and Sessions Judge
(CBI Cases relating to Banks and Financial Institutions),
Chennai.

2.The Inspector of Police,
SPE/CBI/BS & FC/Bangalore.

3.The Special Public Prosecutor,
High Court, Madras.

+1 cc to M/s.Lakshmipriya Associates, Advocate, sr.9402

Pre delivery Order made in
Crl.R.C.No.658 of 2011

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kra 14.03.2016