IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

(Reserved on : 03.11.2016 ; Pronounced on : 08.11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1275 of 2015

T.Rajendran ...Petitioner

Vs.

1.State Rep. by
The Inspector of Police,
CBI/SCB/Chennai.

2.The General Manager & Chief Vigilance Officer,
Vigilance Officer, Vigilance Wing,
Head Office, No.112, J.C.Road,
Bangalore - 560 002. ..Respondents

Prayer: This Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code against the charges framed dated 12.10.2015 in C.C.No.28 of 2012 on the file of the XI Additional City Civil Court and Sessions Judge for CBI Cases, Chennai.

For Appellant : Mr.S.Doraisamy

For Respondents : Mr.K.Srinivasan, Spl.PP for CBI (for R1)
Mr.S.Kesavan (for R2)

J U D G M E N T

This Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code against the order dated 12.10.2015 in C.C.No.28 of 2012 on the file of the XI Additional City Civil Court and Sessions Judge for CBI Cases, Chennai.

2. The facts of the case:

i) The General Manager and the Chief Vigilance Officer, Canara Bank preferred a complaint to the 1st respondent on 24.09.2010 that A-3, Nazeer Ahamed, and A-4, Fathima Rizwana are partners of A-1, Afrina Steel Rolling Mills and A-2, Basheer &

Company had dealings with the Kilpauk Branch of Canara Bank since 2007 and availed loan facilities by collateral mortgage on certain land property which were not properly valued and the accounts became irregular and overdue and classified as NPA on 30.06.2009 and thereby caused wrongful loss to the complainant-Bank to an extent of Rs.405.00 lakhs. Thus, they have cheated the 2nd respondent bank.

ii) On receipt of the complaint, the 1st respondent registered case in FIR in RC.8(S)/2010/CBI/SCB, Chennai. After collecting 58 documents which related to annexure and examining 43 witnesses, the 1st respondent filed the charge sheet against the petitioner and 6 others for the alleged offences u/s. 120 (B) r/w. 420, 468, 471 IPC and Section 13(2) r/w. 13 (1) (d) of Prevention of Corruption Act, 1988 and the petitioner was arraigned as accused No.5, out of which A1 and A2 are partnership firms.

iii) After filing the charge sheet, the copies were furnished to the accused persons. After going through the documents and charge sheet, the petitioner filed a petition u/s. 227 of Cr.P.C. in Crl.M.P.No.3721 of 2012 to discharge the petitioner from the above case on the ground that the materials collected by the CBI did not prima facie disclose commission of any offence by the petitioner as alleged by the 1st respondent. After hearing the parties, the learned Special Judge for CBI cases on 17.10.2014, dismissed the petition for discharge.

iv) Against the above said order, the petitioner herein filed a revision petition before this Court in Crl.R.C.No.1337 of 2014. Pending disposal of the above revision petition, the trial court on 12.10.2015, framed the charges against the accused, against which the petitioner / A5, is filing this revision petition to set aside the charges framed in C.C.No.28 of 2012 on the file of the XI Additional City Civil Court & Sessions Judge for CBI cases, Chennai.

3. The petitioner has filed this Revision mainly against the charge numbers 1, 2 and 5, which are related to this Revision Petition.

4. The learned counsel for the Revision Petitioner has submitted that the petitioner had granted sanctioned loan only based on the legal advice given by the bank advocate and he has not committed any offence. The petitioner retired form service on 21.10.2008.

5. It is stated by the learned counsel for the petitioner that prosecution against any public servant, who is in service or for commission of offence alleged while discharging duties as

public servants, did not obtain sanction as required under Section 197 of Cr.P.C. and hence, the trial court cannot take cognizance of the alleged offences against the petitioner without sanction from the 2nd respondent / complainant. The documents relied upon by the prosecution and the statement of the witness who were responsible for making the recommendations over the sanction of loans, would show that the other Officers of the bank alone are responsible and on their recommendation only, the loans were sanctioned and hence the charge memo against the petitioner is liable to be set aside. Moreover, the charge sheet does not disclose any commission of offence by this petitioner / A5. Learned counsel referred to the decision of the Supreme Court in the case of Rakesh Kumar Mishara vs. State of Bihar and others, reported in (2006) 1 SCC 557.

6. The learned Spl. Public Prosecutor appearing for the respondent would submit that the accused persons have committed a criminal breach of trust in respect of credit facilities and bank guarantee from Canara Bank, Kilpauk Chennai, with sum of Rs.405.00 lakhs which were sanctioned by this petitioner / 5th accused in the capacity of public servant i.e., Branch Manger of Canara Bank, Kilpauk Branch Chennai by abusing his official position, on the strength of hypothecation of non-existing stocks and plant and machinery as well as collateral security of lands, which could not be disposed of and also accepted valuation of another land and building adjacent to the mortgaged property, which had already been mortgaged with Federal Bank for the credit facilities availed by another firm of Nazeer Ahmed and the same were within the knowledge of T.Rajendran, the petitioner / 5th accused.

7. The petitioner / 5th accused in the capacity of Chief Manager, Canara Bank, Kilpauk Branch, in furtherance of criminal conspiracy, showed undue favour to M/s. Afrina Steel Rolling Mills (A-1) and M/s. Basheer & Co. (A2) by misusing and abusing his official position as public servant knowing fully well that the valuation report submitted by Shri K.S.Ashok (A-7) was false and there was no building existing in the mortgaged property and he sanctioned OCC limits of Rs.30 lakhs and term loan of Rs.20 lakhs. In furtherance of criminal conspiracy, petitioner / 5th accused has dishonestly released the term loan of Rs.92 lakhs to M/s.Afrina Steel Rooling Mills (A1) on 06.10.2007 before obtaining the OPL from Karur Vysya Bank, Armenian Street Branch by ignoring the condition in sanction order.

8. The petitioner / 5th accused had accepted the false valuation report submitted by Shri K.S.Ashok (A7), Panel Valuer and without verifying / comparing the same with title deeds, sanctioned Rs.30 lakhs in OCC limits and Rs. 20 lakhs as term loan to M/s. Basheer & Co. (A2). Further the petitioner / 5th

accused had enhanced the OCC limits to Rs.54 lakhs on 13.06.2007 in favour of M/s. Basheer & Co.(A2). Further the petitioner / 5th accused had enhanced OCC limits to Rs.75 lakhs on 31.03.2008 and bank guarantee to Rs.30 lakhs on 10.06.2008 in favour of M/s. Basheer & Co. (A2).

9. With regard to the 5th charge, the learned counsel for the respondent would submit that the petitioner / 5th accused in furtherance of criminal conspiracy had not verified the properties offered for the purpose of collateral security and sanctioned credit facility to M/s. Basheer & Co.(A2). He accepted collateral security of non existing land and building.

10. During the process of sanctioning of loan, the accused persons including the petitioner changed the survey numbers of the property and obtained valuation report out of criminal conspiracy. Properties which the petitioner mentioned are different from the property offered as collateral security for the credit facility availed by M/s. Baseer and Company. The petitioner / A5 sanctioned credit facilities by accepting false valuation certificate, false stock and book debts. Though the junior level officers received the records such as balance sheets, book debts and records of stock etc., it was the primary duty of the petitioner / 5th accused being the Branch Manager, to check the rules / norms stipulated by the bank while sanctioning. But the petitioner / 5th accused has not followed the mandatory provisions while sanctioning credit facilities.

11. It is also revealed that during investigation the credit facilities of Rs.75 lakhs OCC limits, Rs.20 lakhs term loan on 09.03.2007 and 30 lakhs bank guarantee on 10.06.2008 were granted in favour of M/s. Basheer & Co. (A2) and the credit facilities vz. Rs.130 lakhs on 28.09.2007 and Rs. 92 lakhs term loan on 08.09.2007 along with bank guarantee of Rs.50 lakhs in favour of M/s. Afreena Steel Rolling Mills (A1) were sanctioned during the tenure of the petitioner / 5th accused as sanctioning authority cum Branch Manager of Canara Bank, Kilpauk Branch before his retirement on 21.10.2008. He also sanctioned term loan of Rs.92 lakhs on 06.10.2007 based on the sanction order of Circle Office. However, the petitioner / 5th accused has not complied with the condition of sanction that OPL has to be obtained from Karur Vysya Bank about the supplier M/s. Senthil Industries before sanctioning the term loan. However, the petitioner / 5th accused without ascertaining the existence of the same, thereby facilitated A1 company and A3 & A4 to divert the credit facilities.

12. Further, he would submit that after framing of the charges, the prosecution has examined 5 witnesses of the side of the prosecution. The trial court has fixed the trial and other

list of witnesses have been summoned for examination. For protracting the case the petitioner, this petition has been filed by the petitioner knowing fully well that there are prima facie materials to proceed against him. Therefore, the criminal revision petition is liable to be dismissed.

13. Heard both sides and perused the materials placed before this Court and also the grounds of revision petition and counter affidavit filed by the respondents. According to the petitioner, the trial court has failed to look into the fact that there is no prima-facie materials to implead this petitioner / 5th accused in this case. Prior to the cognizance of the offence against the accused, prosecution has to obtain sanction order for his prosecution under Section 197 of Cr.P.C.

14. The learned counsel for the respondents, on considering the materials placed before him, framed 5 charges against the accused, out of which, charge Nos.1, 2 and 5 are related to this petition.

15. Heard both sides and also perused the charges framed by the trial court. It is pertinent to note that this petitioner has come before this Court earlier Crl.R.C.No.1337 of 2014 invoking Section 401 of Criminal Procedure Code, and this Court dismissed the petition on 23.11.2015 and gave liberty to invoke correct provision of law. The petitioner has filed this Revision under Section 397 read with Section 401 of Cr.P.C.

16. On a perusal of the grounds raised in the Revision Petition and counter filed by the counsel for CBI and records placed in the typed set by the revision petitioner and submission made by both counsels, it is seen that after going through entire materials, the trial court has framed 5 charges.

17. On a perusal of the entire records, it is seen that there are prima facie materials against this petitioner / 5th accused to proceed further. So far as sanctioning of prosecution is concerned, the learned Special Public Prosecutor submitted that the accused facing offences under the Prevention of Corruption Act, cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the Court took cognizance of the said offence.

18. I have carefully perused the records submitted before this court and also the submission made by both the counsel and also the facts and circumstances of the case. The above referred decision of the Supreme Court reported in Rakesh Kumar Mishra Vs. State of Bhiar (2006 (1) SCC 557) is squarely applicable to the facts of the present case on hand. As the petitioner / 5th accused has retired form service on 21.10.2008, the sanction

under Section 197 of Cr.P.C. is not necessary. As already admitted by both the counsel, prosecution has examined the witnesses. The petitioner can raise all the defence before the trial court. However, there is no reason to set aside the charges framed against the accused by the trial court dated 12.10.2015.

19. The trial court has come to the conclusion that there are prima facie materials and thereby framed charges against all the accused including this petitioner / 5th accused. The petitioner is at liberty to raise his objection during the arguments before the trial court. As this Court has no reason to interfere with the charges framed by the accused at this stage, the Revision Petition is liable to be dismissed. Accordingly, the Revision Petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

To

1.The Inspector of Police,
CBI/SCB/Chennai.

2. The Special Public Prosecutor, CBI Cases,
High Court, Madras

3. XI Additional City Civil Court and Sessions Judge for CBI Cases, Chennai.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.64592
+1cc to Mr.K.Srinivasan, Advocate, S.R.No.64039
+1cc to Mr.S.Kesavan,Advocate, S.R.No.64022

Crl.R.C.No.1275 of 2015

SSK(CO)
MA(28/12/2016)

P.VELMURUGAN,J.

pvs

08.11.2016