IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on : 12.09.2016)

Orders delivered on : 29.09.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.R.C.No.595 of 2015
and
M.P.No.1 of 2015

O.Meenakshi ... Petitioner/Accused No.2

Vs.,

State rep by
Inspector of Police,
CBI/ACB,
Shastri Bhavan,
Chennai-600 006. ... Respondent

Prayer: Criminal Revision Case has been filed under Section 397 & 401 of the Criminal Procedure Code r/w Section 27 of the Prevention of Corruption Act, 1988, against the order dated 28.04.2015 made in Cr.M.P.No.319 of 2015 in Spl.C.C.No.3 of 2014 passed by the learned Special Judge (under the Prevention of Corruption Act), Puducherry.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel, for Mr.M.Ajmal Azzath

For Respondent : Mr.B.Mohan, Spl. PP for CBI cases

ORDER

This Revision has been filed by the petitioner challenging the order dated 28.04.2015 in Cr.M.P.No.319 of 2015 in Spl.C.C.No.3 of 2014 passed by the learned Special Judge (under the Prevention of Corruption Act), Puducherry, in and by which the petition filed by the petitioner under Section 239 of Cr.P.C. seeking to discharge him from the said case was dismissed.

2.The brief facts of the case of the prosecution are as follows_

2-1.The petitioner has been arrayed as 2nd accused in the case. She is the Proprietrix of one M/s.ATOZ Life Sciences, a drug manufacturing unit. The 1st accused - P.Rajakumaran was the Licencing Authority-cum-Controlling Authority, Department of Drugs Control, Puduchery. The 3rd accused Vaidyanathan (deceased) was the General Manager of the said company viz., Ms/ATOZ Life Sciences.

2.2.The case has been registered against the petitioner herein (A2) for the alleged offence under Section 120-B r/w 420 ICP; whereas the case has been registered against the 1st accused for the alleged offence under Sections 120-B r/w 420 IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2-3.The main allegation against the accused persons is that during the period from 2009-2011, the petitioner herein (A2) criminally conspired with the 1st accused, who is working as Licensing Authority-cum-Controlling Authority, Department of Drugs Control, Puducherry, and manufactured 25 Fixed Dosage Combinations (FDC) drugs/new drugs, without even applying and obtaining prior approval of the Drugs Controller General of India, New Delhi. Further, the petitioner has without even subjecting the said 25 drugs to the safety, and efficacy test and also clinical test as stipulated in the Drugs and Cosmetics Act & Rules, and thereby the health of the consumer/patients were put to risk by unapproved drugs and they evaded to pay the requisite fess of Rs.50,000/- per drug and consequently, caused revenue loss to the Government of India, to the tune of Rs.11 lakhs and corresponding wrongful gain for the petitioner. It is further alleged that the 1st accused, by abusing and misusing his official position granted licences to M/s.ATOZ Life Science, Puducherry and seven other manufacturing units for manufacture of new drugs without the prior approval of the Drugs Controller General of India, New Delhi. In pursuance of the conspiracy, the petitioner herein (A2) and the 3rd accused-Vaidyanathan (deceased) and others did not apply for approvals and did not pay the prescribed fee for such approvals and thereby cheated the Government of India, totally to the tune of Rs.1,80,50,000/- and corresponding pecuniary advantage to themselves. Hence, the case has been registered against the accused persons for the above said offences. After completion of investigation, the respondent-CBI filed the chargesheet and the same was taken on file as Spl.C.C.No.3 of 2014 on the file of the learned Special Judge (under the PC Act), Puducherry.

2-4.Before the Trial Court, the petitioner herein filed a petition in Crl.M.P.No.319 of 2015 seeking to discharge her from the case. But, by the impugned order dated 28.04.2015, the said petition was dismissed by the Trial Court. Aggrieved over the same, the present Revision has been filed by the petitioner (A2) before this Court.

3.The learned senior counsel for the petitioner would submit that the petitioner herein is only the Proprietrix of M/s.ATOZ Life Sciences, a drug manufacturing Unit. One Vaidyanathan (A3) was the General Manager of the said Company and he was lookingafter the entire affairs of the company, including the drugs manufacturing activities. While so, the said company viz., M/s.ATOZ Life Science had applied for grant of licence for 25 drugs, out of which 22 drugs were new drugs and the application for licence was made through the said Vaidyanathan (A3), General Manager of the said Company. The 1st accused has granted licence for all the 25 FDS drugs. Now, it is the case of the prosecution that without the prior approval/permission from the Drug Controller General of India, New Delhi, (in short 'DCGI') the licence was granted by the 1st accused for new drugs. For grant of approval/permission for manufacturing a new drug, a sum of Rs.50,000/- should be remitted to the Central Government towards fees; but, in the instant case, no fee was remitted, which resulted in loss to the Government of India.

4.The allegation against the petitioner herein(A2) is that the petitioner along with the other accused entered into a criminal conspiracy and in pursuance of the said conspiracy, the 1st accused by misusing his official position as Licensing Authority, Department of Drugs Control, has granted licence to the said drugs. The petitioner herein (A2) and the said Vaidhayanathan (A3), General Manager of the Company, knowing fully well that approval of the DCGI is required to be obtained on payment of necessary fees, but without applying and obtaining proper approval/permission from the DCGI, without paying requisite fees for such approvals, in connivance with the 1st accused, fraudulently and illegally obtained the subject licence to manufacture the 25 drugs and manufactured them and sold/supplied the same to the customers. Assailing the said allegation, the learned senior counsel for the petitioner submitted that the petitioner is a house-wife and the entire affairs of the company was lookedafter only by the said Vaidhayanathan (A3), General Manager of the Company; therefore, no criminal liability could be attributed against the petitioner. In support of his contention, the learned senior counsel for the petitioner relied upon the judgment in the case of Ramakrishna Raja Vs. Registrar of Companies (MANU/TN/1536/2004) and submitted that the principal cannot be held responsible for every act done by an agent. Thus, the learned senior counsel for the petitioner submitted that except the fact that the petitioner is the Proprietrix of the company, no allegation has been made against her and she is only a house wife. The petitioner has not imputed knowledge about the fact that the 1st accused, State Licensing Authority, does not have any authority to grant license and further there is no material to even suggest that there was any meeting of minds between the petitioner and the 1st accused for the purpose of doing the illegal act of grant of license.

5.In this regard, the learned senior counsel for the petitioner invited the attention of this Court to the definition for 'cheating' enunciated under Section 415 of IPC, which read as follows_

> "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to

> any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."
> Explanation. A dishonest concealment of facts is deception within the meaning of this section.

The learned senior counsel for the petitioner would submit that the criminality is attributed to the person whoever commits an act of cheating and whoever is a party to a criminal conspiracy for commission of such offence; there is no vicarious liability in criminal law. Further, if the criminal prosecution can be proceeded against the petitioner herein, materials should be produced by the prosecution, which prima facie establish that the petitioner has committed an offence of cheating or is a party to the criminal conspiracy for the offence.

6.It is further submitted by the learned counsel for the petitioner that the necessary ingredients for the offence of cheating is that fraudulent or dishonest representation being made by the person with an intention to deceive any person so as to induce the other person induced to do or omit to do a thing, which act or omission would cause damage or harm or result in loss of property. But, in the instant case, necessary ingredients for cheating have not been made out as against the petitioner herein.

7.Further, the learned senior counsel for the petitioner would submit that the 1st accused is the State Licensing Authority and that when he received an application for licence, without proper approval from the DCGI, even assuming for a moment that the application for license is made for the new drugs, he ought to have rejected or returned the application for license submitted by the petitioner's company. In fact, a reading of the statements of the witnesses recorded by the Investigating Officer would show that it is only the Licensing Authority (A1) who had knowledge about the Rules and Regulations and procedures, whether applied drug is a new drug or an existing drug. Further, no witness has implicated the petitioner herein with the knowledge about the procedure and violation of the procedure. Therefore, according to the learned senior counsel for the petitioner, absolutely there is no material in this case to frame charge against the petitioner herein; but, the trial Court failed to find out as to whether any material is available to implicate the petitioner herein about her knowledge and willful violation of the procedure. In this regard, the learned senior counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court reported in AIR 1979 SC 366 [Union of India Vs. Prafulla

Kumar Samal and anr], and submitted that the Judge while considering the question of framing of charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima faice case against the accused has been made out. Further, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. For the same proposition, the learned senior counsel for the petitioner has also relied upon the following decision_

i)2002 (2) SCC 135 [Dilawar Balu Kurane Vs. State of Maharashtra]

ii)(2008) 10 SCC 394 [Yogesh Vs. State of Maharashtra].

Thus, the learned senior counsel for the petitioner sought for setting against the impugned order and to discharge the petitioner from the case.

8.Countering the submissions made by the learned senior counsel for the petitioner, the learned Special Public Prosecutor appearing for the respondent, by filing a detailed counter, would contend that there is a prima facie case against the petitioner herein to frame the charges. The application for obtaining the licence has been signed only by the petitioner; therefore, she is responsible for the same. Though the 3rd accused Vaidhayanathan was the General Manager of the company, he was only an employee of the company, receiving monthly salary; whereas the benefits from the sale of the drugs have been enjoyed only by the Proprietrix of the Company viz. the petitioner herein. Further, the learned Special Public Prosecutor submitted that the drugs manufactured by the petitioner's company have not been approved by the DCGI and unless the approval of the DCGI is obtained, the rationality of the same cannot be determined. The petitioner had not obtained approval from the DCGI; as such she had not paid the mandatory fees, which resulted in revenue loss to the Government of India; thus, the petitioner has cheated the Government of India by not paying the mandatory fees. It is for the witnesses to speak that the petitioner is not the incharge and not responsible for the conduct of the business of the company. But, the fact remains that the petitioner by obtaining licence from the 1st accused without proper approval from the DCIG; and was thus benefited wrongfully to the tune of Rs.11 lakhs, and that itself is sufficient to come to the conclusion that there was a conspiracy among the accused persons. The learned Special Public Prosecutor would further contend that the petitioner has to prove her innocence only during the course of trial and not in the petition for discharge. Thus, he sought for dismissal of the petition.

9.Heard both sides and perused the materials available on record.

10.The sum and substance of the submissions made by the learned senior counsel for the petitioner are on the following lines_

(i)The 3rd accused Vaidhayanathan (deceased) was the General Manager of the Company and actually, he was lookingafter the entire affairs of the company, including drugs manufacturing activities. The petitioner is only a house wife. No vicarious liability could be fastened against the petitioner herein for the alleged criminal offence.

(ii)To prove the criminal conspiracy there should be materials suggesting the chain of events, from which it can be inferred that there was a conspiracy. Mere allegation that there was a conspiracy between the accused is not sufficient.

(ii)Mere submitting the application to the Licensing Authority (A1 herein) would not constitute an offence of cheating. When the 1st accused, State Licensing Authority, received the application for grant of licence, he ought to have verified it as to whether it required prior approval/permission from the DCGI, and if prior approval/permission is required, the 1st accused should have returned the application or rejected the application. Now, since the licence has been granted by the 1st accused, the petitioner cannot be held responsible for the alleged offence under Section 120-B r/w 420 IPC. The witnesses have also not implicated the petitioner as being the Proprietrix of the Firm conspired with the other accused. In other words, no witness has attributed any knowledge to the petitioner about the lack of authority of the 1st accused to grant licence.

11.It is the submission of the learned senior counsel for the petitioner that the entire affairs of the company was looked after by the General Manager Vaidhayanathan (A3) and the petitioner herein is the house wife. But, I am of the opinion that the petitioner is the Proprietrix of the company, a drugs manufacturing unit; therefore, she is responsible for any act of the said company. The learned senior counsel for the petitioner relied upon the decision in the case of Ramakrishna Raja Vs. Registrar of Companies (MANU/TN/1536/2004) in support of his contention that principal cannot be held responsible for every at done by an agent. But, I find that the said judgment was delivered under the Companies Act (Special Act) and in that case, the petitioner therein resigned from the Directorship of the company and he also executed a Power of Attorney in favour of one Gopalakrishnan, as he was out of India; therefore, in the said case, a plea was taken that he cannot be held responsible for the act of the Power of Attorney Agent. But, that is not the state of affairs in the instant case. The questions as to whether the petitioner had the knowledge about the requirement of the prior approval/permission from the DCIG or not and whether the application for licence was presented before the 1st respondent without the knowledge of the petitioner or not, are purely matters of evidence and the same cannot be decided in the discharge petition.

12.It is the submission of the learned senior counsel for the petitioner that the witnesses have not spoken about the knowledge of the petitioner in respect of the requirement of the prior approval/permission from the DCGI and all the witnesses had spoken only about the 1st accused and not against the petitioner herein. But, as contended by the learned Special Public Prosecutor, I am of the opinion that there is no need for the witnesses to speak about the knowledge of the petitioner in respect of the requirement of the prior approval/permission of the DCGI. Two facts are clear from the evidence on record. Firstly, the petitioner has applied for licence before the 1st accused, by affixing her signature as the Proprietrix of the company. Secondly, by not obtaining prior approval/permission from the DCGI, the petitioner was benefited wrongfully to the tune of Rs.11 lakhs as they had not paid the required fee to the Government, which resulted in loss to the Government. Hence, there is a prima facie case against the petitioner. Under such circumstances, the submission made by the learned senior counsel for the petitioner that for the act of the General Manager of the Company (3rd accused), the petitioner cannot be held responsible, cannot be accepted. In this regard, it would appropriate to place a reference in the judgment reported in AIR 2013 SC 52 (Sheoraj Singh Ahlawat and others Vs. State of U.P. and another) wherein, in paragraphs 10 to 12, the Apex Court held as follows:

> "10. The case at hand being a warrant case is governed by Section 239 of the Cr.P.C. for purpose of determining whether the accused or any one of them deserved to be discharged. Section 239 is as under:
>
> > "239. When accused shall be discharged:
> >
> > If upon considering the police report and the documents sent with under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."
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> 11. A plain reading of the above would show that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers the charge against the accused to be groundless. Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming

that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of Section 239 Cr.P.C. and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in Onkar Nath Mishra and others Vs. State (NCT of Delhi) and another, (2008) 2 SCC 561. That was a case in which a complaint under Sections 498-A, 406 read with Section 34 of the IPC was filed against the husband and parents-in-law of the complainant-wife. The Magistrate had in that case discharged the accused under Section 239 of the Cr.P.C., holding that the charge was groundless. The complainant questioned that order before the Revisional Court which directed the trial Court to frame charges against the accused persons. The High Court having affirmed that order, the matter was brought up to this Court. This Court partly allowed the appeal qua the parents-in-law while dismissing the same qua the husband. This Court explained the legal position and the approach to be adopted by the Court at the stage of framing of charges or directing discharge in the following words:

> " 11. It is trite that at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

12. Support of the above view was drawn by this Court from earlier decisions rendered in State of Karnataka Vs. L.Muniswamy, 1977 Cri.L.J. 1125, State of Maharashtra and others Vs. Som Nath Thapa and others, 1996 Cri.L.J. 2448 and State of M.P. Vs. Mohanlal Soni, 2000 Cri.L.J. 3504. In Som Nath's case (supra) the legal position was summed up as under:

"If on the basis of materials on record, a

> Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record by the prosecution has to be accepted as true at that stage."

From the above said decision it is clear that if the complaint alleged against an accused is groundless, then the discharge petition can be entertained. If there is strong suspicion founded on the materials placed before the Court with regard to the offence committed by the accused, that would justify framing of charge against the accused. In the instant case, the statement of witnesses and the documents produced on the side of the prosecution would show that there are sufficient materials against the petitioner herein to frame charges. The innocence of the petitioner cannot be adjudicated in the discharge petition.

13.Moreover, while discussing the pros and cons of the case at the time of framing charges, the Court is not required to go deep into the probative value of the materials on record. It needs to evaluate as to whether there is a ground for presuming that the accused had committed the offence. But, it should not evaluate the sufficiency of evidence to convict the accused. In this regard, it is worthwhile to notice the judgment of the Hon'ble Supreme Court reported in 2013(11) SCC 476 (Sheoraj Singh Ahalwat Vs. State of U.P), wherein it has been held that while framing charges, Court is required to evaluate the materials and documents on record to decide as to whether the facts emerging therefrom taken at their face value, would disclose existence of ingredients constituting the alleged offence; at this stage, the Court is not required to go deep into the probative value of materials on record; it needs to evaluate as to whether there is a ground for presuming that the accused had committed the offence; but, it should not evaluate the sufficiency of evidence to convict the accused; even if there is a grave suspicion against the accused and it is not properly explained or Court feels that the accused might have committed the offence, then framing of charges against the accused is justified and it is only for conviction of accused that the materials must indicate that the accused had committed the offence, but for framing of charges, if the materials indicate that the accused might have committed the offence, then framing of charge is proper.

14.In the instant case, the Court below after considering the materials available on record and the statement of the witnesses, has rightly come to the conclusion that there are materials to frame charges against the petitioner herein and that after examination of the witnesses only, the question as to whether the petitioner has committed the offence or not can be decided. Hence, I do not find any valid ground to interfere with the impugned orders passed by the Court below.

For the foregoing reasons, the Revision is liable to be dismissed and accordingly, the same is dismissed. Consequently, connected Miscellaneous Petition is closed. However, the petitioner is at liberty to approach the trial Court for dispensing with her personal appearance, by filing an affidavit to the effect that she will co-operate for the completion of the trial. On such an affidavit being filed by the petitioner, the Trial Court is directed to pass appropriate orders dispensing with her appearance.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Special Judge (under PC Act),
   Puducherry.

2. The Inspector of Police, CBI/ACB
   Sharity Bhavan, Chennai 600 006.

3. The Special Public Prosecutor, for CBI Cases,
   High Court, Madras.

+ 2 ccs to Mr.M. Ajmal Azzath, Advocate sr.56277

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and
M.P.No.1 of 2015

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