

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2016

CORAM :

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

Crl.O.P.No.6029 of 2012

and

M.P.No.1 of 2012

1.S.Harshavardhan Reddy

2.M.R.Sarangapani

3.S.Shaalini

4.Nitya Reddy ... Petitioners
Vs.

1.State rep. by
The Additional Superintendent of Police,
CBI, BS & FC, Bangalore.

2.K.B.Jayaprakash,
General Manager & Chief Vigilance Officer,
Canara Bank, Vigilance Section,
Head Office Annexe,
Bangalore. ... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.15007 of 2008 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai and to quash the same.

For Petitioners :Mr.Premkumar
for Mr.R.Srinivas

For Respondent-1 :Mr.K.Srinivasan
Spl. Public Prosecutor for CBI Cases

For Respondent-2 :Mr.A.Sasidharan

O R D E R

The petitioner has preferred the instant Crl.O.P.No.6029 of 2012 in calling for the records in C.C.No.15007 of 2008 from the file of the Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai and to quash the same.

2. Heard the Learned counsel for the Petitioners/Accused 1, 2, 3 & 5 and the Learned Special Public Prosecutor for CBI Cases appearing on behalf of the First Respondent as well as the Learned counsel for the Second Respondent.

3. According to the Petitioners, the First Respondent/State led by the Additional Superintendent of Police, CBI, BS & FC, Bangalore had lodged a complaint in C.C.No.15007 of 2008 against them before the Learned Additional Chief Metropolitan Magistrate, Egmore, Chennai in respect of the alleged offences under Section 120 B r/w.420, 468, 471 and 474 of IPC on the allegation that they with a criminal conspiracy to cheat the Defacto Complainant by using forged documents as genuine, had induced the Second Respondent/General Manager & Chief Vigilance Officer, Canara Bank, Vigilance Section, Head Office Annexe, Bangalore to part with funds and cheated to the extent of Rs.13 Crores, of which, Rs.10.77 Crores was outstanding as on 22.02.2007.

4. It is represented on behalf of the Petitioners that the former General Manager of the Second Respondent/Canara Bank, Teynampet Branch, Chennai was also included as one of the accused and he died later. As such, he was not charge sheeted by the prosecution.

5. Further, a recovery proceedings under SARFAESI Act, 2002 in O.A.No.1547 of 2007 before the Debts Recovery Tribunal-I at Chennai was initiated and a sum of Rs.10,50,00,000/- was recovered by selling the Petitioners' property. That apart, a sum of Rs.2,50,00,000/- was also deposited by the Petitioners in S.A.No.732 of 2007 before the Debts Recovery Appellate Tribunal, Chennai. It is to be noted that the Second Respondent had attached the aforesaid amount.

6. The core contention raised on behalf of the Petitioners in the grounds of CrI.O.P.No.6029 of 2012 is that the allegation of cheating in respect of an offence under Section 420 IPC cannot be sustained because of the facts that the Defacto Complainant i.e., the Second Respondent had recovered the entire amount payable by the Petitioners.

7. The other plea taken on behalf of the Petitioners (as seen from the grounds) is that they cannot be charged in respect of an offence under Section 420 of IPC, inasmuch as they had not at all fraudulently or dishonestly induced the Second Respondent to advance the loan amount. Moreover, the Petitioners had not done any harm to the Second Respondent's loan amount advanced to them which was duly recovered by the Second Respondent by selling their property under SARFAESI Act, 2002.

8.It transpires that the Petitioners have also taken a stand that the purported offences under Sections 468, 471, 474 of IPC, are liable to be quashed by this Court because of the reason that the Defacto Complainant viz., the Second Respondent had not sustained any financial loss due to alleged forgery committed by the Petitioners. Also that, they had not at all cheated the Second Respondent by producing alleged forged documents in view of the fact that the entire loan amount was released by selling the properties mortgaged by the Petitioners.

9.On behalf of the Petitioners, a view is taken that the properties secured by the Bank for advancing the loan amount were sold under the SARFAESI Act and a considerable sum was realised by the Defacto Complainant through the sale proceeds of the mortgaged property.

10.At this stage, a cursory glance of the ground (g) taken by the Petitioners in the present Criminal Original Petition points out that 'all the offences alleged against the Petitioners are compoundable and since the Defacto Complainant has almost recovered the entire dues from the Petitioners as on date, the complaint is liable to be quashed.

11.Conversely, it is the submission of the Learned Special Public Prosecutor for the First Respondent that the case in RC.2/E/2007 against M/s.Merit Resorts Pvt. Ltd. and its Directors and other accused persons were registered by the First Respondent under Section 120-B r/w.420, 468, 471 IPC and Sec. 13 (2) r/w.13(1)(d) of Prevention of Corruption Act, 1988 based on the complaint lodged by the General Manager and Chief Vigilance Officer, Canara Bank, Head Office, Bangalore and the First Information Report was submitted before the Learned Special Judge for CBI Cases at Chennai.

12.The Learned Special Public Prosecutor for the First Respondent brings it to the notice of this Court that a charge sheet was filed on 14.11.2008 before the Learned Additional Chief Metropolitan Magistrate, Egmore, Chennai against S.Harshavardhan Reddy (A1), M.R.Sarangapani (A2), S.Shaalini (A3), Ritesh Ranka (A4), Nitya Reddy (A5), M/s.Merit Resorts Pvt. Ltd., (A6) represented by its Directors S.Harshavardhan Reddy and M.R.Sarangapani and M/s.Trisha Exports, Chennai (A7) represented by S.Harshavardhan Reddy for the offences punishable under Section 120-B r/w.420, 468, 471, 474 IPC and for substantive offences thereof.

13.It appears that accused on being served with summons, had appeared before the trial Court concerned.

14. At this juncture, the Learned Special Public Prosecutor for the First Respondent draws the attention of this Court to the fact that charges were framed on 16.07.2009 against all the Petitioners/Accused and out of 60 witnesses, 47 witnesses were examined. At that point of time only, the Petitioners/A1, A2, A3 and A5 have projected the present CrI.O.P.No.6029 of 2012 before this Court, without any bona-fide reasons.

15. The Learned Special Public Prosecutor for the First Respondent projects an argument that during 2004-2005 S.Harshavardhan Reddy (A1), M.R.Sarangapani (A2), S.Shaalini (A3), Ritesh Ranka (A4), Nitya Reddy (A5) were parties to the criminal conspiracy among themselves to cheat Canara Bank by availing a loan by dishonestly and fraudulently submitting, forged property documents of the prime security and the collateral security, forged bank statements, balance sheets, IT Returns, etc., knowing them to be forged. Further, S.Harshavardhan Reddy (A1) together with Ritesh Ranka (A4) submitted a proposal to the Canara Bank, Teynampet Branch for a loan of Rs.20 Crores under the CANRENT Scheme for M/s.Merit Resorts Pvt. Ltd., allegedly for making additional constructions for the Educational Institution run by Merit International Education Foundations, in which, S.Harshavardhan Reddy (A1), M.R.Sarangapani (A2) and S.Shaalini (A3) were the Trustees. In fact, the forged 'Lease Agreements' were created as if they were rent receipts to the Trust.

16. Expatiating his submission, the Learned Special Public Prosecutor for the First Respondent strenuously contends that the prime security for the CANRENT loan was the rent receivable from M/s.Merit International Education Foundation and the property at Ooty including the buildings thereon and the collateral security offered was the land and building at No.547, Anna Salai Chennai which was shown as standing in the name of S.Harshavardhan (A1). It is represented that together with the proposal it appears that the forged lease agreement between the Trust and Company, forged IT Returns, forged Balance Sheets and forged Statement of Accounts in the name of the Company and the Trust were furnished to the Bank along with an inflated valuation reports in respect of the properties at Ooty and Chennai which were offered as security. Indeed, Canara Bank on the basis of the above said applications, sanctioned the loan to the tune of Rs.16 Crores, of which, Rs.13 Crores was withdrawn by them showing it as for purchase of equipment from Trisha Exports and diverted the funds by transferring the same to the various accounts opened by them and thereafter withdrawing it and thus, caused a wrongful loss to the Canara Bank to the tune of Rs.10.77 Crores and caused corresponding wrongful gain to themselves.

17.The Learned Special Public Prosecutor for the First Respondent proceeds to make a significant mention that the investigation in the case had lead to the establishment of a pivotal fact that S.Harshavardhan Reddy (A1), M.R.Sarangapani (A2) and S.Shaalini (A3) were the Directors of M/s.Merit Resorts Pvt. Ltd., (the same being incorporated on 15.11.1996) and they are also the trustees of M/s.Merit International Education Foundation, registered as Public Charitable Trust at Chennai on 28.05.1997. Apart from that, the said resorts had purchased land measuring 10.34 acres at Ooty and had constructed buildings and started running the Merit International Institute of Technology. In reality, the Company had entered into an agreement with the Trust for leasing out the building for running the Educational Institution for which they had shown receipt of advance which was to be adjusted against the rentals to be received.

18.Further, in the course of investigation, it came to light that the aforesaid lease agreement was forged one created by the accused in furtherance of the criminal conspiracy that they were aware that there was an agreement for lease of hostel accommodation entered into between the Company and the Trust dated 27.04.1998, in which, M.R.Sarangapani had signed as Managing Director of the Company and S.Shaalini had signed as Managing Trustee as per Merit Resorts Pvt. Ltd., had offered 150000 sq. ft approximately of plinth area of Merit International Education Foundation for hostel accommodation of students on completion of the project and the lease rentals will be fixed by Merit Resorts Pvt. Ltd., in consultation with Merit International Education Foundation at reasonable market rates. That apart, the Merit International Educational Foundation had agreed to pay lease rental advance of approximately Rs.750 lakhs which was to be adjusted against the rentals. As a matter of fact, the lease rental advance was reflected in the Balance sheet of the Company and as such, no rentals were paid by the Trust to the Company.

19.The Learned Special Public Prosecutor for the First Respondent also invites the attention of this Court to yet another plea that (they came to be established during the course of investigation) IT Returns of the Company and the Trust were forged for the Assessment Years 2002-03 and 2003-04 and only copies of forged returns were submitted to the Bank along with the proposal. Further, Original Returns filed before the IT Department were showing loss whereas the copies submitted to the Bank were showing huge profits and payment of huge Income Tax. The accused also furnished photocopies of forged portfolio statement of account number 734187 in respect of Merit Resorts Pvt. Ltd., with ABN Amro Bank for the period 01.04.2004 to 30.09.2004 and in account number 734191 in respect of Merit International Education with ABN Amro Bank for the period

01.04.2004 to 30.09.2004 respectively along with the proposal to show that the Company is receiving rental income from the Trust.

20.The Learned Special Public Prosecutor for the First Respondent in effect submits that the aforesaid accounts do not contain any of the transactions. In short, the Company has submitted bogus and forged provisional balance sheet as on 30.09.2004 showing bogus figures of Income from Merit International Education Foundation towards rental and maintenance charges. Also that, the Original Balance Sheet of the Company was signed by M.R.Sarangapani and S.Shaalini, but the copies furnished to the Bank were signed by Harshavardhan Reddy as Managing Director and S.Shaalini as Director.

21.The Learned Special Public Prosecutor for the First Respondent takes an emphatic plea before this Court that Ritesh Ranka and Nitya Reddy were not made as Directors of the Company and Form 32 was not filed before the Registrar of Companies. But a forged copy of the Form 32 was submitted to the Bank. For fulfilling the condition of executing the personal guarantee for all the Directors of the Company, on 30.12.2004, Harshavardhan Reddy collected two personal guarantee forms to be signed by M.R.Sarangapani and S.Shaalini who were informed to be at abroad and by forging the signature of these two Directors and also getting forged signatures and stamp impressions of the officer of the Embassy, to make it appear that these guarantee forms were genuinely executed by the two Directors who were abroad, submitted the same to the Bank. The said Harshavardhan Reddy, thereafter submitted the forged property document relating to the prime security for the loan, namely, the sale deeds 340/99, 647/99 and 906/01 knowing fully well that they were forged documents and the Originals of the said documents were held by his parents. Also that, Harshavardhan Reddy submitted Encumbrance Certificate for the said properties obtained from Ooty with the help of S.Shaalini and her staff and also submitted forged document relating to the property at No.547 Anna Salai along with forged Encumbrance Certificate to the Bank. In respect of the property belonging to one Salahudeen and Noore Fathima, they obtained forged document showing the ownership of Salahudeen and Noore Fathima and a forged document showing the sale of the property by them to Harshavardhan Reddy which was shown as registered at Sub Registrar Office, T.Nagar, which admittedly had no jurisdiction to register the same.

22.The Learned Special Public Prosecutor for the First Respondent contends that Bank had disposed the mortgaged property of both land and building at No.22 Havelock road, Ooty and No.547 Anna Salai, Chennai under SARFAESI Act and appropriated the proceeds of the sale by 'Auction' and recovered

their dues owed by the Petitioners/Accused. However, this property is not connected with this criminal case.

23. Furthermore, it is represented on behalf of the First Respondent that a charge sheet was filed against the Petitioners in respect of the offences under Section 120-B r/w. 420, 468, 471 and 474 IPC and substantive offences thereof. In fact, the Civil and Criminal liability are distinct and separate in the eye of Law. Also that the offence under Section 420 IPC is a compoundable one, that too, with the permission of the Court. Apart from the ingredients of Section 420 IPC, there are other Sections of IPC under which the Petitioners/Accused were charged, which are non compoundable in character.

24. The Learned Special Public Prosecutor for the First Respondent submits that the repayment of dues to the Bank by the Petitioners/Accused by no stretch of imagination can absolve their criminal liability in the eye of Law. Also, it is projected on behalf of the First Respondent that in any event, the Criminal Original Petition filed by the Petitioners to quash C.C.No.15007 of 2008 on the file of the trial Court is per se not maintainable in the eye of law or on facts.

25. As far as the present case is concerned, there is no two opinion of crystalline fact that charges were framed on 16.07.2009 and already 47 witnesses were examined out of 60 witnesses (on the date of filing of counter on 04.09.2014) and axiomatic principle in Law is that when once the trial had commenced in a criminal case, then, a Petition/Application under Section 482 Cr.P.C., for quashing the trial Court proceedings would not lie, as laid down in the decision in Zoom Vision, rep. by Y.Hariharan, Managing Partner & Others V. P.Manickam and Co., rep. by its Partner M.Nagarajan [2001 (4) Crimes 96].

26. At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in Gian Singh V. State of Punjab and Another [2011 (2) MLJ (Crl.) 201 (SC)], whereby and whereunder, it is observed that 'Non Compoundable offences cannot be permitted to be compounded by the Court directly or indirectly'.

27. One cannot brush aside a primordial fact that where the Accused/Individual had 'Guilty Mind' (Mens Rea) or not, can only be ascertained based on proper available materials on record during the trial of a given case. Viewed in that perspective, an inherent powers of a Court of Law cannot be pressed into service when a case in C.C.No.15007/2008 was already in the final stage.

28.Also, this Court aptly points out the decision of the Hon'ble Supreme Court in Central Bureau of Investigation V. Maninder Singh reported in 2016 (1) Supreme Court Cases at page 389 and at Special page 394, wherein, at paragraphs 17 & 18, it is observed as follows:

"17.The inherent power of the High Court under Section 482 Cr.P.C should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, the Court would quash the proceedings. In economic offences the Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned was well planned and was committed with a deliberate design with an eye on personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

18.In the recent decision in Vikram Anantrai Doshi [State of Maharashtra V. Vikram Anantrai Doshi (2014 (15) SCC 29)], this Court distinguished Nikhil Merchant case [Nikhil Merchant V. CBI (2008 (9) SCC 677: 2008 (3) SCC (Cri) 858)] and Narendra Lal Jain case [CBI V. Narendra Lal Jain (2014 (5) SCC 364 : 2014 (2) SCC (Cri) 579)] where the compromise was a part of the decree of the court and by which the parties withdrew all allegations against each other. After referring to various case laws under subject in Vikram Anantrai Doshi case, this Court observed that cheating bank expositis fiscal impurity and such financial fraud is an offence against the society at large, in para 26, this Court held as under : (Vikram Anantrai Doshi case, SCC P.42)

"26. ... Be it stated, that availing of money from a nationalised bank in the manner, as alleged by the investigating agency, vividly expositis fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the charge-sheet cannot be put in the compartment of an individual or personal wrong. It is a social

wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominantly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skilfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a 'no-dues certificate' and enjoy the benefit of quashing of the criminal proceedings on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humble remind, should have dealt with the matter keeping in mind that in these kinds of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The Court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand, the learned Single Judge has not taken pains to scrutinise the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be

also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court [Vikram Anantrai Doshi V. State of Maharashtra (Criminal Application No.2239 of 2009, order dated 22.04.2010 (Bom)] is wholly indefensible".

29. In view of the fact that C.C.No.15007 of 2008 on the file of the trial Court (as on date of filing of the counter dated 04.09.2014) in the main case, out of 60 witnesses, 47 witnesses were examined and in order to ascertain whether the case would end in conviction or acquittal, it is not necessary for the Court to find out the same.

30. It is brought to the notice of this Court that the present stage of the case is for examination of the witnesses on the side of the First Respondent/Prosecution and only Investigating Officer is to be examined and the next date of hearing of the case is 28.09.2016.

31. In view of the foregoing reasons and also, this Court taking note of the fact that in C.C.No.15007 of 2008 on the file of the trial Court, the case is in final stage and it is just and prudent for the Petitioners to take part in the course of trial of the main case and to take the result of the verdict one way or other (based on the merits of the case), even though dues were paid to the Bank by the Petitioners. Looking at from any angle, the the Criminal Original Petition sans merits.

32. In the result, the Criminal Original Petition is dismissed. Before parting with the case, this Court abundantly makes it clear that it is open to the Petitioners to raise all factual and legal pleas before the trial Court in C.C.No.15007 of 2008 including the aspect of payment of amounts due to the Bank and to seek appropriate remedy if they so desire/advised, of course, in accordance with Law and in the manner known to Law. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Additional Chief Metropolitan Magistrate,
Egmore, Chennai

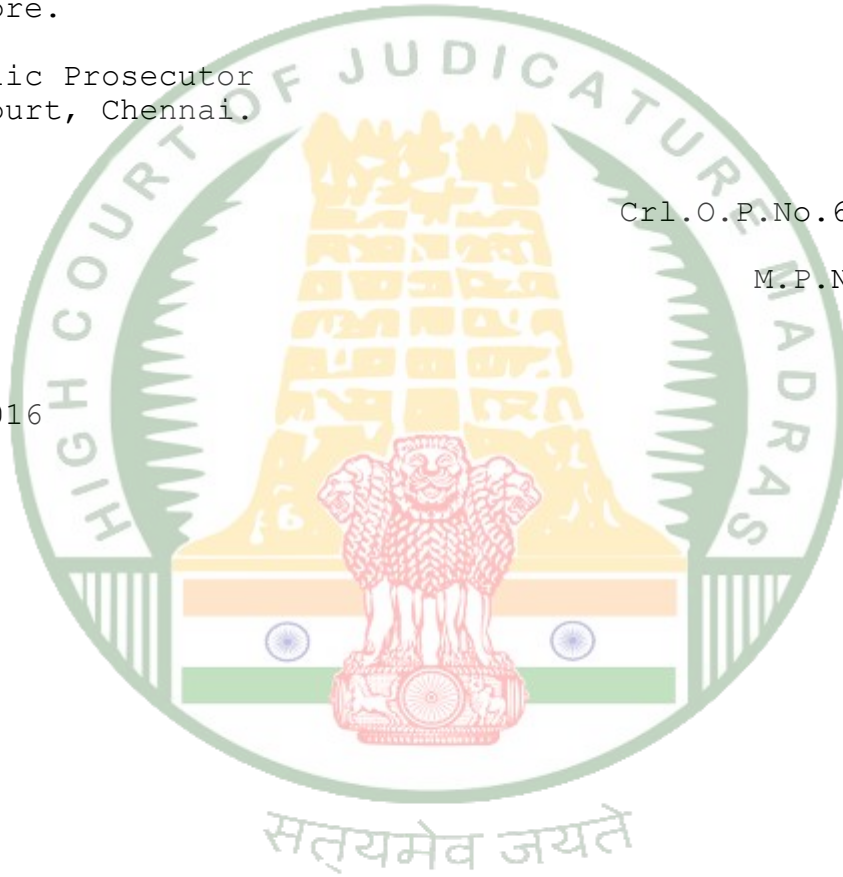
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