

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2016

(Orders reserved on 29.06.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.R.C.No.227 of 2016
and Crl.M.P.No.1549 of 2016

1. G.Vaidyanathan
2. P.A.Sasikumar @ Kumar ... Petitioners

Vs.

State Rep. by
Inspector of Police,
SPE/EOW/CBI, Rajaji Bhavan,
Chennai. (R.C.11/E/2008) ... Respondent

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C. against the order dated 22.12.2015 passed in Crl.M.P.No.1016 of 2013 in C.C.No.5127 of 2009 on the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai.

Criminal Revision case filed under Section 397 read with 401 Cr.P.C. to call for and examine the records from the Additional Chief Metropolitan Magistrate, Egmore, Chennai Passed in Crl.M.P.No.1016 of 2013 in C.C.No.5127 of 2009, dated 22/12/2015, set aside the order of the Lower Court passed against the Petitioners/Accused No.3 & 4 to direct the Additional Chief Metropolitan Magistrate, Egmore, Chennai to make over the case pending in C.C.No.5127 of 2009 to the Court of Chief Metropolitan Magistrate, Egmore, Chennai.

For petitioner : M/s.Lakshmipriya Associates

For respondent : Mr.K.Srinivasan, Spl.P.P. for CBI cases

ORDER

The revision petition is filed against the order dated 22.12.2015 passed in Crl.M.P.No.1016 of 2013 in C.C.No.5127 of 2009 on the file of the Additional Chief Metropolitan Magistrate's Court, Egmore, Chennai, dismissing the petition filed by the revision petitioners under Section 306 (4) and (5) of Cr.P.C. to make over the case to the Chief Metropolitan Magistrate's Court.

2. Brief facts which are necessary to decide the issue involved in this case are as follows:

(a) On 14.11.2008, FIR in R.C.No.11/E/2008 was registered by CBI, EOW, Chennai against M/s.Palpap Ichinichi Software International Limited, Chennai, represented by P.Senthil Kumar, Vaidyanathan, Sasi Kumar @ Kumar and other unknown persons for the offences punishable under Sections 120-B read with 419, 420, 467, 468, 471 and 109 IPC and substantive offences. The allegation is that P.Senthil Kumar (A2), Managing Director / CEO of M/s.Palpap Ichinichi Software International Limited, Chennai (A1), entered into criminal conspiracy with G.Vaidyanathan (A3), P.A.Sasi Kumar @ Kumar (A4), Thanjai Chezhan (A5) along with others, at Chennai during 2005-2006 to cheat State Bank of India, Vivekananda House Branch, Chennai in the matter of sanctioning personal loans by way of fabricated documents like identity cards, salary certificates, etc., of the loanees by giving false address and other particulars and providing false guarantee to the fictitious persons who impersonated as employees of A-1 Company and availed 156 personal loans from the State Bank of India, Vivekananda House Branch, Chennai, with a dishonest intention to cheat the Bank. After fraudulently obtaining personal loans to the tune of Rs.1.66 Crores, the accused persons dishonestly cheated the Bank by not repaying the loan amount, thereby, causing a wrongful loss of Rs.1,24,72,126/- to the SBI and corresponding wrongful gain to themselves.

(b) During the investigation, it was revealed that the address of the loanees are wrong and T.L.Lakshmanan, the then Administration Manager and M.Kanniappan, the then Office Boy of the accused Company were examined and they have implicated themselves and others involved in the crime. Likewise, five loaness, viz., S.Gajendran, S.Naveen Chander, R.Vinoth Kumar, M.Vinoth Kumar and M.N.Subramani, who signed in fictitious names, were also examined and they have also implicated themselves and others involved in the crime. Based on their willingness and desire to confess before any Court of Law, their confessional statements were recorded. The confessional statements of T.L.Lakshmanan, M.Kanniappan, S.Gajendran, S.Naveen Chander, R.Vinoth Kumar, M.Vinoth Kumar and M.N.Subramani clearly revealed their own role and the role of A-2 P.Senthil Kumar, Managing Director of the accused-Company A-1, A-3 G.Vaidyanathan, A-4 P.A.Sasi Kumar @ Kumar and A-5 Thanjai Chezhan in the fraudulent acts of impersonation and forgery used to obtain personal loans from SBI and thereby, cheating the Bank. Based on their full disclosure of the occurrence in the confessional statements and considering their role, they have been taken as "approvers" in the case after tender of pardon under Section 306 IPC. Accordingly, after

tender of pardon, S.Naveen Chander, R.Vinoth Kumar, M.Vinoth Kumar and M.N.Subramani were taken as "approvers" in the case by the III Metropolitan Magistrate, George Town, Chennai on 26.08.2009. Similarly, after tender of pardon, T.L.Lakshmanan, M.Kanniappan and S.Gajendran were taken as "approvers" in the case by the XI Metropolitan Magistrate, Saidapet, on 16.09.2009.

(c) Thereafter, charge-sheet has been filed against the accused persons. After filing of the charge-sheet, the revision petitioners herein (A3 and A4) filed CrI.M.P.No.1016 of 2013 in C.C.No.5127 of 2009 on the file of the Additional Chief Metropolitan Magistrate, Chennai, under Section 306 (4) and (5) Cr.P.C. praying for an order to make over the case to the Chief Metropolitan Magistrate, Chennai. Since the said CrI.M.P. was dismissed, the petitioners/A-3 and A-4 have filed this Criminal Revision Petitions.

3. It is the submission of the learned counsel for the petitioners that as per Section 306(5) Cr.P.C., where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case: (a) commit it for trial--(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate, (ii) , (b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself. In the instant case, according to the learned counsel for the petitioners/A3 and A4, as per Section 306(5)(b) Cr.P.C., the Additional Chief Metropolitan Magistrate Court before whom the case is pending, has to first examine the approvers and then the case should be made over to the Chief Metropolitan Magistrate for trial.

4. On the other hand, learned Special Public Prosecutor appearing for the respondent submitted that the Additional Chief Metropolitan Magistrate and the Chief Metropolitan Magistrate have equal powers and the Additional Chief Metropolitan Magistrate is the designated Court for the exclusive trial of CBI cases, and therefore, there is no need to make over the case to the Chief Metropolitan Magistrate, Chennai. Hence, he prayed for dismissal of the revision petition.

5. Mere reading of Section 306(5) Cr.P.C. would show that if the offence is triable exclusively by the Court of Sessions, then the Magistrate has to commit the case to the Sessions Court. In other cases, the cases have to be made over to the Chief Judicial Magistrate. But, in the instant case, as rightly contended by the learned Special Public Prosecutor, the Additional Chief Metropolitan Magistrate is having equal power to that of the Chief Metropolitan Magistrate. In this regard, a

reference could be made to Section 17(2) Cr.P.C., which states that the High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

6. Therefore, by taking into account the provisions of Section 17(2) Cr.P.C., it has to be held that the trial Court has correctly rejected the request of the revision petitioners. Hence, I do not find any infirmity in the impugned order of the trial Court. Accordingly, the CrI.R.C. is dismissed. CrI.M.P. is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Additional Chief Metropolitan Magistrate,
Egmore,
Chennai-600 008.
(Now at Moore Market Court Complex,
Allikulam, Chennai-600 003).
2. The Chief Metropolitan Magistrate,
Egmore, Chennai-600c008.
3. Inspector of Police,
SPE/EOW/CBI, Rajaji Bhavan,
Chennai. (R.C.11/E/2008)
4. The Special Public Prosecutor (CBI cases),
High Court,
Madras.

CrI.R.C.No.227 of 2016

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