IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2016

(Orders reserved on 12.08.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.R.C.Nos.40 and 41 of 2016

and Crl.M.P.Nos.252, 254, 5096 and 5097 of 2016

Mr.Thanjai Chezian .. Petitioner in both Crl.R.Cs.

Vs.

State by The Inspector of Police,
Central Bureau of Investigation,
Economic Offence Wing,
Chennai. .. Respondent in both Crl.R.Cs.

Criminal Revision Case No.40 of 2016 filed under Sections 397 and 401(1) Cr.P.C. to call for the records in Crl.M.P.No.820 of 2015 in C.C.No.5127 of 2009 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai (now at Allikulam, Chennai-600 003), by order dated 22.12.2015 in Crime No.RC.11/E/2008-CBI/EOW/Chennai on the file of the respondent-Police and set aside the order of dismissal of discharge and discharge the revision petitioner/A5.

Criminal Revision Case No.41 of 2016 filed under Sections 397 and 401(1) Cr.P.C. to call for the records in Crl.M.P.No.816 of 2015 in C.C.No.4859 of 2009 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai (now at Allikulam, Chennai-600 003), by order dated 22.12.2015 in Crime No.RC.9/E/2008-CBI/EOW/Chennai on the file of the respondent-Police and set aside the order of dismissal of discharge and discharge the revision petitioner/A3.

For Petitioner : Mr.P.Kumaresan
For Respondent : Mr.K.Srinivasan, Spl.P.P.

COMMON ORDER

Both these revision petitions arise out of the common order dated 22.12.2015 passed in Crl.M.P.No.816 of 2015 in C.C.No.4859 of 2009 and Crl.M.P.No.820 of 2015 in C.C.No.5127 of 2009 on the file of the Additional Chief Metropolitan Magistrate Court, Chennai, in and by which, the discharge petitions filed by the revision petitioner under Section 239 Cr.P.C., had been dismissed.

2. In C.C.No.4859 of 2009, the revision petitioner is arrayed as A3 and he has been arrayed as A5 in C.C.No.5127 of 2009. In both the cases, charge sheets have been filed against the petitioner (A3-A5) and other accused persons. In C.C.No.4859 of 2009, the charge sheet has been filed against the petitioner/A3 for the offences under Sections 120-B read with 419, 420, 467, 468, 471 and 109 IPC and substantive offences thereof. In C.C.No.5127 of 2009, the charge sheet has been filed against the petitioner/A5 for the offences under Sections 109 read with 419, 420, 467 and 468 IPC.

3. The case of the prosecution in Crl.R.C.No.40 of 2016 (C.C.No.5127 of 2009) against the petitioner/A5 and others is that the case was registered on a complaint, dated 11.11.2008 preferred by Shri.Veerapandian, the then Regional Manager, Region-II, State Bank of India, Administrative Unit-I, Chennai. A1 -- M/s.Palpap Ichinichi Software International Limited (a registered Company) and A2 / P.Senthil Kumar, who is the Managing Director and CEO of A1-Company, entered into criminal conspiracy with A3-Vaidyanathan, A4-Sasi Kumar @ Kumar and other unknown persons in Chennai during 2005-2006 to cheat the State Bank of India (for short, 'the SBI'), Vivekananda House Branch, Chennai and in furtherance of the said conspiracy, A2 got 161 loan accounts opened under personal loan scheme in the SBI in the names of fictitious persons showing them as employees of A2's Company and got the loan sanctioned in batches during the period from August 2005 to February 2006. A1-Company gave corporate guarantee and A2 gave personal guarantee to the said loans of reported employees. In furtherance of the conspiracy, A2, with dishonest and fraudulent intention, got prepared and submitted fabricated salary certificates, identity cards and Form-16 in the name of the loanees. Subsequently, though the loans were sanctioned in the names of the said fictitious employees and credited to the individual accounts, A2 has received the proceeds of the loans and no repayment was made, thereby, he caused wrongful loss of Rs.1,24,72,126/- to the Bank and corresponding wrongful gain to the accused persons. It is further gathered from the investigation that A-1 Company is a registered Company and had its registered office in Chennai and

the Company is developing softwares used for educational institutions. A2 Senthil Kumar is the Managing Director and also the Chairman and Executive Officer of the Company. Smt.Papathi, the mother of A2 and Smt.Banumathi, the sister of A2 are the Directors of the Company. Investigation revealed that the accused Company employed around 60 persons and some of them were deputed to various educational institutions throughout Tamil Nadu to install and maintain the programmes developed by the Company and the others were working at the Company's office in Chennai. The investigation further revealed that A2, during the year 2005, approached the SBI, Vivekananda House Branch, Chennai along with A3 and A4, private financial consultants known to him, for obtaining personal loans to the employees of A1 Company. A2 submitted the proposal seeking personal loan for his employees after consulting one N.Chandran, the then Branch Manager, SBI, Vivekananda House Branch, Chennai. It was further revealed during the course of investigation that initially, A2 applied personal loans in the names of five employees, viz., T.L.Lakshmanan, Administrative Manager, S.Siva Kumar, Software Engineer, D.Murali, Vice-President (Operations), M.V.Satya Sai Prasad, Business Development Manager and G.Kandavel, Senior Software Engineer and assured them that the Company would give Corporate Guarantee and the repayments would be made by the Company. Based on the assurance given by A2, they agreed for the proposal and they were asked to sign in the blank account opening forms and personal loan application forms provided by N.Chandran. Further, as per the instructions of A2, the financial consultants A3 and A4 filled in wrong personal particulars of these employees with fictitious addresses and incorrect father's name to their imagination, but correctly wrote the names and affixed the photographs of the persons. The five employees were sanctioned Rs.2 lakhs each by N.Chandran and the loan amounts were withdrawn by these employees and handed over to A2 as per his advise. It was further revealed that A2 subsequently availed 156 personal loans in the names of fictitious employees in batches, as the Company was not in a good position and the loan was availed only for misusing the same in the name of the Company and these fictitious persons were arranged by A2 through his friend A5-Thanjai Chezian (the revision petitioner herein), an Advocate from Purasawalkam, Chennai and through A3 and A4, showing them as employees of his Company (A1), with a clear intention to cheat the Bank. Further, only few persons were produced initially by A5 before A2 and for others, he provided only photographs and not produced them physically; likewise, A3 and A4 have provided only the photographs of the persons agreed to arrange by them. The said N.Chandran accepted the loan application forms without insisting for the personal appearance of the loanees as per the request made by A2 that most of his employees are Implementation Engineers and would be visiting various Colleges in Tamil Nadu. Further, with the photographs provided by A5 (the revision petitioner herein), A3 and A4, the A2 arranged more copies through his employees Lakshmanan and Kanniappan from the shops at Anna Nagar and pasted in the account opening and the loan application forms. Further, as requested by A2, the A5, A3 and A4 arranged signatures of the fictitious persons arranged by them in the blank forms of the SBI. Thus, it is alleged that A2 to A5, along with the approvers T.L.Lakshmanan, M.Kanniappan, S.Gajendran, S.Naveen Chander, R.Vinoth Kumar, M.Vinoth Kumar, M.N.Subraman and the Bank Manager N.Chandran, entered into criminal conspiracy at Chennai, during 2005-2006 to cheat the SBI 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 A1-Company and availed 156 personal loans from the SBI, Vivekananda House Branch, Chennai, with a dishonest intention to cheat the Bank. A2 also availed personal loan of Rs.2 lakhs each in the name of five of his employees assuring that the Company would repay the loan and misappropriated the amount. After fraudulently obtaining personal loans to the tune of Rs.166 lakhs, the accused persons dishonestly cheated the Bank by not repaying the loan amount, thereby, caused wrongful loss of Rs.124 lakhs to the SBI and the corresponding wrongful gain to themselves. Hence, the petitioner/A5 along with others, were charge-sheeted in C.C.No.5127 of 2009 in Crime No.11/E/2008-CBI/EOW/Chennai, for the alleged offences under Sections 120-B read with 403, 419, 420, 467, 468, 471 and 109 IPC and substantive offences thereof and the revision petitioner (A5) is charge-sheeted for the alleged offences under Section 109 read with 419, 420, 467 and 468 IPC.

4. The case of the prosecution in Crl.R.C.No.41 of 2016 (C.C.No.4859 of 2009) against the petitioner/A3 and others is that the case was registered on source information on 27.09.2008, however, Smt.B.Kalavathi, the then Chief Manager, Bank of India, Anna Salai Branch, Chennai, preferred a complaint on the same allegations which was received on 15.10.2008. A1 (P.Senthil Kumar), CEO-cum-Chairman of M/s.Palpap Ichinichi Software International Limited (A4), Chennai, entered into a criminal conspiracy with P.K.Raman and other persons at Chennai during 2007 to cheat the Bank of India (for short, 'the BOI'), Anna Salai Branch, Chennai, and in pursuance of the conspiracy, A1 got 149 loan accounts opened under Star Personal Loan Scheme of the BOI, Anna Salai Branch, Chennai, in the names of fictitious persons showing them as employees of his Company and got the loans sanctioned at Rs.1.5 lakhs each, in batches between May 2007 and October 2007 and the loan repayments were regular till November 2007, thereafter, the payments were stopped; all these loan accounts were declared as NPA by BOI on 31.03.2008 and the total outstanding amount in the bank accounts amounted to Rs.506.87 lakhs, thereby, the accused persons caused

wrongful loss to the Bank. The said Company is a registered Company and developing softwares used for educational institutions. A1 is the Managing Director and also the Chairman and Executive Officer of the said Company (A4). Smt.Papathi, the mother of A1 and Smt.Banumathi, the sister of A1, are the Directors of the Company. It was further revealed during the course of investigation that the accused Company employed around 60 persons and some of them were deputed to various educational institutions throughout Tamil Nadu to install and maintain the programmes developed by the Company and the others were working in the Company's office at Chennai. Further investigation disclosed that on 07.03.2007, A1, who is the CEO-cum-Chairman of A4-Company met Sri.G.S.Iyer, AGM, Regional Officer and Shri.T.J.Bala Kumar, Marketing Executive of BOI and submitted a proposal requesting personal loans for 100 employees of A4-Company. Sri.G.S.Iyer recommended the proposal after field visit and the same was approved by Sri.S.K.Datta, DGM, BOI on 16.04.2007. After approval, the proposal was transferred to BOI, Anna Salai Branch, Chennai, for disbursal. The Branch Manager Smt.Janaki Mani sought the assistance of Sri.T.J.Bala Kumar, who visited the office of A4-Company on various dates and completed the formalities of filling in the application forms for the SB Account and the personal loan account with the help of the employees of A4-Company. It was further revealed in the investigation that A1 stood as a guarantor for the personal loans and A4/Company stood as corporate guarantor. The proposed borrowers of the Company were produced before the Bank Officers in batches of 10 or 20. All the loanees were fictitious persons and none of them were employees of the Company. A1 fraudulently identified the fictitious persons as his employees and introduced them to the Bank where these persons forged their signatures in different names. A1 and P.K.Raman, the then Accountant of A4/Company, forged the documents and used the forged documents as genuine ones for obtaining loans from the Bank. A2 S.Kalidasan abetted the impersonation of many persons and also abetted them to forge their signatures in fictitious names. He himself impersonated as H.Jayakumar and availed loan of Rs.1.5 lakhs, which he did not repay. A1 arranged fictitious persons to impersonate as employees of the Company for obtaining loans from the Bank and by creating forged documents, A1 identified the loanees to Sri.Bala Kumar, Marketing Executive of the BOI as his employees at the time of filling of loan applications. It is further revealed by the investigating agency that A3 (Thanjai Chezian, revision petitioner herein), who is an Advocate and Legal Advisor for A4-Company, lured some youth through A2 from Perambur area under the guise of providing attractive jobs in a software company, based on which, these young men were taken to the accused Company by A2, and A1 conducted a mock interview with them and assured them of providing a job in his Company and they were asked to provide photographs for their identity cards and were also asked to sign in blank forms of the Bank and told that a Savings Bank Account would be opened in their names for crediting their salaries. They were also asked to sign in different names as the job was already allotted in the names of those persons and they have signed in fictitious names as requested by A2 and A1 and they were assured of the job. As they were lured for a job in a software Company, they failed to consider the consequences and signed the blank account opening forms and also the loan application forms without knowing that they were also signing the loan application forms. After this process, they were assured that they would be called to join the Company after a few days. On the advise of A3 (revision petitioner herein / Thanjai Chezhian), A2 arranged candidates in whose names the personal loans were availed by A4/Company. A2 and A3 arranged candidates to impersonate as employees of A4/Company as requested by A1 by taking commission for the same. After fraudulently obtaining personal loans to the tune of Rs.222 lakhs, the accused persons dishonestly cheated the Bank by not repaying the loan amount, thereby, caused wrongful loss of Rs.206.87 lakhs to the BOI and corresponding wrongful gain to themselves. Hence, the petitioner/A3 along with others, were charge-sheeted in C.C.No.4859 of 2009 in Crime No.RC.9(E)/2008-CBI/EOW/Chennai, for the alleged offences under Sections 120-B read with 419, 420, 467, 468, 471 and 109 IPC and substantive offences thereof.

5. Subsequent to the filing of the above charge sheets before the Court below, the petitioner (in the capacity as A3 and also as A5 in the respective cases), filed discharge petitions under Section 239 Cr.P.C. before the trial Court, which were dismissed, against which, the petitioner has filed both these revision petitions.

6. Learned counsel for the petitioner submitted that the petitioner is an Advocate/Legal Advisor to the accused-Company, namely M/s.Palpap Ichinichi Software International Limited, Chennai and absolutely, there is no allegation or averment against the petitioner (A3/A5) so as to attract the penal provisions of the IPC. In this regard, learned counsel invited the attention of this Court to the statement of one Mr.T.L.Lakshmanan and also of one Mr.Kanniappan, recorded under Section 161 Cr.P.C. which shows that there is no specific allegation as against the petitioner and only general allegations had been made, which do not attract the offences under the IPC. Learned counsel further contended that A2-Senthil Kumar is only the beneficiary of the loan amounts said to have been obtained in the names of fictitious persons and the loan amounts were deposited in the Bank Accounts in A2-Senthi Kumar's account. The entire transaction is between A2-Senthil Kumar and the Bank officials. As per the averments made in charge-sheet (s), criminal conspiracy was entered into by A2-Senthil Kumar

with Bank officials for obtaining loan amounts and the petitioner (A-3 - A-5) is no way involved in the process of obtaining the loan amounts from the Bank officials. Therefore, according to the learned counsel, there cannot be any criminal conspiracy alleged to have been entered into by the petitioner (A3-A5). In fact, the Bank officials have not been added as accused in the charge sheet(s). Learned counsel further submitted that the allegation against the petitioner is that he introduced certain persons to the Bank officials, and from whose names, A-1 Senthil Kumar obtained loan amounts. Therefore, the chance of convicting the petitioner (A3 and A5) is very bleak. Without considering all the above aspects properly, the trial Court dismissed both the discharge petitions, which may be set aside by allowing the revision petitions. In support of the above submissions, learned counsel for the petitioner relied on various judgments of the Supreme Court.

7. Countering the above submissions, learned Special Public Prosecutor appearing for the respondent submitted that the petitioners/A3-A5 entered into the criminal conspiracy with the other accused persons to cheat the SBI and BOI and fictitious persons were arranged by the petitioner to obtain personal loans on the wrong promise to those fictitious persons that job will be given to them in the accused Company. The petitioner being the legal advisor of the Company for about ten years, has sponsored and did not get the job even to one of them, which indicates his knowledge of the conspiracy. The oral and documentary evidence collected during the course of investigation, establishes that the petitioner, by receiving pecuniary gain of Rs.3,000/- for each of the candidates from A2 Senthil Kumar, has in fact brought in batch of fictitious persons, which cannot be said to be a legal act. The oral and documentary evidence collected during the course of investigation, establishes the role played by the accused persons and that is the reason why the petitioner was charge-sheeted. In this regard, learned Special Public Prosecutor invited the attention of this Court to the statement of witnesses recorded during the course of investigation under Section 161 Cr.P.C., namely T.L.Lakshmanan, S.Gajendran, M.Senthil Kumar and S.Panneerselvam and by relying the statements of these persons, the trial Court came to the conclusion that there are materials to frame charge against the revision petitioner. Since there is prima-facie material against the petitioner, learned Special Public Prosecutor prayed for dismissal of the revision petitions.

8. I have given by anxious consideration to the submissions made by learned counsel on either side and perused the materials available on record.

9. The sum and substance of the submissions of the learned counsel for the petitioner is that the petitioner was only a practising Advocate and he is only a legal advisor to the accused Company and in that capacity, he has only acted and whatever he has received is only legal remuneration from A2 Senthil Kumar. If at all any conspiracy is there, it is only between A2 Senthil Kumar and the Bank Officials and the petitioner has no role to play in the transaction for availing the loan from the Bank and even as per the prosecution case, only in later part, he was introduced by some persons to the Company, under whose names, A2 Senthil Kumar alleged to have obtained loan by obtaining signatures from them.

10. On a perusal of the materials available on record, more particularly the statements recorded under Section 161 Cr.P.C. from the witnesses T.L.Lakshmanan and S.Gajendran, it is seen that the said witnesses have specifically stated in the said statement about the criminal act/role played by the petitioner herein (A3-A5). In fact, the trial Court has extracted the statement of the said witnesses in the impugned order and also the statement of the other witnesses, namely M.Senthil Kumar, S.Panneerselvam, T.L.Lakshmanan and S.Gajendran and also the statement recorded under Section 164 Cr.P.C. in respect of co-accused R.Vinoth Kumar and came to the conclusion that the confession statement of the co-accused and the statements of the above witnesses, clearly show the involvement of the petitioner in the offence. Therefore, the trial Court came to the conclusion that there are prima-facie materials to frame the charge against the petitioner in both the cases. When the statement of the above witnesses, coupled with the confession statement of the co-accused shows the involvement of the petitioner in the offence, whether the amount received by the petitioner (A3-A5) is only legal remuneration as claimed by him and whether the petitioner has played any role or not, in the criminal conspiracy in obtaining the loan from the Bank, are only purely matters for trial and the statement of the defence has to be decided only during the course of trial.

11. It is worthwhile to note a decision of the Supreme Court reported in AIR 2013 SC 52 = 2013 (11) SCC 476 = CDJ 2012 SC 813 (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."

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."

12. Therefore, from the above decision of the Supreme Court, it is clear that if the complaint alleged against an accused is groundless, then the discharge petition can be entertained; and if there is strong suspicion founded on the materials placed before the Court with regard to the offence(s) committed by the accused, that would justify framing of charge (s) against the accused. Moreover, at the stage of framing of a charge, the probative value of the materials available on record by the prosecution, has to be accepted as true at that stage.

13. In this case, the statement of the witnesses and a co-accused clearly shows the involvement of the petitioner/A3-A5 in the offence and hence, there is material for framing charge against him. From the materials available on record, it is clear that there is a strong suspicion founded on the materials placed before the Court with regard to the offences committed by him, which would justify framing of charge(s) against the petitioner/A3-A5. Therefore, the contentions of the petitioner, will not definitely serve as a ground for discharging him from

the case and they are all matters for trial and it cannot be said that absolutely there is no material against the petitioner to frame charge.

14. The decisions of the Supreme Court relied on by the learned counsel for the petitioner, are distinguishable on facts and hence, the same are not discussed here.

15. Therefore, for the reasons stated supra, I do not find any valid ground to interfere with the impugned order passed by the trial Court. The petitioner (A3-A5) is not liable to be discharged from the case. Accordingly, both the revision petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cs

Copy to
1. The Additional Chief Metropolitan Magistrate,
   Egmore, Chennai-600 008
(now at Allikulam, Chennai-600 003).

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

3. The Inspector of Police,
   Central Bureau of Investigation,
   Economic Offence Wing,
   Chennai.
4. The Record Keeper, Criminal Section,
High Court, Madras.

+1 cc to M/s.P.Kumaresan Advocate sr 47384
Crl.R.C.Nos.40 and 41 of 2016

aa09/09/2016