IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 02.11.2016

JUDGMENT PRONOUNCED ON : 08.11.2016

CORAM:

THE HON'BLE MR.JUSTICE P. VELMURUGAN

Crl.R.C.No.551 of 2016
and
Crl.M.P.No.3707 of 2016

1. B.Sivasundaram

2. C.Gokul Nathan ...Petitioners

-vs-

State represented by
Additional Superintendent of Police,
SPE : CBI : ACB : Chennai,
RC/38/A/2010 ...Respondent

This Criminal Revision is filed under Sections 397 r/w. 401 of Cr.P.C. seeking to set aside the order of dismissal dated 12.01.2016 in Crl.M.P.No.1146 of 2012 in C.C.No.2 of 2012 on the file of the XI Additional City Civil Judge, CBI Cases, Chennai.

For Petitioners : Mr.S.Ratnakaran

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

O R D E R

This Criminal Revision is directed against the order of dismissal dated 12.01.2016 in Crl.M.P.No.1146 of 2012 in C.C.No.2 of 2012 on the file of the XI Additional City Civil Judge, CBI Cases, Chennai.

2. The brief allegations in the charge sheet are that the accused entered into a criminal conspiracy having the common object to sanction / obtaining disbursement of various loans dishonestly and fraudulently to ineligible borrowers, in violation of established norms of Indian Bank governing the loans; by exceeding the prescribed financial power limits of A3 and without having any genuine purpose in the borrowing of loans ensuring and monitoring end use and thus, dishonestly and fraudulently to cheat the Indian Bank by using the forged loan documents as genuine and also caused wrongful loss to Indian Bank / to misappropriate the funds of customers entrusted with the bank officials and having dominion over the funds of the customers and bank funds by corrupt or illegal means and by public servant, abusing the official position by the aforesaid bank officials / part-time non-official Director of Indian Bank, MRC Nagar Branch and Indian Bank, Sterling Road Branch, Chennai and to obtain undue pecuniary advantage to the private persons besides themselves.

3. In furtherance of the aforesaid criminal conspiracy, A6 while functioning as part-time non-official Director of Indian Bank, by abusing his official position as such, introduced A1 and A2 to A3, A4 and A15 and exerted his undue influence over the bank officials in the matter of issue of loans to A1, A2 and their associates and also signed as an introducer in the Opening Form of Bank Accounts, viz., Account No.829884272 in the name of All India Christian Liberation Front with A1 as its Chairman on 02.04.2009 Current Account No.836286331 in the name of St. Thomas Apostle Trust, represented by its Chairman A1 on 18.06.2009 and for the Savings Bank Account No.830113544 in the name of A2 on 05.04.2009 with Indian Bank, MRC Nagar Branch, Chennai and the same were authorised by A3 / noted by A4. There is no identification proof for the opening of the aforesaid account in the name of A2. There is no signature of the branch officials in the Account Opening Form. The Columns relating to ''Bank's use'' is also kept blank.

4. On completion of investigation in Crime No.RC/38/A/ 2010, SPE : CBI : ACB, Chennai, filed the charge sheet under Section 173 (2) Cr.P.C against A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12, A13, A14 and A15 under Sections 120(B) r/w. 409, 420, 468 r/w.471 IPC and under Sections 13(2) r/w. 13(i)(d) of the Prevention of Corruption Act, 1988 before XI Additional Special Judge for CBI Cases, Chennai, on 24.01.2012 and the same was taken on file in C.C.No.2 of 2012.

5. After taken on file and pending for framing charge, the petitioners herein, viz., A13 and A14 filed discharge petition in Crl.M.P.No.1146 of 2012 before the trial Court. After hearing both sides, the same was dismissed on 12.01.2016.

6. Aggrieved with the said order passed by the trial Court, the petitioners herein, viz., A13 and A14 have filed the present Revision Petition before this Court on the grounds that the entire transaction is purely civil in nature and no offence is made out as alleged by the respondent. The documents furnished by the petitioners were originals and based on the original documents, the bank has initiated SARFAESI proceedings. The petitioners having obtained loan by furnishing original documents have cleared the loan dues in the SARFAESI proceedings. The trial Court, without considering the materials placed before it, mechanically dismissed the discharge petition by simply holding that the issues have to be decided during trial. There is no prima facie case against the petitioners to proceed for trial.

7. The case of the prosecution as against these petitioners is that in furtherance of the aforesaid criminal conspiracy, on 04.03.2010, A3 had sanctioned and released OD secured loan in Account No.878265083 for Rs.22.50 lakhs in favour of M/s. Lakshmi Sastha, where these petitioners are the purported partners. In this account, no application form is available and the amount in the account were misutilised for the benefit of A2 and M/s. HS Associates of A2; the loan sanctioned to these petitioners is beyond the financial power of A3; the petitioners have signed in the loan documents. The entire loan amount was misutilised by these petitioners in conspiracy with A2 for whom the loan was sanctioned. It has been ascertained that on the same day ie., on 04.03.2010, out of loan proceeds, Rs.5,90,000/- and Rs.7,50,000/- were withdrawn by A2 from OD secured loan in Account No.878265083 by these petitioners. Further on 20.03.2010, a loan of Rs.3,75,000/- and on 20.04.2010, Rs.3,00,000/- were transferred to M/s.HS Associates Account No.867937843 of A2 from the said OD Facilities Account No.878265083. The loan was sanctioned without obtaining basic documents and proper verification by A3 and the entire loan proceeds were misutilised by these petitioners in connivance with A2, A3 and other accused.

8. The learned counsel for the petitioners would submit that the documents furnished by the petitioners before the Bank were originals, they have not filed any forged documents.

Further, the entire transaction is purely in civil nature. Therefore, they cannot fastened any criminal liability on this, the bank has taken action against these petitioners and other accused in the SARFAESI Proceedings. The petitioners have cleared the loan dues in the SARFAESI Proceedings and further, there is no prima facie materials available to frame the charge. The trial Court failed to look into these aspects and dismissed the petition. The order passed by the trial Court is liable to be set aside.

9. The learned Additional Public Prosecutor would submit that from the materials placed before the trial Court, it is clear that there is a prima facie case to proceed this case against these petitioners. The trial Court has considered all the materials placed before it and came to the conclusion that there was a prima facie material to frame the charges and dismissed the application; there is no illegality or impropriety in the order passed by the trial Court. Therefore, the Criminal Revision is liable to be dismissed.

10. Heard both sides and considered the submissions made by the counsel for both sides and perused the records placed before this Court, carefully.

11. On perusal of the record, it is admitted fact that these petitioners availed the loan from Indian Bank. But according to the prosecution, in furtherance of the criminal conspiracy, the loan was sanctioned without obtaining basic documents and proper verification by A3 and entire loan proceeds were misutilised by the petitioners in connivance with A2, A3 and other accused, it leads loss to the Bank. According to the petitioners, they have availed the loan by producing the original documents and not forged documents. Further, they settled the entire dues in the SARFAESI Proceedings and there is no loss either to the Bank or the Government.

12. Considering the facts and circumstances of the case, as already stated that, from the admitted facts and on perusal of the charge sheet, it is clear that there are certain allegations against these petitioners under Sections 120(B) r/w. 409, 420, 468 r/w.471 IPC and under Sections 13(2) r/w. 13(i)(d) of Prevention of Corruption Act, 1988. Further, from the materials produced by the prosecution under Section 173 of Cr.P.C to these petitioners, there are prima facie materials available to proceed the case against these petitioners.

13. Further if one sees Sections 239 and 240 of Cr.P.C, if the Court comes to a conclusion that the case put up against the accused is groundless, if unrebutted it would not warrant conviction, there is no sufficient material to frame the charge, to put it simply, there is no prima facie case as against the accused, the Court has to discharge the accused. But if it is otherwise, there is a ground to proceed further, the Court has to frame the charges.

14. In the instant case, as already stated, there are materials to show that the loan was sanctioned without obtaining basic documents and proper verification by A3. At this stage, this Court can have the impression that they might have committed the offence and the probative value of the materials cannot be tested. Further settling dues during the SARFAESI proceedings will not take away the criminal offence done by these petitioners. All these defences can be taken during the trial and not at the stage of framing charges.

15. No doubt, the benefit of doubt always goes in favour of the accused. But at the same time, at the stage of framing charges under Sections 239 of Cr.P.C, the benefit of doubt goes in favour of the prosectuion. That is even a suspecian drawn on incriminating materials is enough to frame a charge against the accused. At this stage, this Court can have the impression that she or he might have committed the offence. Further at this stage, probative value of the materials cannot be tested.

16. Considering the facts and circumstances of the case, this Court bearing in mind the important fact that as far as the present stage is concerned, there are enough materials to implicate the petitioners in this case and further the charge sheet as laid down in the present case in C.C.No. 2 of 2012 for the offence under Sections 120(B) r/w. 409, 420, 468 r/w.471 IPC and under Sections 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 cannot be ignored and this Court comes to an irresistable and inescapable conclusion that there are enough materials in the form of records to bring home the role played by these petitioners. Therefore, the petition filed by the revision petitioners before the trial Court seeking to discharge them from the case in C.C.No. 2 of 2012 in Crl.M.P.No.1146 of 2012 is liable to be dismissed. Under the above said circumstances, the dismissal order passed by the trial Court in Crl.M.P.No.1146 of 2012 in C.C.No. 2 of 2012 dated 12.01.2016 does not suffer from any material irregularity or patent legal infirmity in the eye of law.

17. In fine, the Criminal Revision Petition is dismissed. The order passed by the learned trial Judge in Crl.M.P.No.1146 of 2012 in C.C.No. 2 of 2012 dated 12.01.2016 is confirmed. Consequently, connected Miscellaneous Petition is closed.

18. Since the alleged commission of offence is in the year of 2008 and the Calendar Case is of the year 2012, the trial Court is directed to expeditiously dispose the case, preferrably within six months from the date of receipt of a copy of this order. Both the learned Additional Public Prosecutor and the learned defence counsel will give their co-operation to the trial Court to complete this case in time and it is made clear that the learned trial Judge, uninfluenced by the observations made in this order, will dispose of C.C.No.2 of 2012 on merits in accordance with law.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Mra

To

1.The Additional Superintendent of Police,
SPE : CBI : ACD :
Chennai (RC/B8/A/2010)

2.The XI Additional City Civil Judge,
CBI Cases,
Chennai.

3.The Special Public Prosecutor,
CBI Cases, Chennai.

Crl.R.C.No.551 of 2016

SVI (CO)
PSI (28/12/2016)