

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 02.11.2016

JUDGMENT PRONOUNCED ON : 09.12.2016

CORAM:

THE HON'BLE MR. JUSTICE P. VELMURUGAN

Crl.O.P.No.17329 of 2013

and

M.P.No.1 of 2013

N.Venkatachalam ... Petitioner

-vs-

State represented by
The Inspector of Police
CBI/EOW/Chennai.

... Respondent

This Criminal Original Petition is filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.54 of 2011 on the file of the XI Additional Special Judge for CBI Cases, Chennai and to quash the same.

For Petitioner : Mr. N.R. Elango Sr.C for
Mr.R.Vivekananthan

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor

O R D E R

This Criminal Original Petition is filed praying to call for the records in C.C.No.54 of 2011 on the file of the XI Additional Special Judge for CBI Cases, Chennai and to quash the same.

2. The case of the petitioner as averred in the Original Petition in brief is as follows:-

The petitioner is facing trial before the learned XI Additional Special Judge for CBI Cases, Chennai, for the offences under Sections 120-B r/w.420, 467, 468 and 471 of IPC and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act,

1988 based on the allegations alleged in the charge sheet are that petitioner is the Deputy General Manager and while working as Chief Manager, Bank of India, Usman Road Branch, Chennai, and as Assistant General Manager, Bank of India, Coimbatore Main Branch, the petitioner abused his official position as Public Servant and by corrupt and illegal means obtained / allowed pecuniary advantage to the borrowers viz., A-1, A4, A11, A2 and one S.Shanmugam (died) in the matter of above said credit facilities / loans, knowing fully well that the said A1 and S.Shanmugam (died) and C.Sundar had no title over the properties offered as collateral securities to the Bank of India; that the petitioner as Head of the Branch accepted the forged property documents, without conducting proper pre-sanction inspection and post-sanction inspection of the properties to cover it up; that the petitioner knowing fully well allowed diversion of funds of loans into the accounts of A1; that the said loan accounts became NPA, which resulted in wrongful loss of Rs.2,74,24,378/- to the Bank of India and pecuniary advantage of A1 and his family members; the above acts of the accused persons established the commission of offences punishable under Sections 120-B r/w.420, 467, 468 and 471 of IPC and Section 13(2) r/w.13 (1)(d) of Prevention of Corruption Act, 1988. The petitioner filed a discharge petition before the learned XI Additional Special Judge for CBI Cases, Chennai, in CrI.M.P.No.1603 of 2012, which was dismissed on 05.04.2013. Now, the petitioner herein has approached this Court to quash the proceedings under Section 482 of Cr.P.C.

3. The main grounds raised by the petitioner for quashing the case are that the sanction accorded to prosecute the petitioner is illegal and invalid as per the decisions of the Hon'ble Supreme Court and the Madras High Court. The charge sheet had not made any allegations for criminal conspiracy against the petitioner. The charge sheet had also not made allegation of any wrongful gain made by the petitioner. The charge sheet had also not made any allegations of any other relationship of the petitioner with the other accused. It is also pertinent to mention that while the other accused were shown to be having some sort of relationship with one another, there was no such allegation or finding in the investigation report in respect of the petitioner. The petitioner is one of the eight officers, who have at various times recommended / sanctioned loans to A1 and all the other seven officers have not been charged. The bank before making complaint to the respondent had also done its internal investigation and found nothing amiss and thus proper and in the normal course of business. It is only the petitioner, who was cheated and he could at no stretch be alleged for cheating or forgery as the documents and valuation were scrutinized by the designated authorities like Panel Advocate, Panel Valuer and Credit

Evaluation and Recommendation Authorities of the bank. The borrower had settled all their dues to the bank and the banker also had issued "'No Due Certificate'" to the effect, the borrowers have no further liability in respect of the loan accounts, that are the subject matter of the present case. The competent authority of the bank refused to give sanction against the petitioner and they sent a letter dated 04.07.2011 reference No. VIG/CHN/94/1815 to CVC for not prosecuting the petitioner. After this refusal, the CBI obtained sanction from the authorities concerned, without placing new materials. The sanction for prosecution, which had been initially refused by the sanctioning authority, was again subsequently given based on the same materials. The respondent had not obtained proper sanction in accordance with law before seeking to prosecute the petitioner in the above case. Therefore, under these circumstances, the Criminal Original Petition is filed to call for the records in C.C.No.54 of 2011 on the file of the XI Additional Special Judge for CBI Cases, Chennai and to quash the same.

4. The case of the respondent as averred in the counter are as follows:-

The case against the petitioner was registered on the basis of the complaint dated 30.04.2010 received from Shri A.K.Ghosh, Assistant General Manager & Deputy Zonal Manager, Bank of India, Chennai Zonal Office, Errabalu Street, Chennai - 1. The brief allegations as per FIR are that (i) E.Muthusamy (A1), (ii) C.Sundar, (iii) Late S.Shanmugam (iv) A.Vincent (A2) and (v) O.P.Thamaripoo (A3) entered into criminal conspiracy with other unknown persons obtained eleven different loans from Bank of India, Usman Road Branch, Chennai, by furnishing forged title deeds and its revenue records, knowing fully well that they were forged and caused wrongful loss to the tune of Rs.238.97 lakhs plus interest to the bank and obtained corresponding wrongful gain to themselves. The case of the prosecution is that A1 to A11 entered into conspiracy among themselves to cheat Bank of India by using forged sale deeds, pattas, enjoyment certificates, acknowledgments of Income Tax Returns etc., dishonestly and fraudulently in connivance with A12/petitioner herein, of Bank of India. The petitioner, Deputy General Manager while working as Chief Manager, Bank of India, Usman Road Branch, Chennai, and as Assistant General Manager, Bank of India, Coimbatore Main Branch, in pursuance of the criminal conspiracy abused his official position as Public Servant and by corrupt or illegal means obtained / allowed pecuniary advantage to the borrowers viz., A1, A4, A11, S.Shanmugam (died) and A2 in the matter of the sanction of various credit facilities / loans, knowing fully well that the said A1, S.Shanmugam (died) and C.Sundar had no title over the properties offered as collateral securities to the Bank of India. The petitioner (A12) as Head

of the Branch accepted the forged property documents without conducting proper pre-sanction inspection and post-sanction inspection of the properties to cover it up. The petitioner knowing fully well allowed diversion of funds of loans into the accounts of A1. The said loan accounts became NPA on 11.07.2009, which resulted in wrongful loss of Rs.2,74,24,378/- to the Bank of India and pecuniary advantage of A1 and his family members. The above acts of the accused persons established the commission of offences punishable under Sections 120-B r/w.420, 467, 468 and 471 of IPC and Section 13(2) r/w.13 (1)(d) of Prevention of Corruption Act, 1988. Therefore, the charge sheet has been filed before the learned XI Additional Special Judge for CBI Cases, Chennai against A1 to A12 for the said offences. The petitioner was arrayed as A12 and the case is pending for trial on the file of the learned XI Additional Special Judge for CBI Cases, Chennai.

5. The learned counsel for the petitioner would submit that there is no allegation of conspiracy against this petitioner and allegation of any wrongful gain made by the petitioner, any allegation of any other relationship of the petitioner with other accused. The petitioner is one of the eight officers, who had also on various occasions recommended / sanctioned loan to A1, but the other seven officers have not been charged. The bank before making complaint to the respondent had also done its internal investigation and found nothing against this petitioner. The respondent has not obtained proper sanction in accordance with law, before seeking to prosecute the petitioner in the above case. The competent authority had refused sanction for the prosecution of the petitioner. The CMD of the bank also refused sanction for the prosecution of the petitioner. The bank had conducted an elaborate internal investigation by an independent professional Investigating Agency by Mr.G.Chandrasekaran, a retired CBI and BOI official. During the enquiry of the petitioner, the respondent had grilled the petitioner extensively on the basis of the above said investigation report dated 26.02.2010. The respondent had suppressed the above documents and coerced the competent authority of the bank to accord sanction for prosecution by holding a tripartite meeting comprising the respondent CVC representative and the competent authority of the bank. The sanction obtained for prosecution of the petitioner is not independent of the appropriate authority and thus, the same is not valid in law. There is no allegations or materials or collateral evidence of any wrongful gain made against the petitioner. The borrower had settled all their dues to the bank and there is no loss to the bank. The competent authority of the bank refused to give sanction against the petitioner and they sent a letter dated 04.07.2011 reference No.VIG/CHN/94/1815 to CVC for not prosecuting the petitioner. After this refusal,

the CBI obtained sanction from the authorities concerned without placing new materials. The sanction accorded to prosecute the petitioner is illegal and invalid. In support of his attention, the learned counsel for the petitioner has cited the following decisions of the Hon'ble Supreme Court and the Hon'ble Madras High Court:-

a) The decision of this Hon'ble Court in the case reported in (2012) 3 MLJ (Cri.) 368, Ravi kumar and another v. State, represented by the Deputy Superintendent of Police, SPE/CBI/ACB/Chennai. In the said judgment, this Court has quoted the observation of the Hon'ble Supreme Court in paragraph-17 as follows:-

"The Hon'ble Supreme Court has held that the order either refusing or granting sanction is an order passed under statutory power, but at the same time, it is held that even the power once exercised can be exercised once again, but while reconsidering the matter, fresh material must have been collected by the investigating agency subsequent to the earlier order and it should have been placed before the sanctioning authority."

b) The Hon'ble Supreme Court of India has decided in the case of State of Punjab & another v. Mohd. Iqbal Bhatti, reported in (2011) 1 SCC (Cri.) 949, that reconsideration of the earlier decision by the sanctioning authority without any fresh material is not acceptable.

c) Further in the reported case of State of Himachal Pradesh v. Nishant Sareen reported in AIR 2011 SC 404, it has been held by the Hon'ble Supreme Court as follows:-

"12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reason best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and

placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

13. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated March 15, 2008, it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible.

14. By way of foot-note, we observe that the investigating agency might have had legitimate grievance about the order dated November 27, 2007 refusing to grant sanction, and if that were so and no fresh materials were necessary, it ought to have challenged the order of the sanctioning authority being not of continuing character could have been exercised only once on the same materials.''

6. The learned counsel for the petitioner would further submit that in view of the above judgments, it is very clear that if the sanctioning authority has declined permission initially, then the Investigating Agency will have to place additional evidences / materials before the sanctioning authority in case of reconsideration. However, the respondent, i.e., the CBI have not placed any such additional evidences / materials collected subsequent to the earlier order for declining sanction for prosecution to the competent authority and therefore, the initiation of the prosecution proceeding against the petitioner is per se not in conformity with the law laid down by the Supreme Court and the High Court and has to be quashed.

7. The learned Special Public Prosecutor for CBI Cases would submit that the reading of charge sheet itself shows that there are specific allegations against this petitioner for the alleged offences punishable under Sections 120-B r/w.420, 467, 468 and 471 of IPC and Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988 and after investigation, the prosecution has got sufficient materials to show the involvement of this accused for the offences under Sections 120-B r/w.420, 467, 468 and 471 of IPC and Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988. As far as the contention regarding the sanction order is concerned, the CBI report was placed before the Executive Director and the Disciplinary Authority for his

comments. He has furnished his tentative view for not prosecuting Shri.Venkatachalam, since there is a difference of opinion between the competent authority and the CBI. As per the CVC guidelines, the matter was placed before the Chairman and Managing Director for his view. The Chairman and Managing Director has since concurred with the view of the competent authority. Accordingly, they referring this case to him seeking his advice in the matter. It is clear from the above that there was only a difference of opinion between the competent authority of the Bank of India and CBI and therefore, no final order was passed for refusing to grant sanction. The respondent has got sanction for prosecution in accordance with law.

8. The learned Special Public Prosecutor for CBI Cases would further submit that there are umpteen number of rulings of Hon'ble Apex Court as well as different Hon'ble High Courts which clearly say that at this stage, charges can be framed on the strength of a Police Report, list of witnesses and list of documents. The learned Court need not look into the defence documents or the defence of the accused at this stage. Prima facie evidence is sufficient to frame charges. Moreover, as per the ruling "Nirmaljit Singh Hoon v. State of West Bengal" reported in AIR 1972 SC 2639, the Hon'ble Supreme Court of India had held that, the test is whether there was sufficient ground for proceeding and not whether there is sufficient ground for conviction, and where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage. This stand was upheld by the Hon'ble Supreme Court in the rulings, "State of Bihar v. Ramesh Singh" reported in 1979 Cr.L.J. 1390 wherein, the Hon'ble Apex Court has observed that strong suspicion against the accused is sufficient for framing charges. In another ruling "Niranjan Singh Punjabi v. State of Maharashtra" reported in AIR 1990 SC 1962, the Hon'ble Supreme Court has held that at the state of framing of charge, the duty of the Court is only to evaluate the materials and documents to find out whether facts emerging therefrom disclose all the ingredients of the alleged offence. In "State of Jammu & Kashmir .v. Sudarshan Chakkar" reported in 1995 of Cr.L.J, the Hon'ble Supreme Court held that at the time of framing of charge, the Court should find its attention only to the documents. The Hon'ble Supreme Court, while explaining the requirements under Sections 227 & 228, 239 & 240 and 245(1) & (2), categorically stated that, test of existence of prima facie case - if there is ground for presuming that the accused has committed the offence, it can be said that a prima facie case has been made out against the accused - Even if the Court think that the accused might have committed the offence, it can frame the charges - At the stage of framing of charge, probative value of the materials on record

cannot be gone into. In "State Anti Corruption Bureau, Hyderabad and another v. P.Suryaprakasam" reported in 1999 Supreme Court Cases (Cri.) 373, the Hon'ble Supreme Court has observed that at the stage of framing of charge, what the trial Court is required to and can consider are only the police report under Section 173 Cr.P.C and documents sent with it. The only right of the accused is of being heard and nothing beyond that. Of course, at that stage, the accused may be examined, but that is a prerogative of the Court only. This position was again confirmed by the Hon'ble Supreme Court in "State of Orissa v. Debendra Nath Padhi" reported in 2004 (8) SC 568. In another ruling "State of Delhi v. Gyan Devi and others" reported in 2001 MLJ (Cri.) 117, the Supreme Court held that at the stage of framing of charges, duty of the Court is not to examine and assess in detail the materials placed before it, but it has to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. Further the Hon'ble Supreme Court held in 2009 (1) SCC (Criminal) Page 953 in the matter of Paul Vargheesh v. State of Kerala - Sec.19 of PC Act - Error, omission or irregularity in sanction - effect of - held - it is not fatal unless it has occasioned or resulted in failure of justice - requirement of sanction under Section 19(1) is a matter of procedure and does not go to the route of the jurisdiction.

9. Heard both sides. Considered the submissions made by the learned counsel for both sides. Perused the records placed before the Court carefully.

10. The admitted facts are that the petitioner is a Deputy General Manager in Bank of India and A1 applied loan from the Bank where the petitioner was working and the petitioner has also sanctioned loan to A1. Now the borrower has settled the loan. The disputed facts are that according to the petitioner, though when he was a Chief Manager and also Assistant General Manager he sanctioned loan to A1, but he is one of the eight officers, who have at various occasions recommended / sanctioned loan to A1 and all the other seven officers have not been charged; the bank before making complaint to the respondent had also done its internal investigation and found nothing against this petitioner; there is no loss to the bank and none of the ingredients of the offence are made out against this petitioner; the competent authority of the bank refused to grant sanction against the petitioner and they have sent a letter for not prosecuting the petitioner; after the refusal, the CBI obtained sanction from the authority concerned, without placing new materials; the sanction for prosecution, which had been initially refused by the sanctioning authority, was subsequently given based on the same materials; therefore, the sanction order

is not in accordance with law and therefore, it vitiates the case of the prosecution. According to the respondent, they have got enough materials to proceed against this petitioner; subsequent settlement of loan dues will not take away the offence committed by the petitioner; there was no final order passed for refusal; therefore, the contention raised by the counsel for the petitioner is not acceptable and the authorities submitted by the counsel for the petitioner are not applicable to the present case.

11. On perusal of the quash petition filed by the petitioner, counter affidavit filed by the respondent, documents filed by both sides and on considering the submissions made by both the counsel and the authorities submitted by both sides, it is seen that a case under Section 120-B r/w. 420, 467, 468 and 471 of IPC and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 was registered in FIR No. RC.09/E/2010/CBI/EOW/Chennai against this petitioner and other accused. After investigation and after getting sanction for prosecution, the respondent has filed charge sheet in No.09/2011 dated 27.12.2011 against this petitioner and other accused. The petitioner is challenging the order of sanction for prosecution. The main contention is originally the sanctioning authority refused to accord sanction to prosecute this petitioner and subsequently, the CBI had influenced the sanctioning authority and based on the influence, the sanctioning authority accorded sanction to prosecute this petitioner and also he relied on the following judgments of the Hon'ble Supreme Court and the Madras High Court:-

- a) Ravi kumar and another v. State, represented by the Deputy Superintendent of Police, SPE/CBI/ACB/Chennai reported in (2012) 3 MLJ (Cri.) 368.
- b) State of Punjab & another v. Mohd. Iqbal Bhatti, reported in (2011) 1 SCC (Cri.) 949.
- c) State of Himachal Pradesh v. Nishant Sareen reported in AIR 2011 SC 404.

12. On careful perusal of the records referred by the counsel for the petitioner, there are no records found to show that the sanctioning authority initially refused to accord sanction and final order was passed in writing with reference to refusal. The letter dated 04.07.2011 sent by CVO, Bank of India, addressed to Advisor, Chief Vigilance Commissioner, New Delhi, reads as follows:- "the CBI report was placed before the Executive Director & Disciplinary Authority for his comments. He has furnished his tentative views for not prosecuting Shri Venkatachalam. Since there is a difference of opinion between the Competent Authority and the CBI, as per the CVC guidelines, the matter was placed before the Chairman & Managing Director for his views. The Chairman & Managing Director has since

concurred with the view of the competent authority. Accordingly, we referring this case to you seeking your advice in the matter."

13. As stated by the learned Special Public Prosecutor, there was only a difference of opinion between the competent authority of Bank of India and CBI. But that is not the final order passed by the sanctioning authority refused to accord sanction in the earlier occasion. Further, there is no records to show as mentioned in the citations referred by the learned counsel for the petitioner that the sanctioning authority already passed final order in this regard. Therefore, the contention raised by the petitioner that the sanctioning authority earlier decided not to prosecute this petitioner, but subsequently, without any new materials and with the very same materials as available on the date of refusal, has accorded sanction. Since there is no final order earlier to the present sanction order, the sanctioning authority had taken decision and passed order in writing not to grant sanction. Under these circumstances, the present sanction order is in accordance with law and the same is not vitiated the case. So whatever the grievance with reference to the sanction order, it is left open to the petitioner to agitate before the trial Court during the trial. There is no illegality in according sanction for prosecution. When the materials are placed before authority concerned, with the available materials, if the appointing authority comes to the conclusion that there is commission of offence made out against the public servant, the appointing authority may accord sanction. It is the statutory duty of the appointing authority. Though, it is the discretionary power of the sanctioning authority, the discretion should not be exercised arbitrarily and it should be exercised judicially. Since there was no final order regarding refusal to sanction for prosecution against this accused, the sanction order under challenge holds good. Under these circumstances, the authorities submitted by the learned counsel for the petitioner is not applicable to the present case on hand. In the above referred decisions, it is clearly discussed about the dismissal of the sanction order and held that once the sanctioning authority decided not to grant sanction and passed an order of refusal, then without any new material, subsequently on the very same material, sanction cannot be accorded. But in the present case on hand, as stated earlier, there is no records to show that in earlier occasion, refusal order was passed by the sanctioning authority and subsequently, on the very same materials and without placing any new materials, the sanctioning authority has accorded sanction to prosecute the petitioner. Therefore, under the above said circumstances, the contention raised by the learned counsel for the petitioner is not acceptable and the authorities submitted by the learned counsel

for the petitioner are not applicable to the present case on hand.

14. Since there is specific allegation against this petitioner in the charge sheet and the documents produced in the police report under Section 173 Cr.P.C., there are enough materials available to proceed against this petitioner. Settling the dues of the bank by the borrower subsequent to the filing of this case is also not a ground for quashing the proceedings.

15. In the above circumstances, there is no ground to quash C.C.No.54 of 2011 on the file of the XI Additional Special Judge for CBI Cases, Chennai, invoking Section 482 of Cr.P.C. There is no merits on this petition and therefore, this Criminal Original Petition is liable to be dismissed and accordingly, dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The XI Additional Special Judge,
for CBI Cases, Chennai

2 The Public Prosecutor (CBI Cases)
High Court, Madras

3 The Inspector of Police
CBI/EOW/Chennai

SSI (CO)
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CrI.O.P.No.17329 of 2013 and
M.P.No.1 of 2013