THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.935 of 2013

ORDER:

The criminal revision case is filed questioning the correctness of the order dated 09.04.2013 in Crl.MP.No.1518/2011 in CC No.24/2009 on the file of the III Additional Special Judge for CBI Cases at Hyderabad, by and under which, the Court below dismissed the petition filed by the petitioner/A11 seeking to discharge him from the charges levelled against him.

Heard the learned counsel appearing for the petitioner/A11 and the learned Additional Public Prosecutor, representing the State.

The case of the prosecution in brief is as follows:

It is alleged that the non-petitioner/A1, the then Senior Divisional Manager of Oriental Insurance Company Limited (for short 'OICL'), DO-III, Secunderabad, the non-petitioner/A2, the then Branch Manager of OICL, CBO-VII, Parklane Branch, Secunderabad and the non-petitioner/A3, the then Administrative Officer of OICL, DO-III, Secunderabad, have criminally conspired with the present petitioner/A11 and other accused with dishonest and fraudulent intention to cheat Oriental Insurance Company Limited for wrongful gain in the settlement of 6 motor accident claims, 3 fire claims, four engineering claims and four Marine Cargo claims, along with survey fee wroth Rs.61,28,065/- on the basis of false and fabricated survey reports and other forged documents and caused loss to the Insurance Company. The petitioner/A11 was the General Manager of M/s.MMS Steel & Power Private Limited. M/s.MMS Steel & Power Limited had taken policy No.431301/11/POL/2006/MIG/654 for the period from 30.12.2005 to 29.10.2006 from OICL, DO-III, Secunderabad and said company filed a claim No.2007/002 for Rs.21,00,472/- as fire broke out in store room on 05.06.2006, and the claim was settled for Rs.20 lakhs which was paid by way of cheque. The allegation against the petitioner/A11 is that he being the General Manager of the said Company made false claim and got it settled for Rs.20 lakhs through the insurance officials by submitting false intimation letter, false claim form and false fire certificates etc., even though no fire accident has occurred. In this regard charge sheet was laid against the present petitioner/A11 and other accused for the offences punishable under Sections 120-B, 419, 420, 468 and 471 IPC and under section 13(2) r/w.13(1)(d) of P.C.Act, 1988.

The petitioner/A11 filed a petition under section 239 Cr.P.C before the Court below seeking discharge from the charges leveled against him stating that he cannot be linked with the crime without any evidence. Mere for signing on claim form on behalf of the company, he cannot be prosecuted in this crime. As per the statement of LW 39-K.Appala Raju, fire accident was occurred in the plaint.

The learned Court below vide orders dated 09.04.2013 dismissed the said discharge petition while observing that there is *prima facie* case against the petitoner/A11 and without examining the witnesses cited and the documents relied upon by the prosecution, the petitioner/A11 cannot be discharged of the charges levelled against him. Questioning the said order, the petitioner/A11 filed the present revision petition.

The point that arises for consideration in this revision is as to whether the petitioner/A11 is entitled to be discharged of the offences alleged against him or whether there is *prima facie* material to proceed against him.

<u>Point:</u>

As already stated, the petitioner/A11 being the General Manager of M/s.MMS Steel & Power Private Limited, which is shown as A12, has been prosecuted by CBI along with several officials of the Oriental

Insurance Company Limited alleging that there is a deep seated conspiracy in between the accused so as to defraud the Insurance Company by setting up different type of false claims, such as, motor accidents claims, fire claims, Marine cargo claims etc. It is alleged that all the accused have conspired and caused huge loss to the insurance company by making dishonest and fraudulent claims.

In so far as the petitioner/A11 is concerned, the specific allegation made against him is that with a view to cheat the insurance company, he submitted a false claim, intimation letter, false claim form and false fire certificate indicating that fire accident was occurred at their plant at Nagapattinam, Tamilnadu on 5th /6th June 2006, even though the actual damage/fire accident have not taken place and got processed the wrong claim of Rs.20 lakhs and thereby cheated the insurance company.

The contention of the petitioner/A11 is that on the basis of the information that is furnished to him by the Plant Personnel at Nagapattinam, he being stationed at Hyderabad, has submitted the claim forms and that the claim was settled and amount was paid to the A12 company and that he has not derived any pecuniary benefit. In other words, his contention is that only on the basis what was informed to him by LW 39 i.e. Kalidindi Appalaraju, who was working as Stores incharge at their site at Nagole, he submitted the claim forms.

A perusal of the statements of the said Stores incharge shows that there was a miner fire accident and he informed the same to the Head Office at Hyderabad. The said Stores incharge did not inform the local police, the fire station or the Electricity Department. As per the statement of the said witness, he has informed the head office only about there being a fire accident. It is the petitioner/A11 in his capacity as General Manager of the A12 company, has submitted the claim for about Rs.21 lakhs and the claim was ultimately settled for Rs.20 lakhs and the amount was paid to the account of the A12 company. The petitioner/A11 has also addressed a letter on 05.06.2006 to the Senior Divisional Manager informing that on 04.06.2006 their stocks got damaged due to fire at Nagapattinam power plant and requested to depute the surveyor, along with this, he also enclosed the claim form. The contention of the petitioner/A11 is that on the basis of the claim made by him, the officials of the Insurance Company have surveyed the plant and that only on being satisfied, made the claim.

The contention of the petitioner/A11 is that he has not done anything except for filling up and submitting the claim form to the insurance company on the basis what was told to him by the personnel at the plant. What is the responsibility of the petitioner/A11 being the senior official of the Company at Hyderabad is matter of detailed evidence. On what basis he has given the details of the loss sustained by the company in the claim form is to be culled out during trial. *Prima facie*, the allegations are made to the effect that there was conspiracy in between different claimants, including the petitioner/A11 and also officials of the insurance company, who are shown as the accused and huge loss was caused to the insurance company by submitting, processing and clearing different types of claims, such as, fire accident claims, motor accident claims etc.

Learned counsel for the petitioner/A11 has relied upon several authorities of the Apex Court, which no doubt lay down the legal proposition with which there is no quarrel. The scope of the enquiry that is contemplated at the stage of framing of the charge is well settled and there are catena of authorities on this aspect. Briefly stated, at the stage of framing of the charge what all that is required by trial court to see is as to whether the cumulative effect of the oral and documentary evidence that is produced by the investigating officer *prima facie* make out a case against the person arrayed as an accused to proceed with the trial or whether the allegations *per se* are groundless so as to discharge the petitioner/A11 even without there being any further trial.

In ***Union of India v. Prafulla Kumar***[1] the Hon'ble Supreme Court in para-10 laid down the following principles as under:

> "10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :
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> (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:
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> (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.
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> (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and largo however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
>
> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

In ***Dilawar Babu Kurane v. State of Maharashtra***[2] the Hon'ble Supreme Court made the following observations at para-12:

> "12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weight the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trail [See *Union of India v. Prafulla Kumar Samal and Anr.* 1979CriLJ154 .

In ***CBI v. K.Narayana Rao***[3] after referring to several judgments on the subject, the Hon'ble Supreme Court has made the following observations:

> "21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:
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> (i) The Judge while considering the question of framing the charges Under Section 227 Code of Criminal Procedure has the undoubted power to sift

and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is

> opposed to common sense or the broad probabilities of the case.
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> (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.
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> From the above decisions, it is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, in that event, it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. A judicial magistrate enquiring into a case Under Section 209 of the Code is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once. It is also settled law that while exercising jurisdiction Under Section 227 of the Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This provision was introduced in the Code to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analyzing the role of the Respondent herein (A-6) from the charge sheet and the materials supplied along with it, the above principles have to be kept in mind".

From the above authoritative pronouncements of the Hon'ble Supreme Court, the scope of enquiry at the stage of framing of charge was laid down in unambiguous terms to the effect that the Court has to determine as to whether there is *prima facie* case to proceed with the trial or whether absolutely there are no grounds to frame the charges which, however, cannot be done by undertaking a roving enquiry into the pros and cons of the matter and weigh the evidence as if, a trial is being conducted.

In the instant case, the evidence of the proposed witnesses and the documents that are relied upon by the investigating agency have to be appreciated in detail after a full fledged trial. The petitioner is a Senior General Manager of A12 Company and he has filled up and submitted the claim form which it is alleged to be false and fraudulent. There are several documents and circumstances which *prima facie* go to show that it is a fit case where trial has to be conducted. The learned trial Court has considered all these aspects in proper perspective and dismissed the petition filed by the petitioner/A11 to discharge him. There are no merits in the revision petition and the same is liable to be dismissed.

In the result, the Criminal Revision Case is dismissed. It is needless to mention that the trial Court shall not be influenced by any of the observations made in this order while proceeding with trial of the calendar case, in accordance with law.

It is however submitted that the petitioner/A11 is a senior official, aged more than 55 years and therefore, his presence during course of trial may be dispensed with.

Considering the facts and circumstances of the case, the trial Court is directed to proceed with the trial and dispose of the matter, however, without insisting for the presence of the petitioner/A11 for each and every adjournment, unless it feels that his physical presence is necessary for any specific purpose.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 29.01.2015

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[1] 1979 Crl.L.J 154

[2] 2002 Crl.L.J 980

[3] 2012 Crl.L.J 4610