IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 13.02.2017

Date of pronouncing the Judgment: 22.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.O.P.No.23321 of 2013

M. Ravichandra Babu .. Petitioner / Accused No.12

Vs.

State rep. by
The Inspector of Police
Special Police Establishment,
Central Bureau of Investigation
Economic Offences Wing
Chennai
RC No.3(E)/3008 .. Respondent / Complainant

PRAYER: Petition filed under Section 482 of Criminal Procedure Code praying to call for records relating to the Charge-sheet in C.C.No.24 of 2009 on the file of XI Additional Special Judge for CBI Cases, Chennai, and quash the same in respect of Petitioner/Accused No.12, quash the charge sheet No.3 of 2009 dated 30.06.2009 filed by the Respondent against the Petitioner/Accused No.12 in R.C.No.3(E) of 2008 dated 21.04.2008.

For Petitioner : Mr. N.R. Elango, Senior Counsel for M/s. Surana & Surana

For Respondent : Mr. K. Srinivasan, Special Public Prosecutor

ORDER

The Criminal Original Petition has been filed under Section 482 of Code of Criminal Procedure, 1973, praying to call for the records relating to Calendar Case No. 24 of 2009 on the file of XI Additional Special Judge for CBI Cases, Chennai, and quash the same in respect of Petitioner/Accused No.12.

2. The Respondent laid final report u/s 173(2) Cr.P.C. before the Principal Special Judge for CBI cases, Chennai u/s 120B IPC r/w 420, 419, 467 & 471 IPC and Section 13

(2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988, as against the Petitioner/Accused -A-12 & 13 others.

3. Brief fact of the case is that the first Accused namely M/s. Jailani Steel Traders is a Partnership firm. A-2 to A-9 is the partners of the above firm. A-10 was the Bank Manager of United Bank of India, T.Nagar, Chennai. A-11 is the panel advocate for the above bank. A-12 who is the Petitioner herein namely Mr. M. Ravichandra Babu prepared the Project Report to avail loan from the bank for the first Petitioner. A-13 is Mr. S.R. Sekar, who entered into criminal conspiracy with S.Amurudheen (A-3) and A-14. M. Chakravarthy and arranged fictitious persons A-4, A-5, A-6, A-7 and A-8 to impersonate as K.Vadivel, S.Aravalli, K.Rajamalli, B.Rani and B.Murugan respectively and executed a false Partnership Deed back dated 01.04.2003 having A-2 to A-9 as Partners of A-1 firm M/s.Jailani Steel Traders.

4. As per the Prosecution case, A-2 to A-14 during the period between 2004 to 2007 entered into a criminal conspiracy among themselves to cheat the United Bank of India, T. Nagar Branch, Chennai, and in pursuance of the said criminal conspiracy A-2 to A-8 furnished false and fabricated documents such as Title Deeds, Encumbrance Certificates, Legal heir Certificates, Death Certificates, Ration Cards, Stock Statements etc., with dishonest and fraudulent intention to cheat the bank. In pursuance of the criminal conspiracy, A-4 to A-8 also impersonated and signed in the documents as if they were the real owners of the property situated at Survey No.315/1 to an extent of 2.02 Acres at Mogappair Village, Chennai, which was offered as one of the collateral securities to the bank. In pursuance of criminal conspiracy, A-3, A-9 and A-12 applied for credit facilities of Rs.3.00 crores in the name of A-1 firm by submitting false and inflated Project Report prepared by A-12 and suppressed the earlier credit facilities availed by A-3 from various banks. In pursuance of criminal conspiracy, A-10 accepted the projected balance sheets, trading & profit loss account, projected profitability statement and net worth of partners etc., prepared by A-12 Ravichandra Babu knowing fully well that he was not a competent person to prepare & submit the above said reports to the bank on behalf of the borrower. In furtherance, A-12 M. Ravichandra Babu also submitted a clarification letter to the bank on behalf of the A-1 firm that the new partners (1. K.Vadivelu; 2. S.Aravalli; 3. K. Rajamalli; 4. B. Rani; & 5. B.Murugan) are family friends of Smt. Jailani Beevi, Managing Partner, and known for decades. Thus, A-1 to A-14 caused wrongful loss to the extent of Rs.2.68 crores to the United Bank of India, T. Nagar Branch, Chennai.

5. The learned Counsel for the Petitioner submits that the Accused No.12 is a commerce graduate, freelance project

reporter and financial consultant. His main occupation is preparing project reports. The Project Report has been prepared by the Petitioner/A-12 on the document furnished by Jailani Steel Traders and the details of these were furnished by the Bank, as part of the pre-inspection report prior to sanction of loan. Further, it is submitted that the project report is only an estimate given by A-12 on the basis of data provided by the Auditor of the Company. Further it is stated the letter was signed by A-12 Ravichandra Babu, only in pursuance to the clarification sought to the project report submitted to the bank. Therefore, the learned Counsel for the Petitioner argued that the project report is like a legal opinion given by the Advocate on the basis of the documents furnished by the A-1. It is submitted that in this case A-11 namely, Mr. P.B. Sampathkumar, panel advocate of the United Bank of India who gave legal opinion regarding the marketability of the securities furnished by A-1, but, the Prosecution impleaded the panel advocate as one of the Accused in this case. The same was challenged by the panel advocate/A-11 before the High Court of Judicature at Madras in Crl.O.P.No.14801/2010 and M.P.No.1 of 2010. In the order passed in the said OP, it was observed "that the Petitioner/A-11 giving opinion to the bank in favour of the borrower based on the copies of the documents furnished to him and there is no other material to connect the Petitioner along with other Accused in the commission of offence of cheating the bank. It is further observed that there is no material to show that the Petitioner acted in a manner to defraud the bank or he was an active participant along with other co-accused in the alleged act of criminal conspiracy. Thus it is contended that it cannot be said that the Petitioner had given an opinion favourable to the borrowers knowing fully well that the copies of documents which are furnished to him were forged or fabricated and as such, no criminal liability can be fastened to him. In fine, the proceedings in respect of the A-11, alone is quashed.

6. Pointing it out, the learned counsel for the Petitioner herein submits that the Petitioner/A-12 also is similarly placed Professional and he has submitted only the project report in favour of the borrower based on the copies of the documents furnished to him. Therefore, it is argued the same ratio has to be applied to the Petitioner/A-12 also and hence prays to quash the proceedings in respect of Petitioner/A-12.

7. The learned Counsel of the Petitioner/A-12 submitted the following case laws in support of his contention:-

a. Nand Kumar Singh Vs. State of Bihar in 1992 Supp (2) Supreme Court cases 111 wherein it is held that, "simply because appellant received the benefits from LIC, he cannot be said to be a party to the cheating - In absence of sufficient evidence conviction of the appellant cannot be sustained --- Insurance Act, 1938, S.104."

b. Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao in (2012) 9 Supreme Court cases 512, wherein, it is observed that "The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrences have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable evidence."

Relying on the above said Rulings, the Petitioner/A-12 seeks to quash the Proceedings against him.

8. On the other hand refuting, the claim of the petitioner, the learned Special Public Prosecutor for the Respondent submitted that the Petitioner/Accused No.12 has acted as Auditor, though not qualified, signed and submitted financial statements of A-1 firm and gave replies to the bankers' queries with respect to A-1 firm and through such misrepresentation, caused sanction of loan and he took commission of Rs.14.98 lacs for such acts. It is further submitted that the Petitioner/A-12 has acted as a broker/agent for the banks. Further, Petitioner/A-12 called himself as an Auditor and used to prepare project report for the company and introduce new business to the banks. A-3 S. Amrudheen approached the Petitioner/A-12 through A-9 M. Sivakumar and requested him to arrange a bank loan for Rs.3.00 crores. The Petitioner/A-12 also agreed to arrange loan from bank and demanded 3% as Commission from the loan amount. The same was agreed by A-3. The Petitioner/A-12 had prepared documents such as Projected Profitability Statement, Projected Balance Sheet and went to the United Bank of India, T. Nagar Branch, Chennai, along with A-3 and he only introduced A-3 to the Branch Manager, A-10 and also handed over the loan application along with Project Report for sanction of cash credit limit of Rs.3.00

crores. With the connivance of the Petitioner/A-12 along with other Accused, the United Bank of India had sanctioned the cash credit limit of Rs.2.50 crores. Further it is submitted that there are sufficient evidences available against the Petitioner/A-12 for framing charges. The discharge petition earlier filed by the Petitioner/A-12 in Crl.M.P.No.4759/2009 before the Trial Court was dismissed on 27-04-2009 on the ground that "there is prima facie case clearly being made out against the Petitioner/A-12 for the offences alleged against him. Hence, the discharge petition is dismissed devoid of merit." Thus the respondent seeks dismissal of the present petition.

9. Further, the learned Special Public Prosecutor submitted the following case laws in support of Prosecution contention:-

a. "Nirmaljit Singh Hoon Vs. State of West Bengal" reported in AIR 1972 SC 2369, wherein 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 chaged 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.

b. Similarly, in the ruling, "State of Bihar Vs. Ramesh Singh" reported in AIR 1977 SC 2018 and "Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja" 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 Vs. State of Maharashtra" reported in AIR 1990 SC 1962, the Hon'ble Supreme Court has held that at the stage 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.

c. In "State of Jammu & Kashmir Vs. Sudarshan Chakkar" reported in 1995 of Cr.L.J. the Hon'ble Supreme Court held that at the time of framing charge, the Court should focus its attention only on the documents. The Hon'ble Supreme Court, while explaining the requirements u/s 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 charge-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 Vs. 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 u/s 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 Vs. Debendra Nath Padhi” reported in 2004(8) SC 568. In another ruling “State of Delhi Vs. Gyan Devi and others” reported in 2001 M.L.J. (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 material placed before it, 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. Following the above said ruling, the learned Special Public Prosecutor contended that there is enough material available on record in the present case, to proceed with the Trial and hence prays for dismissal of the petition. He also pointed out that this petitioner stands in different footing than that of A-11.

10. In such circumstances, considering the rival contentions and perusal of the final report including the list of documents and the authorities submitted by the respective Counsel, it is found that A-4 to A-8 have allegedly impersonated as K. Vadivelu, K. Aravalli, K. Rajamalli, B. Rani and B. Murugan respectively and executed a false partnership deed back dated on 01-04-2003 having A-2 to A-9 as partners of A-1 M/s. Jailani Steel Traders. The Manager, United Bank of India, T. Nagar, Chennai, raised some queries with regard to the above persons to the Petitioner/A-12. For that, the Petitioner/A-12 sent a letter to the Manager, United Bank of India, Chennai as “K.Vadivelu and his family M/s. Rajammalli, Aravalli, Rani and Murugan are new partners of the business admitted in view of the security offered. They are close family friends known for decades. They hold 30% of the business interest in Jailani Steel and are not actively involved in business.” Further the Petitioner/A-12 submits that Mr. Vadivelu, Rajamalli, Aravalli, Rani & Murugan are having assets, and net worth of each partner is Rs.125.00 lakhs, Rs.125.25 lakhs, Rs..128.25 lakhs, Rs.126.25 lakhs & Rs.124.50 lakhs respectively. The above letter issued by the Petitioner/A-12 would clearly shows that the Petitioner/A-12 is directly involved in the above offences. It is rightly stated by the learned Public Prosecutor that at the stage of framing of charges, the Court 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 person or not. In view of the above said alleged acts of the Petitioner/A-12 and documents produced by the Petitioner, it is clear that

sufficient material is available on record to make out a prima facie case against the Petitioner/A-12 herein and to proceed with the case against the petitioner herein.

11.In fine, on careful perusal of the materials placed before this court especially the final report filed by the respondent along with the list of oral and documentary evidence annexed therewith under Section 173 Cr.P.C, it is clear that a prima facie case is made out and sufficient incriminating materials are available against the petitioner to proceed further. In such circumstances, considering the entire facts and circumstances of the case, this Court comes to the conclusion that prima facie materials are available and the plea of the petitioner cannot be entertained. The Point is answered accordingly.

11.In the result, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs/nvsri

To

1.The Inspector of Police
Special Police Establishment,
Central Bureau of Investigation
Economic Offences Wing
Chennai. [RC No.3(E)/3008]

2.The XI Additional Special Judge for CBI Cases, Chennai.

3.The Public Prosecutor Office, High Court, Madras.

+1cc to M/s. Surana & Surana, Advocate sr.no.92391

Crl.O.P.No.23321 of 2013

rk(co)
nr 10/12/2018