

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.09.2017

Pronounced On : 22.09.2017

CORAM:

THE HON'BLE JUSTICE DR.G.JAYACHANDRAN

Crl.R.C.No.1242 of 2017
and Crl.M.P.No.11918 of 2017

1.P.Aswini
2.N.Prabhu

.. Petitioners

Vs.

State rep.by
Inspector of Police
Central Bureau of Investigation
EOW, Chennai.
(RC 2/E/2015/CBI/EOW/CHENNAI)

.. Respondent

PRAYER: This Criminal Revision Petition filed under Section 397 read with 401 Cr.P.C, against the order dated 25.06.2017 made in Crl.M.P.No.2183 of 2016 in C.C.No.5205 of 2016 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioners : Mr.M.Palanivel

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor(CBI Cases)

ORDER

The petitioners herein are facing the criminal prosecution before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.5205 of 2016, for alleged offences under Sections 120(b) I.P.C., r/w 420, 467, 468 and 471 I.P.C. The gravamen of the charge against the petitioners is that the first petitioner/P.Aswini, wife of second petitioner/N.Prabhu, the availed term loan of Rs.198 lakh under the Direct Credit Scheme with capital subsidy of Rs.15 lakh under Credit Linked Capital Subsidy Scheme (CLCSS) and Working Capital Limit of Rs.125 lakh vide two Letter of Intents (LOIs) both dated 31 December 2013 for the purpose of expansion cum modernisation of the project involving acquisition of multi-colour offset printers from SIDBI, Chennai. The first respondent has requested the defacto complainant/SIDBI to disburse a sum of Rs.170,62,500/- to Sri Sakthi Graphics, 2/559, B Perumalpatti, Perumal Koil Vandiyur, Madurai towards purchase of machineries supplied by them.

2. Accordingly, SIDBI credited a sum of Rs.150 lakh to Sri

Sakthi Graphics and directed Sri Sakthi Graphics to supply the machinery at the earliest and report the same. The first petitioner on 27.02.2014, requested to release of Rs.27,37,500/- to one Sun Traders, Sivakasi Branch for supplying electrical fittings. Accordingly, a sum of Rs.22.49 lakh was remitted into Sun Traders account as part payment. When a request for release of working capital was made by the first petitioner, the officials of the SIDBI/de-facto complainant inspected the premises of the first petitioner and found that the machinery have not yet arrived and the printing work were not carried out by the Sri Raghavendra Printers owned by the first petitioner, but carried out by M/s.S.B Printers owned by her husband/N.Prabhu. The loan of terminal advance and the working capital release were not utilised by the first appellant/P.Aswini, the printers was diverted to S.B Printers owned by her husband/N.Prabhu.

3. Further, there was default in payment of instalment by the first petitioner. Hence, reminder letters were sent by the de-facto complainant on various dates during the month of July-2014 and August 2014 to remit loan arrears and to regularise the term loan/working capital accounts. Further, visit was carried out by the

Branch Officials and the de-facto complainant. They observed that only part of the machinery arrived and rest of the machineries were not yet to be acquired. The unit had no power supply and stocks remains to be in the premises of the second petitioner. When enquired about the non-operation of the units, the promoters have given lame explanation and promised to rectify the same, within a week time and also clear the over due debts.

4. However, on the next visit by the Officials on 05.09.2014, they found that most of the machineries purchased by the first petitioner from the loan advanced by the de-facto complainant were removed and shifted to S.B Printers, at Maduravoyal owned by the second petitioner. When the Officials visited the premises of Sri Raghavendra Printers, Vanagaram, Chennai, on 05.09.2014, they found the unit under lock and the persons nearby inform them that unit owners tried to remove the machinery, but was prevented by the landlord since, they have not paid rent to him.

5. Thus, the complaint alleging the petitioners have forged documents to defraud SIDBI to the tune of Rs.3,21,51,844/- including principal outstanding of Rs.3,10,19,182/- and interest

overdue/other charges of Rs.11,32,662/- was lodged by the General Manager of SIDBI on 10.06.2015. The CBI has registered the case on 11.06.2015 and has completed the investigation and on filing report on 30.06.2016 before the learned Additional Chief Metropolitan Magistrate, Egmore at Chennai.

6. The petitioners herein who were arrayed as A1 & A2 have filed an application before the trial Court under Section 239 of Cr.P.C, to discharge them on the ground that they are innocent and not committed any crime as alleged in the final report. They have not committed any irregularity in repaying loan to the SIDBI Bank to the tune of Rs.3.21 Crores. They have given adequate collateral security for the loan sanction by the de-facto complainant and they have not furnished forged documents as alleged in the complaint. They have contended that from the evidence relied by the prosecution, no case is made out by the petitioners and therefore, the absence of *prima facie* case made out by them, they should be discharged from the case.

7. The Trial Court, after considering the contention raised by the petitioners and the materials placed before it by the

prosecution along with the final report has held that there is *prima facie* case made out against the accused and therefore, the petition to discharge them is liable to be dismissed. Not satisfied by the order of the trial Court, the present Revision Petition is filed by A1 and A2.

8. The specific allegation made against these two petitioners as found in the final report is that they availed loan for purchase of machineries but have not commenced the unit, but diverted the machineries to the unit run by the second petitioner. In addition, she has failed to repay the loan amount. To prove the said allegations, the prosecution has examined 38 witnesses and recorded their statement. Numerous documents incriminating the accused have been collected and placed along with the final report.

9. The Trial Court has perused the statement of witnesses and documents produced by the prosecution and has held that the witnesses have spoken about the *modus operandi* adopted by the second petitioner to advance money by way of cheque and get receipts for the same and later, come and return the receipt and get back the cheque. Likewise, the second petitioner has received

five receipts each for Rs.20 lakh from Vairamuthu as if he has placed orders for printing machinery and issued cheques and in all the occasions, he has come back returned the receipts and got back the cheque. By using photocopy of the receipt given by Vairamuthu, the said N.Prabhu/second petitioner has drawn margin money to the tune of Rs.50 lakh from SIDBI against the term loan agreement entered between SIDBI and P.Aswini/first petitioner herein.

10. On further examination of the final report and list of witnesses relied by the prosecution, the trial Court has come to the conclusion that enough material is available to try the petitioners. Now, it is well settled by this Court as well as the Apex Court that when final report is filed against the accused, disclosing *prima facie* case however weak the evidence be, discharge petition cannot be entertained. It is admitted fact by the petitioners that the first petitioner has availed loan for expansion of her units, but, she has not installed all the machineries. She has acquired the loan and shown a specific premises in which, it has to be installed. It is also admitted fact that the first petitioner has not repaid the loan as per the terms of loan agreement.

11. The statement of witnesses indicates that the some of the machineries purchased from the loan advanced by the de-facto complainant were found in the premises of the second petitioner. There is evidence to show that the first petitioner had tried to remove the machineries from her premises to elsewhere. On cumulative assessment of the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure, it is clear that nothing warrants interference of the Trial. This Court find no error in the order of the learned Additional Chief Metropolitan Magistrate, Egmore, dismissing the discharge petition.

12. Hence, the Criminal Revision Petition is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

22.09.2017

Index : Yes/No
dm

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To

- 1.The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Inspector of Police
State of Tamilnadu
Central Bureau of Investigation
EOW, Chennai.
- 3.The Special Public Prosecutor(CBI Cases),
High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Pre-delivery judgement in

CrI.R.C.No.1242 of 2017
and CrI.M.P.No.11918 of 2017

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