IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2017

PRONOUNCED ON : 22.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.O.P.No.26882 of 2016

G. Sekar
S/o. Ganesan
No.18, Ramasamy Street
T. Nagar
Chennai – 600 017 … Petitioner / A-5

Vs.

Union of India,
Represented by
The Inspector of Police,
SPE, CBI, ACB,
Shastri Bhavan,
Chennai – 600 006. … Respondent /Complainant

Prayer:- Criminal Original Petition filed under Section 482 Crl.P.C., praying to call for the records pertaining to the Charge-sheet in C.C.No.9 of 2006 pending on the file of XI Additional Court for CBI cases, Chennai and quash the same.

For Petitioner : Mr.M. Prabakar

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

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 the charge sheet in Calendar Case No.9/2006 pending on the file of XI Additional Court for CBI cases, Chennai, and to quash the charges made against the Petitioner/A-5.

2 The material averments made in this petition are as follows:-

(a) The Petitioner/A-5 worked as a Manager of the 3rd accused

M/s.Kothari Constructions Ltd., Chennai. The Respondent submitted a Charge Sheet in C.C.No.9 of 2006 as against Accused Nos. 1 to 16 for the offences u/s 120B r/w 420, 467, 468 & 471 of IPC r/w 13(2) and 13 (i)(d) of Prevention of Corruption Act, 1988 and the allegation leveled against the Petitioner/A-5 is that A-1, who was the Regional Chief of HUDCO, Chennai, in criminal conspiracy with other Accused, sanctioned loan in excess of the eligibility as against the procedures knowing fully well that the documents processed are all based on forged documents, inflated valuation report, falsified and inflated sale agreements and invoices. The Specific allegations leveled against the Petitioner/A-5 is that the Petitioner being the Manager of the 3rd Accused Company signed some of the Sale Agreements forging the signature of A-4 who was the Managing Director of A-3, on which loan has been sanctioned by A-1 in the name of the Purchasers of house sites from the A-3 Company and thereby the defacto Complainant sustained a wrongful loss to the tune of Rs.21,07,546.70 p. and corresponding wrongful gain to the Accused persons excepting the Petitioner.

(b) It is further stated that the Petitioner was not working as the Manager of A-3 company and he never held any Executive Post and is no way connected with the 3rd accused company. It is further alleged that the prosectuion has not submitted any documents to establish the fact that the petitioner was employed as Manager of the 3rd accused company. The prosecution has not produced any documents to prove the same along with final report. The allegation of the prosecution that the Petitioner/A-5 forged the signature of A-4 Managing Director of A-3 in some of the sale agreements entered into between A-3 company and the purchasers is not true and the prosecution did not produce any material to substantiate the same. It is further alleged that the signatures alleged to have been forged by the petitioner/A-5 was sent along with the specimen writing and the signature of A-5 marked as S.12 to S.15 and S.112 to S.114 to the Forensic Laboratory, requesting them to submit a report about the genuineness of the signature and the writing in the said documents. The petitioner states that the Central Forensic Laboratory, Chennai, has not sent any report in respect of specimen signature given markings as S.12 to S.15 and S.112 to S.114, even though report relating to other document has been forwarded by the Central Forensic Laboratory, Chennai. The petitioner further states that there is no evidence available on record to establish the allegation viz., A-5 forged signatures of A-4 except oral statement of L.W.19 and 20. The petitioner further contends that the oral evidence of L.W.19 and 20 is not corroborated by any other documentary evidence. According to the petitioner, there is no other constructive material to proceed with the trial against A-5. The further contention of the petitioner is that the petitioner is not charged u/s.34 of

IPC but only under section 120 (B) IPC, and as such, the same is not maintainable. It is further alleged that no case is made out against the Petitioner/A-5 regarding any wrongful gain made by him and as such no material is available to connect the petitioner to the alleged commission of offence. Hence, the petitioner prays to quash the proceedings pending against him in C.C.No.9 of 2006 on the file of XI Additional Court for CBI Cases, Chennai.

3. The learned Special Public Prosecutor contended that the trial is in part-heard stage and already number of witnesses have been examined and in such circumstances, it is not open to the petitioner to come forward with this petition seeking to quash the proceedings pending before the trial court. The learned Special Public Prosecutor also pointed out that already this petitioner along with co-accused filed Crl.O.P.No.7378 of 2009 before this court seeking similar relief and the said petition was dismissed as withdrawn, by order dated 29.10.2011 with a direction to the trial court to complete the trial within six weeks from the date of receipt of the said order copy. Inspite of such direction, the trial is still not completed and the petitioner has now come forward with this petition at this belated stage only with an intention to drag on the proceedings. Hence, the learned Special Public Prosecutor for CBI sought for dismissal of the petition.

4. The learned counsel for the Petitioner submitted that no case is made out against the petitioner and the prosecution has not produced any material to connect the petitioner with the alleged offence. The learned counsel for the petitioner also contended that there is no allegation against the petitioner that he had common intention with other accused and no allegation is made against the petitioner that he obtained wrongful gain out of the alleged transaction and no material is available to substantiate any such thing. It is further contended that no positive report from the Forensic Laboratory, Chennai, was received to prove that the Petitioner’s specimen signature and writing tallied with the alleged forged signature. It is further contended that the oral evidence of L.W.19 and 20 was not supported by any other admissible documents. As such, the oral statement of L.W.19 and 20 not supported by any documentary proof will not be sufficient to presume that prima facie case is made out against the petitioners. Further, it is contended that as no report is received from the Forensic Laboratory in respect of the Specimen signatures and disputed writings of the petitioner, no case is made out against the petitioner. Thus, the learned counsel for the petitioner contended that except vague allegations, there is no material available on record to link the petitioner with the alleged offence and no prima facie case is made out against the petitioner. In such circumstances, the learned counsel for the petitioner relied upon the Ruling of the

Apex Court reported in AIR 1992 SC 604(1) [State of Haryana and others Vs. Ch.Bajanlal & others to contend that this court has to necessarily entertain the petition under Section 482 Cr.P.C.,and quash the proceedings in C.C.No.9 of 2006. In the said Ruling, it is held as follows:-

> " 1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
> 2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.
> 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
> 4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.
> 5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused.
> 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
> 7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. "

The learned counsel also relied upon the Ruling reported in AIR 2001 SC 2960 [Palanitkar Vs State of Bihar], wherein, it is held as follows:-

> "intention to deceive should be in existence at the time of inducement was made and mere failure to keep up promise subsequently cannot be presumed to be cheating."

Similarly, the learned counsel also relied on Ruling reported in AIR 1977 SC 1489 (1) State of Karnataka Vs. Munishwami, wherein it is held as follows:-

> " .....that in the instant case there was no material on the record on the basis of which any tribunal could reasonably come to the conclusion that the accused were in any manner connected with the incident leading to the prosecution. The High Court was therefore justified in holding that for meeting the ends of justice the proceedings against the rest of the accused ought to be quashed.
> AIR 1976 Cr.L.J 763 (Kant), Affirmed. "

5. Relying upon the above said Rulings, the learned Counsel for the Petitioner submitted that no ingredients is made out and mens rea is not established by the prosecution with the available material on record and the above rulings are squarely applicable to the present case and the petition has to be allowed. The learned Counsel for the petitioner further contended that even though this Petitioner along with other Accused filed quash petition in Crl.O.P. No.7378 of 2009 before this Court, as the said petition was "dismissed as withdrawn" , there is no bar to file this petition as earlier petition was not dismissed on merits. Thus, the petitioner seeks to entertain this petition and to quash the proceedings in C.C.No.9 of 2006.

6. On the other hand opposing the petition, the learned Special Public Prosecutor for CBI cases submitted that the Petitioner who was functioning as the Manager of the A-3 Company, in collusion with the other Accused created false inflated Sale Agreements and this Petitioner particularly forged the signature of A-4 and created so many false agreements and caused loss to the tune of Rs.21,07,546.70 p. to the HUDCO. Further, it is pointed out that as the Petitioner has knowingly created forged agreement with the intention to commit cheating in connivance with other Accused, that itself is sufficient to establish mens rea on the part of the petitioner. The learned Special Public Prosecutor also pointed out that non-receipt of hand writing expert report regarding the signature of the Petitioner cannot be a ground to quash the proceedings, since the available materials are sufficient to prosecute the Petitioner and the case before the Trial Court is in part heard stage. Further, it is pointed out that this Petitioner along with other Accused already filed quash petition and the same was dismissed as withdrawn. Hence, the respondent contends that this petition is not maintainable and sought for dismissal of the petition.

7. Admittedly, this petitioner/A-5 along with co-accused earlier filed Crl.O.P.No.7378 of 2009 and the same was dismissed as withdrawn with direction to the trial court to dispose of the case within six months. The said order was passed on 29.10.2011, but the trial is still pending. In such

circumstances, the petitioner/A-5 has now come forward with this petition to quash the proceedings. The fact that already P.W.1 to P.W.12 has been examined before the trial court and the case is pending for examination of further witnesses is evident as per the report received from the trial court concerned.

8. The learned Special Public Prosecutor contended that as the matter is in part-heard stage, the plea of the petitioner should not be entertained at this stage. In support of his contention, he relied upon the decision of this court reported in 2007 1 L.W.Cril.493, [A.Govindarajan and 6 others Vs. The Inspector General of Police, W-5, All Women Police Station, Chennai-600 040], wherein it is held as follows:-

> "6. The Hon'ble Supreme Court of India has held in Amar Chand Vs. Shanti Bose reported in AIR 1973 SC 799 = 1974 S.O.(Crl.) 40 S.N. that,
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> > "Where the accused moved the High Court at the time when the trial was almost coming to a close and what remained to be done was the examination of two prosecution and one Court witnesses and the High Court quashed the charge and the entire proceedings on the grounds that the complainant suppressed material facts and that the evidence on record did not establish the alleged offence, the order was liable to be set aside. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other, and decline to interfere with those proceedings. The questions whether there was suppression and whether the evidence established the alleged offence were matters to be considered by the trial court after an appraisal of the entire evidence."
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> 7. It is also held by the Apex Court in yet another decision in State of Delhi V. Gyan Devi reported in 2000 SC (Crl) 1486 that,
>
> > "The High Court has erred in its approach to the case as if it was evaluating the medical evidence for the purpose of determining the question whether the charge under Sections 304/34 IPC framed against the accused-Respondents 1 and 2 was likely to succeed or not. This question was to be cnsidered by the trial Judge after recording the entire evidcence in the case. It was not for the High Court to prejudge the case at the stage when only a few witnesses (doctors) had been examined

> by the prosecution and that too under the direction of the High Court in the revision petition filed by the accused. The High Court has not observed that the prosecution had closed the evidence from its side. There is also no discussion or observation in the impugned order that the facts and circumstances of the case make it an exceptional case in which immediate interference of the High Court by invoking its inherent jurisdiction under Section 482 Cr.P.c., is warranted in the interest of justice. On consideration of the matter we have no hesitation to hold that the order under challenge is vitiated on account of erroneous approach of the High Court and it is clearly unsustainable."

9. Thus, in view of the above said Rulings relied upon by the prosecution, it is clear that this court cannot entertain the petition under Section 482 of Cr.P.C., to quash the proceedings at this stage, when the trial court has already examined 12 witnesses. Further the points raised by the Petitioner has to be raised only before the trial Judge.

10. The learned Special Public Prosecutor also pointed out that the allegation of criminal conspiracy to commit the offence of cheating is clearly evidenced by statement of L.W.19 and 20. It appears from the statements of those persons that the petitioner/A-5 along with co-accused made ready some of the sale agreements wherein the petitioner/A-5 allegedly put the signature of A-4 –Managing Director of A-3 company and thereby, created false sale agreements with inflated value so as to get wrongful gain from HUDCO resulting in loss to the company to the tune of Rs.21,07,546.70 p. The main contention of the petitioner is that no report has been received from the Forensic Department in respect of comparison of handwriting and signature of this petitioner/A-5 with that of the disputed signature in the sale agreement. In the considered view of this Court, this is not a ground to quash the proceedings since the expert opinion is only a corroborative piece of evidence and not substantial evidence to prove the case. At this stage, it is sufficient if the statement of witnesses exist to establish the prima facie case. In the case on hand, the statement of L.W.19 and L.W.20 does make out a prima facie case in that regard. Further as to whether the report of forensic expert is necessary to prove the allegation against the petitioner has to be considered only at the time of trial by the court below. In such circumstances, the reason stated by the petitioner is not sufficient to quash the proceedings. Further as stated above, the trial is in part heard stage before the concerned trial court. In such

circumstances, following the above said Ruling, it is clear that the plea of the petitioner cannot be entertained at this stage. It is therefore clear that the prosecution has made out a prima facie case and as the trial has already commenced, this court is of the view that it will not be appropriate to entertain the plea of the petitioner at this stage.

11.In fine, on a 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 to proceed with the trial of the case and as such the plea of the petitioner cannot be entertained. The point is answered accordingly.

In the result, this Criminal Original Petition is dismissed. The learned Trial Judge/XI Additional Court for CBI Cases, Chennai, is directed to expedite the trial in C.C.No.9 of 2006 and dispose of the case as early as possible.Connected MP is Closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

Vs/nvsri

1.The XI Additional Court for CBI cases, Chennai.

2.The Inspector of Police,
SPE, CBI, ACB,
Shastri Bhavan,
Chennai - 600 006.

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

copy to:

The Section Officer,
Criminal Section,
High Court, Madras-104

+1cc to Mr.M.Prabhakar, Advocate sr.no.6916

Crl.O.P.No.26882 of 2016

nr 26/02/2018