IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 26.07.2017

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.971 of 2017
and
Crl.M.P.No.9101 of 2017

S.Nemichand ... Petitioner

versus

State
Rep. by the Deputy Superintendent of Police,
CB CID, Headquarters,
Chennai – 08. ... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w.401 of Cr.P.C., to discharge the petitioner/2nd accused from all the proposed charges in the C.C.No.09/2015 pending before the Principal Special Court for Prevention of Corruption Act, Cases and set aside the order passed in Crl.M.P.No.1664 of 2016 dated 19.05.2017.

For Petitioner : Mr.G.A.Thiyagarajan

For Respondent : Mr. R.Ravichandran
Government Advocate (Crl.side)

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ORDER

The Criminal Revision Case has been filed by the revision petitioner against the order of dismissal passed by the learned Principal Special Court for Prevention of Corruption Act, Cases in C.C.No.09/2015 dated 19.05.2017.

2.The case of the prosecution as per the final report is that LW1 to LW4 of the case are bookies in the illegal trade of cricket betting. The first accused Mahendra Singh Ranka is said to be an influential person and was also closely connected with the fourth accused, who is the Superintendent of Police in Q Branch. In the relevant time, the CBCID Metro Wing Police had registered the case in Cr.No.1/2013 in respect of cricket betting and when the same was pending for investigation, the first accused has acquired knowledge through A4 that LW1 to LW4 were involved in the said case through and with the help of revision petitioner/second accused. The third accused had met LW1 and LW2 on 17.05.2013 at Hotel Park, Chennai and made a promise that the case against LW1 to LW3 would be closed on payment of Rs.5 lakhs each and also threatened them that in the event of failure to pay the said amount, LW1 to LW3 will be booked under Goondas Act. Believing the promise of A1, LW1 to LW3 paid a sum of Rs.15,00,000/- on 18.05.2013 through the brother of LW1. A1 leveled promises and threats to LW4 and demanded Rs.1 Crore 20 lakhs to close the case against him and received the amount on three occasions. It is a further case of prosecution that later A1 had produced LW4 before A4 who in turn sent him to CBCID office and there he was arrested in Cr.No.1/2013 and LW1 to LW3 were enlarged on anticipatory bail.

3.Under such circumstances, since A1 failed to keep up the promise that the case against LW1 to LW4 would be closed on payment of money, LW1 - C.Goutham Chand Nimani has lodged a complaint to the respondent police and the prosecution investigated the case and filed charge sheet in Cr.No.2/2013.

4.It is a specific case of the prosecution as against the revision petitioner that the revision petitioner -Nemichand introduced LW1 to LW4 to the other accused with an intention to get the share in the amount received by A1. Further it was alleged that on 17.05.2013, LW1 to LW3 were invited to meet A1 through and with the help of revision petitioner and A3. The revision petitioner herein further for having arranged such meeting with LW1 to LW3, the first accused is said to have paid a sum of Rs.7.5 lakhs on 20.05.2013 as a share to the second accused and the revision petitioner herein and LW4 were also approached by the first accused through A2 and the revision petitioner herein later on 22.05.2013, revision petitioner and the second accused have met the first accused at his house and received a sum of Rs.15 lakhs from him towards commission.

5.In view of the above narrated circumstances, it has been alleged in the final report that the revision petitioner has conspired with other accused to extort money from LW1 to LW4 to the tune of Rs.1 Crore 35 lakhs by A1 and thereby committed the offence u/s.120 B and also committed offence u/s.384, 506(i) and 420 IPC and 8,3,(1)(d)(i) r/w 13(2) of the prevention of Corruption Act.

6.Further, the revision petitioner and the two accused by inviting LW1 to LW4 to meet the first accused and by appointing such means and by receiving the share to the crime proceeds to the tune of Rs.22.5/- lakhs and also alleged to have independently committed the offence punishable u/s.384 and 420 of IPC. Thus, the proposed charge levelled against the revision petitioner for the commission of offence u/s.120(B), 384 and 420 of IPC after filing the charge sheet before the trial court, taken the charge sheet on the file of C.C.No.9/2015. After furnishing the copies to the accused, the present revision petitioner/A2 filed a discharge petition before the trial court. The trial court considering the materials placed before the trial court found that there was a prima facie case and incriminating materials are available against the revision petitioner/A2 to proceed further and dismissed the discharge petition filed in Crl.MP.No.1664 of 2016.

7.Aggrieved against the said order passed by the trial court in Crl.MP.No.1664/2016 dated 19.05.2017, A2 has filed the present revision petition before this court.

8.Learned counsel for the revision petitioner would submit that the allegations in the final report are not only false and concocted and also remain unsupported and unsubstantive by any materials and there is no iota and acceptable and legal evidence placed along with final report either in the form of documentary or oral evidence to infer prima facie case against the revision petitioner as reasonably connecting the revision petitioner with offence alleged against him. Even if the entire materials placed by the prosecution were deemed to be proved for the arguments sake, no case is made out against the revision petitioner for the alleged commission of offence u/s.120 B, 384, 420 IPC. He would further submit that the trial court without properly applying its judicial mind over the meritorious legal contentions of the revision petitioner, mechanically approached the case and casually dealt with the case and thereupon arrived at an illegal conclusion that there were grounds to presume that the revision petitioner has committed the offences alleged in the final report and the materials placed by the prosecution would indicate a sound prima facie case against the revision petitioner disclosing grave suspicion that in all possibility, he is party to the commission of offences.

9.The trial court arrived at such a conclusion without having regard to the proposed evidence that could be placed in the event of trial. The trial court also miserably misconstrued the scope, ambit, legal tenor and legislative purpose of Sections 227 and 239 of Cr.P.C., and simply accepted the final report as a mouth piece of the prosecution.

10. In the above said circumstances, the order passed by the trial court in dismissing the petition preferred by the revision petitioner is not at all sustainable and illegal, perverse and liable to be interfered with.

11.Learned counsel for the respondent would submit that after registration of FIR in Cr.2/2013, respondent has investigated the case and filed the charge sheet based on the statements recorded from the LWs and collected the documentary evidence and the final report filed by the respondents u/s.173 Cr.P.C, and materials placed along with final report. It will clearly show that there are prima facie materials against the accused to implicate this case. Therefore, the trial court after considering the entire materials placed before it, has rightly dismissed the discharge petition in Crl.MP.No.1664 of 2017 in C.C.No.9 of 2015 dated 19.05.2017 on the file of Principal Special Court for Prevention of Corruption Act.

12.Heard the rival submissions made by both the learned counsel appearing for the parties and perused the entire records.

13.The main contention of the prosecution is that A1 came to know the involvement of the LW1 to LW4 in Cr.No.1/2013 through A4 and met them with the help of revision petitioner and extorted a sum of Rs.1.3 crores alleging that he would resolve them from the said case and further threatened that if they failed to pay the amount, they will be booked under Goondas Act and in furtherance of the said conspiracy between A1 and A4, the first accused share the proceeds with the petitioner and other accused. The main contention of the revision petitioner is that there are no materials to show that the petitioner who connected LW1 to LW4 are present at the time of receipt of money by A1 from the said witnesses, there are no materials to show that the petitioner threatened or extorted money from LW1 to LW4. Even the prosecution mainly relied on the evidence statements of LW14 and LW15 to connect this accused in this case. But whereas neither LW14 nor LW15 has spoken that the purpose for which the amount was paid to A1 and the amount extorted from the witnesses alleged payment was made to the petitioner only after the accomplishment of the object of conspiracy. Thus it cannot be taken as that there is an existence of conspiracy.

14. On careful perusal of the charge sheet filed by the respondent in Cr.2/2013 on the file of the respondent, prima facie there is an allegations against this petitioner also. Further on perusal of the list of

witnesses cited with the charge sheet and other material evidence also shows the involvement of this petitioner in this case.

15. In the case instituted upon the police report, the Court is required at the time of framing of charge to confine its attention to the documents mentioned in Section 173 of Cr.P.C., only. Normally the documents filed by the accused and defence taken by the accused cannot be considered at the time of framing of charge. In fact the hearing provided to the accused under Sections 239 and 227 of Cr.P.C., is only with regard to the records of the case produced by the prosecution and the documents submitted therewith. Further the Court is not expected to go into the probative value of the materials on record nor required to discuss every material placed before it by the police along with charge sheet at the time of framing of charges. It is not for the court to determine whether the particular witness is reliable at this stage and the same can be done only after trial.

16.In the light of the above discussions, this Court is of the view that there are enough incriminating materials available against the petitioner, in this case to proceed further. The order passed by the trial court is perfectly correct and there is no infirmity or perversity in the order and hence, calls for no interference of this Court.

In the result, the revision petition fails and the same is dismissed. Consequently, connected miscellaneous petitions are closed.

26.07.2017

Speaking/Non-Speaking order
Internet:Yes/No
Index : Yes/No
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To

1.The State Rep. By
Deputy Superintendent of Police,
Crime Branch CID,
DCU-II, Egmore, Chennai – 08.

2. The Principal Special Court
for Prevention of Corruption Act.

3.The Public Prosecutor,
High Court,
Madras.

P.VELMURUGAN, J.

rm

CRL.RC.No.971 of 2017
and
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