

Reserved on: 05.06.2017

Delivered on : 06.06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.OP.No.12715 of 2016

R.Venkatesan

...Petitioner/Accused No.1

Versus

State by Inspector
of Police,
Special Police Establishment
Central Bureau of Investigation
Anti -Corruption Branch,
RC.No.47(A) 2007
Chennai

... Respondent (Complainant)

Prayer:- The Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to quash the entire proceedings against the petitioner/ Accused No.1 in C.C.No.7 of 2007, pending before the learned XI Additional City Civil and Sessions Judge for CBI Cases, relating to Banks and Financial Institution, Chennai 1.

For Petitioner : Mr.A.V.Somasundaram

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

सत्यमेव जयते
O R D E R

The petitioner, who is arrayed as Accused No.1 in C.C.No.7 of 2007 pending on the file of the Court of XI Additional City Civil and Sessions Judge for CBI Cases, Chennai, has filed the instant petition praying for quashment of the entire proceedings launched against him in the aforesaid Calendar Case.

2. The facts leading to the filing of this Original Petition are as follows:

(i) Originally, there were five (5) accused in the aforesaid Calendar Case. In the Final Report filed by the respondent/CBI, it is averred that the petitioner/ Accused No.1, while working in the capacity of Industrial Development Officer

(IDO) in Indian Bank, had fraudulently omitted to obtain latest Credit information regarding outstanding bills of M/s. Premier Data Products with M/s. Canbank Factors as on 12.8.2002 and accepted the report furnished by the 5th accused. It is further averred that invoices which were long overdue as on 31.3.2002 continued and remained overdue as on 12.8.2002 and none of the invoices were paid by the 2nd accused and the 3rd and 5th accused have fraudulently suppressed the overdue status of pending bills of M/s. Premier Data Products and gave a satisfactory report. It is also averred that the petitioner fraudulently omitted to obtain market report about the Firm from the existing customers especially with the Director General of Supplies and Disbursal about any of the pending bills that are due to the concern. The petitioner also prepared a note on 19.10.2002 stating that all the terms and conditions are complied with, knowing pretty well that the Power of Attorney was not at all forwarded to the registering authority. Therefore, prosecution was launched by the CBI against this petitioner along with other accused for the offence under Sections 120B, 420, 467 read with 471 IPC and Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988, after obtaining necessary sanction from the authority concerned. The Trial Court has taken cognizance of the offence and framed charges against the petitioner and other accused under Sections 120 B read with 420, 468, 471 IPC and also under Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act.

(ii) The prosecution also commenced examination of witnesses. At this stage, the instant petition has been filed to quash the charges on the ground that prior sanction for prosecuting the officials of the Indian Bank along with K.Ramachandran, Chief Manager, was not accorded. According to the petitioner, instant sanction was obtained as against the petitioner from the competent authority at Calcutta by suppressing the facts. It is the case of the petitioner, the Sanctioning Officer did not peruse the relevant records independently and did not apply his mind while granting sanction to prosecute the petitioner. It is stated that the Sanctioning Officer has received draft sanction order from the Vigilance Department and issued the same in mechanical manner as misguided by the Vigilance Department. In a nutshell, it is the contention of the petitioner that the prosecution itself is a mala fide one.

3. The learned counsel for the petitioner submitted that Ex.C1 marked by the Trial Court would clearly explicit the fact that previously when the sanction was requested to prosecute one K.R.Ramachandran, now AGM, and the present petitioner along with two other officials, the same was not accorded. The Sanctioning Authority has stated that lapses appear to be more procedural in nature and the same does not warrant any

prosecution. The learned counsel for the petitioner further submitted that suppressing the above previous order, the instant sanction was obtained as against this petitioner from the Competent Authority at Calcutta. It is submitted that the competent authority was examined before the Trial Court and his evidence would clearly indicate that the entire materials have not been placed before according sanction to prosecute the petitioner. Similarly, the Sanctioning Authority has received draft Sanction Order alone as has been forwarded by the Vigilance Department. All these facts would clearly prove the fact that the Sanctioning Authority did not apply its mind and mechanically passed an order granting sanction to prosecute the petitioner. Therefore, it is the contention of the learned counsel appearing for the petitioner that prosecution launched against the petitioner is not maintainable. Hence, the learned counsel appearing for the petitioner prayed for quashing the entire proceedings against the petitioner in the aforesaid Calender Case.

4. In support of his contention, the learned counsel has placed reliance on the judgments in the case of CHITTARANJAN DAS V. STATE OF ORISSA (AIR 2011 SC 2893) ; CBI V. ASHOK KUMAR AGGARWAL (AIR 2014 SC 827); and SAKTHIVEL AND OTHERS V. S.KALASTHIRI (2010) 1 MLJ (Cr1) 370.

5. Countering the submission of the learned counsel for the petitioner, the learned Special Public Prosecutor appearing for CBI submitted that this is the second petition filed by the petitioner for the very same relief and previous petition filed by him to quash the charge sheet in Cr1.OP.No.36964 of 2007 has already been dismissed by this Court.

6. The learned Special Public Prosecutor appearing for CBI further submitted that the prosecution has already examined 29 witnesses and trial is likely to be over in short span and hence, at this stage, the instant petition to quash the entire proceedings is not maintainable. It is submitted by the learned Special Public Prosecutor, the merit and demerit of Sanction can very well be canvassed by the petitioner during trial itself. According to the learned Special Public Prosecutor that the instant petition is filed only to protract the trial. Thus, the learned Special Public Prosecutor prayed for dismissal of the petition.

7. In support of his arguments, the learned Special Public Prosecutor has relied on the judgment in A.GOVINDARAJAN AND 6 OTHERS V. THE INSPECTOR GENERAL OF POLICE - W-5, ALL WOMEN POLICE STATION, CHENNAI (2007 - 1- LW (Cr1.) 493)

8. This Court considered the rival submissions put forth by the counsel on either side and also perused the materials

available on record including the order of this Court in Crl.OP.No.36964 of 2007, which was filed by the petitioner herein for the very same relief.

9. The petitioner herein has been arrayed as Accused No.1 in the charge sheet laid by the CBI in respect of C.C.No.7 of 2007 for the offence under Sections 120 B read with 420, 468, 471 IPC and also under Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act. Further, from the records, it is seen that the charge was framed against him and 29 witnesses have been examined on the side of the prosecution.

10. It is curious to note that similar petition filed by the petitioner in Crl.OP.No.36964 of 2007, i.e. for quashing the very same charge, also ended against him in view of the order of dismissal passed by this Court vide order dated 19.10.2010. Even during the filing of the aforesaid Crl.OP in the year 2007, eight (8) witnesses were examined by the prosecution. After ten years of the aforesaid dismissal order, the present petition has been filed seeking to quash the entire proceedings as against the petitioner on the ground that while passing the instant Sanction Order, the Sanctioning Authority did not apply its mind and has also suppressed the previous rejection of Sanction Order. According to the petitioner, the entire materials have not been produced before the Competent Authority.

11. No doubt, Section 19 (3) of the Prevention of Corruption Act does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same. The validity of sanction can be raised at any stage of the proceedings as held by the Hon'ble Supreme Court in NANJAPPA V.S STATE OF KARNATAKA (2015 - 2- L.W. (Crl.) 757). It is well settled that sanctioning order is not mere formality and it must be issued by the competent authority, after a careful perusal of the entire records.

12. Absolutely, there is no dispute with regard to the above aspects.

13. The learned counsel for the petitioner has mainly relied on the deposition of P.W.1 and C.W.1 before this Court to show that the Sanction Order passed as against the petitioner is vitiated for want of non application of mind.

14. It is not disputed by both sides that so far, the prosecution examined 29 witnesses and that the trial is at the fag end. At this stage, this Court while exercising inherent power under Section 482 of Cr.PC cannot make roving enquiry about deposition of the witnesses. It is the domain of the

Trial Court to assess the entire evidence. If the contention of the petitioner is entertained at this stage, it would tantamount to conducting trial by this Court by exercising inherent power thereby usurping the power of the Trial Court. It is well settled that the power Under Section 482 Cr.PC should be exercised sparingly with care and caution and as such, the same cannot be done at this stage. Therefore, this Court is of the view that all the points raised by the learned counsel for the petitioner can be raised by the petitioner only after the conclusion of the trial before the Trial Judge. Therefore, it is for the petitioner to establish his case before the Trial Court as to the non application of mind by the Competent Authority while passing an order granting sanction for prosecution.

15. In this context, it is useful to refer the judgment of the Hon`ble Supreme Court in AMAR CHAND V. SHANTI BOSE (AIR 1973 SC 799 = 1974 L.W. (Cri.) 40, wherein it has been held as follows:

" 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".

16. Similarly, in 2000 SCC (Cri), 1486, the Hon`ble Supreme Court has observed as follows:

".. .. 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 considered by the trial Judge after recording the entire evidence 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.PC 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."

17. Having regard to the above judgments and also the fact that the appreciation of evidence is the domain of the Trial Court, this Court is of the view that the petition to quash the proceedings cannot be entertained. As stated above, the contentions put forth by the learned counsel for the petitioner are relating to the appreciation of evidence, and hence the same has to be decided only after the conclusion of trial. Therefore, it is open to the petitioners to raise all the contentions before the trial Judge at the time of final hearing.

18. It is pertinent to point out that this Court has also declined the similar relief sought for by the petitioner even in the year 2007. Now one more attempt has been made by the petitioner for the very same relief. The above conduct clearly shows that the instant petition has been filed only to prolong the proceedings.

19. In view of the above stated position, this Court is not inclined to entertain this petition. Accordingly, the Criminal Original Petition is dismissed. However, the Trial Court is directed to proceed with the trial without any further delay and dispose of the same within a period of two months from the date of receipt of a copy of this order.

-s/d-

Assistant Registrar (CSII)

True Copy

Sub-Assistant Registrar

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To

1.The XI Additional City Civil and
Special Judge for CBI Cases at Chennai

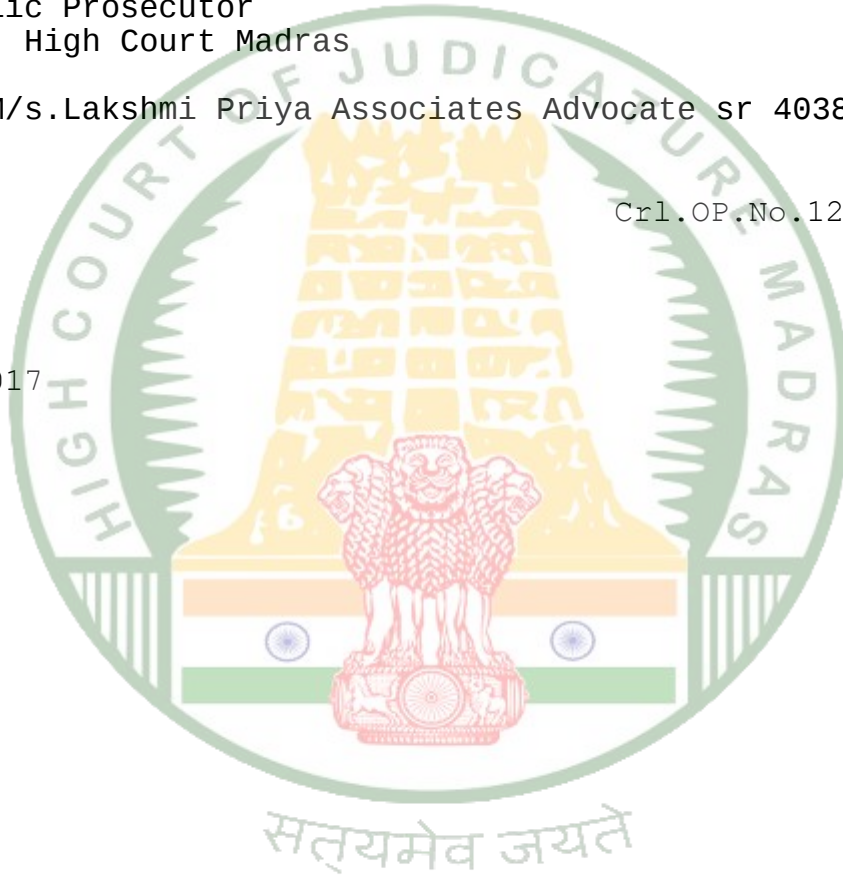
2.The Inspector of Police
SPE/SBI/ACB, RC.No.47(A) 2007
Chennai

3.The Public Prosecutor
CBI Cases, High Court Madras

+1 cc to M/s.Lakshmi Priya Associates Advocate sr 40388

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