



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.08.2017
PRONOUNCED ON : 22.06.2018

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CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.1139 of 2009

The State by
The Inspector of Police,
CBI/BS & FC/Bangalore
RC-5 (E)/2007.

.. Petitioner/Complainant

Vs.

Shri.S.V.Nagaraja Reddy

.. Respondent/A4

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the order dated 11.09.2009 passed by XI Additional Court for CBI Cases, relating to banks and financial institutions in CrI.M.P.No.1400/2009 in C.C.No.3/2009 discharging the respondent/A4 under section 227 Cr.P.C.

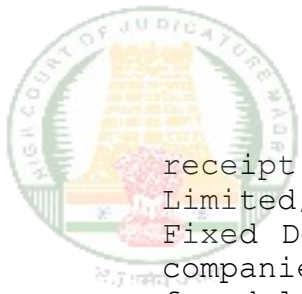
For Petitioner : Mr.K.Srinivasan
Spl.Public Prosecutor for CBI

For Respondent : Mr.N.Anand Venkatesh

O R D E R

This Criminal Revision Case has been filed against the order dated 11.09.2009 passed by XI Additional Court for CBI Cases, relating to banks and financial institutions in CrI.M.P.No.1400/2009 in C.C.No.3/2009 discharging the respondent/A4 under section 227 Cr.P.C.

2. It is to be noted that the allegation against the respondent and other accused persons is that they were parties to a criminal conspiracy hatched with other persons at Chennai during the period 1998 to 2002 to cheat the erstwhile Global Trust Bank (EGTB) in the matter of dishonestly sanctioning of huge credit facility by making an investment in non-convertible debentures for a particular purpose to the tune of Rs.20.00 crores to M/s.Pearl Distillery Limited by misrepresenting the fact that M/s.Pearl Distillery Limited was not a part of the Balaji Group, parking Rs.20.00 crores as Fixed Deposit by M/s.Pearl Distillery Ltd., and further sanctioning demand loans of Rs.14.00 crores and Rs.6.00 crores respectively, to two other Companies viz., M/s.Kyvalaya Agro Farms Private Limited and M/s.Smruthi Agro Farms Private Limited against the third party security of Fixed Deposit



receipt of Rs.20.00 crores in the name of M/s.Pearl Distillery Limited; allowing M/s.Pearl Distillery Limited to withdraw the Fixed Deposit while, the demand loans sanctioned to above two companies were still outstanding and by dishonestly and fraudulently utilizing the same for evergreening the over due accounts and potential Non performing Assets (NPA) accounts of M/s.Balaji Group and its associates Companies. The amount invested in the non- convertible debentures was not paid back to the Bank and the Bank was compelled to convert the same as a term loan, which is still overdue causing a loss of Rs.20.00 crores with interest. Due to non payment of loan, the Bank was compelled to write off the overdues in the demand loan causing a total loan of Rs.30.39 crores with interest. Shri.S.V.Nagaraja Reddy, the present respondent herein, being the Managing Director of M/s.Pearl Distillery Limited, has signed the resolutions authorising the Company to raise loans, to keep the proceeds of the loan as Fixed Deposit, to give security of these Fixed Deposits to the loans raised by the Sister companies and he himself has signed some of the cheques for transfer of funds. M/s.Pearl Distillery Limited had misrepresented the erstwhile Global Trust Bank that M/s.Pearl Distillery Limited does not belongs to Balaji Group, even though he was an employee of M/s.Balaji Group. The respondent herein was the Managing Director of M/s.Pearl Distillery Limited, which pre-closed the Fixed Deposit of Rs.20.00 crores on the pretext that it had to pay M/s.Mc.Dowell & Company and obtained Demand Drafts for Rs.20.00 crores in favour of M/s.Mc.Dowell & Company and immediately had obtained Rs.6.5 crores on 19.12.2000 from the account of M/s.Prayag Enterprises for the purpose of obtaining the Demand Drafts favouring M/s.Balaji Industrial Corporation Limited, which was deposited in the account of M/s.Balaji Industrial Corporation Limited and further transferred to M/s.Balaji Hotels and Enterprises Limited to adjust the previous outstanding loan accounts. The respondent was a party to the Company resolutions authorising Company officials to execute the loan documents.

3. After conducting the investigation, the petitioner herein laid a charge sheet before the learned Special Judge for CBI Cases, Chennai on 27.11.2008. The Special Judge took cognizance of the offence and taken the case on file in C.C.No.3 of 2009 and issued process against the respondent and others. After entering all the accused persons, on 22.06.2009, the respondent had filed a petition under Section 239 Cr.P.C in Crl.M.P.No.1400 of 2009 seeking discharge him from the case in C.C.No.3 of 2009 on the file of the learned Special Judge for CBI cases, Chennai. After receiving counter from the petitioner herein and after hearing the submission of counsel on either side, the learned Special Judge allowed the petition and discharged the respondent from the offences. Feeling aggrieved with the order passed by the learned Special Judge, the petitioner has preferred this present revision.



4. Heard the rival submissions made by the learned counsel on either side and perused the materials placed before this Court.

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5. The learned Special Public Prosecutor (CBI Cases) for the petitioner would submit that prima facie case has been made out for framing the charges against the respondent herein/ A4. The Hon'ble Apex Court and this Court have decided that even if there is strong presumption that the accused has committed an offence, then the Court can come to the conclusion that a prima facie exist for framing charges. In this case, the material on record would show that the respondent herein is the Managing Director of the Company, which had applied for the credit facilities and allowed the Company to be used for the purpose of ever-greening of the loan accounts. The loans were raised at higher interest rate from the erstwhile Global Trust Bank, but the same funds were kept as Fixed Deposits with erstwhile Global Trust Bank itself at lower interest rates and these Fixed Deposits were given as a security to the sister concerns to raise loans, which were used for clearing the outstanding dues of M/s.Balaji Group of Companies. Even these deposits were prematurely closed on the false pretext of business transactions with M/s.Mc.Dowell & Company Limited; and the proceedings of these Fixed Deposits were also used for closing the outstanding dues of Balaji Group. Being the Managing Director of M/s.Pearl Distillery Limited, the respondent, who was party to all the company resolutions authorising its officials to sign the loan documents for the above purpose, which indicates his involvement in the conspiracy and sufficient enough to frame the charge.

6. He further submitted that it is well settled law that at the stage of charge was only to determine if the material brought on records made out a case of strong suspicious against each of the accused. He has also placed reliance on the various judgments of the Apex court and the same are as follows:

1. Indu Jain V.State of Madhya Pradesh (2008) 15 Scale 168,
2. Bharath Parik Vs.CBI (2008) 10 Scale 86,
3. Hem Chand V. State of Jharkhand (2008) (3) Scale 598,
4. Soma Chakravarty V. State (2007) 5 SCC 403,
5. State of Maharashtra V.Salman Salim Khan (2004) 1 SCC 525,
6. State of Bihar V.Ramesh Singh (1977) 4 SCC 39,
7. Superintendent And Remembrancer of Legal And West Bengal V.Anil Kumar Bhunja (1979) 4 SCC 274."



7. In this case also, there are allegations levelled against the respondent and there is a prima facie materials available to frame the charges. However, the learned Special Judge failed to consider the allegations levelled against the respondent, seriousness of the offence alleged in this case and settled proposition of law laid down by the Hon'ble Apex Court, came to the conclusion that there is no material against the respondent and allowed the discharge application and discharged the respondent from the offences. Therefore, the same is liable to be set aside and this Revision has to be allowed.

8. The learned counsel for the respondent would submit that there is no prima facie materials available on records and the list of witnesses have not spoken anything incriminating evidence against the respondent in their statements. He further submits that the learned Special Judge after considering the entire materials placed by the prosecution came to the conclusion that there is no prima facie case against the respondent and therefore, allowed the application filed by the respondent and discharged him from the offences. He further submits that even after framing of charges, no materials to prove that there is a loss to the Bank. Therefore, there is no illegality or perversity in the order passed by the Trial Judge and there is no merits in this revision and the same is liable to be dismissed.

9. It is to be noted that there is an allegation against the respondent that he entered into conspiracy with other accused. A careful perusal of the final report filed by the petitioner against the respondent and other accused would show that there is an allegation against the respondent and the materials collected during the investigation and the charge sheet laid by the petitioner in Final Report No.4/PL/2008 dated 27.11.2008 before the learned Special Judge, would also show that there are prima facie materials against the respondent and the witnesses have also spoken in their statements about the involvement of the respondent. A careful perusal of the FIR, charge sheet filed by the petitioner and also the materials collected during the investigation and also the statement of the list of witnesses, there is a prima facie case against the respondent/A4 to frame the charges.

10. It is settled proposition of law that at the time of framing of charges, the Court has to see that if the materials brought on record made out a case of strong suspicious against each of the accused. Further, at the stage of framing of charges, the Court has to satisfy whether there is a sufficient ground for proceeding against the accused. The veracity and the effect of the evidence, which the prosecution proposes to adduce is not to be meticulously examined at this stage. Probative value of the material on records cannot be looked into. The materials placed by the



prosecution before the Court has to be accepted as true at that stage. Further, it is well settled law that the defence taken by the accused would not be considered at the time of framing the charges.

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11. Further, as per the decisions of the Hon'ble Supreme Court in State of Bihar Vs. Ramesh Singh [(1977) 4 SCC 39] the observation of the Hon'ble Supreme Court that at the stage of framing of charge, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the Trial is sure to end in his conviction. Strong suspicion against the accused if the matter remains in the region of suspicion cannot take the place of proof of his guilt at the conclusion of the trial. But, at the initial stage, if there is a strong suspicion, which leads the Court to think that there is a ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

12. Further, the Hon'ble Apex Court in the case of State of Orissa Vs. Debendranath Pathi reported in [2004 (8) SC 568] has held that at the stage of framing charge, the Trial Court is required to take into consideration only police report filed under Section 173 Cr.P.C., and not any other documents filed by the accused. Even this Court also in an earlier occasion in the case of J.Swaminathan Vs. State represented by the Inspector of Police, Central Bureau of Investigation, SPE reported in (2017) 3 MLJ (Cr1) 186, has held as follows:

"6. On a careful perusal of the charge sheet filed under section 173 of cr.p.c. along with other material documents and dismissal order of the learned Additional Chief Metropolitan Magistrate would show that there are incriminating materials to proceed against the petitioners and other accused. In the above facts and circumstances, at this stage, the trial Court is not expected to conduct a roving enquiry on the material records.

7. At the stage of framing of charge, what the Court has to see is whether the material brought on record would reasonably connect the accused with the crime. No more is required to be inquired into. Only prima facie case is to be seen, the question whether the charges have been proved or not can be determined only after the evidence is recorded in this case. For framing of charge, the Court has to consider judicially whether on consideration of the materials on record it can be said that the accused can be reasonably connected with the offence and that there is a reasonable probability or chance of the accused being found guilty. If the answer is



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affirmative, the Court will be at liberty to frame a charge against the accused. No weight to be attached to the probable defence of the accused. In a case instituted upon a police report, the Court is required at the time of framing of the charges, to confine its attention to documents referred to under section 173 of cr.p.c., only. The Court is not justified in referring to documents relied on by the accused when their authenticity and veracity are yet to be gone into. The documents filed by the defence cannot be considered in framing charge.

8. Further, it is well settled principles of law that at the time of considering the discharge petition before framing of charges, the Court ought to have seen whether there is any prima-facie case made out for framing of charge and the Court need not to conduct any roving enquiry regarding the oral and documentary evidence collected by the prosecution. The Additional Chief Metropolitan Magistrate, considering all the materials collected during the investigation found that there is prima facie case as against the petitioner and other accused to frame the charges. The validity and admissibility of the oral and documentary evidence can be done only after the trial and not at the stage of framing of charges and at the time of framing of charges, the probative value of the material on record cannot be gone into. Therefore, I am of the view that the trial Court has correctly come to the conclusion that there is prima facie case made out as against the petitioner and others to frame charges and at this stage, the order passed by the Additional Chief Metropolitan Magistrate cannot be interfered by exercising the revisional jurisdiction under section 397 read with 401 of i.p.c.

9. At this stage, it is worthwhile to refer the decision of the Hon'ble Supreme Court reported in 2017 CRI.L.J.1433 State of Rajasthan V. Fatehkaran Mehdu, wherein, the Apex Court has dealt with the same issue and has held in paras 26 to 29 as follows:-

26. The scope of interference and exercise of jurisdiction under section 397 of cr.p.c. has been time and again explained by this Court. Further, the scope of interference under section 397 cr.p.c. at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion



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but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in context of quashing of charge framed under section 228 cr. p. c. para 27, 27(1), (2), (3), (9), (13) are extracted as follows:

"27. Having discussed the scope of jurisdiction under these two provisions, i.e., section 397 and section 482 of the code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under section 397 or section 482 of the code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court under section 482 of the code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the



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charge framed in terms of section 228 of the code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. 27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

13. At the time of framing of charge what the Court has to see is whether the materials brought on record would reasonably connected the accused with the crime? No more is required to be enquired into. Only prima facie case has to be seen. The question whether the charges have been proved or not can be determined only after the evidence is recorded in the case. For framing of charge, whether on consideration of the materials on record, it can be said that the accused can



be reasonably connected with the offence and there is a reasonable probability of accused being found guilty. If the answer is affirmative, the Court will be at liberty to frame a charge against the accused. No way to be touched to the probable defence of the accused. In a case instituted upon a police report, the Court is required at the time of framing of charges, to confine itself attention to the documents referred to under Section 173 Cr.P.C., only. The Court is not justified in referring to the documents relied on by the accused when there is authenticity and veracity are yet to be gone into.

14. In this case also a perusal of the FIR and Charge Sheet and also the documents produced by the petitioner before the learned Special Judge under Section 173 Cr.P.C along with other documents would reveal the prima facie case. Therefore, considering the facts and circumstances along with the above said discussion, I am of the view that the Trial Court has committed an error and discharged the respondent from the offence. There is a prima facie case is made out as against the respondent and others to frame charges. There is an imperative and illegality in the order passed by the learned Special Judge and the same is warrant interference by this Court by exercising the Revision under Section 397 Cr.P.C.

15. In the result, this Criminal Revision Case is allowed and the order dated 11.09.2009 passed by the XI Additional Court for CBI Cases, Chennai in Cr1.M.P.No.1400/2009 in C.C.No.3/2009 is set aside.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmi

To
The XI Additional Court for CBI Cases,
Chennai.

+1cc to M/s.A.E.Ravichandran, Advocate SR.No.39428

NRL (CO)
sm:2.7.2018

Cr1.R.C.No.1139 of 2009