

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2017

(Reserved on: 24.11.2016 ; Pronounced on : 03.2017)

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

CRL.OP.No.3726 of 2009

and

M.P.No.1 of 2009

1.V.Kannan

2.V.Baskaran

..Petitioners/Accused 1& 2

Vs.

Inspector of Police,
SPE:CBI:ACB,
Chennai.

(Ref.Cr.No.RC 0027 (A) 2005)

..Respondent/complainant

Prayer: Criminal Original Petition is filed to call for the records and quash the proceeding in Calendar Case No.246 of 2008 pending before the Judicial Magistrate No.1, Pondicherry.

For Petitioner

: Mr.A.Ramesh
Senior counsel for
M/s.Gupta & Ravi

For Respondent

: Mr.K.Srinivasan
Special Public Prosecutor
for CBI

ORDER

The Criminal Original Petition has been filed to call for the records and quash the proceeding in Calendar Case No.246 of 2008 pending before the Judicial Magistrate No.1, Pondicherry.

2. The case of the prosecution is that New Horizon Sugar Mills Limited is a public limited company, incorporated on 11.01.1957, under the Indian Companies Act. The main object of the company is to produce crystal sugar and other by-products and sell them to private traders and to 'Public Distribution System' of the State Government as per the directions of the Sugar Directorate, Ministry of Agriculture, Government of India. The said company was granted loan facilities since 1960, by the Indian Bank, Pondicherry. In the year 1983, the Indian Bank, Pondicherry had sanctioned 'Key Cash Credit' (KCC) facility and 'Open Cash Credit' facility to the company. As per the scheme of the KCC facility, the company has to pledge its stock of sugar bags with the Bank, equal to the value of the loan amount availed. Accordingly, the company, pledged the sugar bags, in its godowns bearing numbers 1,3A, 5, 5A and 6 to the Bank. The said godown were locked and sealed by the Bank and the keys were kept in its

custody. As and when the company wants to release the sugar bags from the said godowns, the equivalent amount shall be deposited with the Bank and a Bank official will collect the keys of the godowns from the Bank, proceed to the godown, deliver the required sugar bags to the company and after such delivery, the godown will be locked and sealed by the Bank official and the keys will again be handed over to the Bank by him. At that times, if no Bank official is available, the Bank used to hand over the keys to the employees of the company, to release the sugar bags and to return them after completion of release. In the year 1989, the petitioners became the Chairman the Managing Director of the Company respectively. During December 1999, as no Bank official was available to deliver the sugar bags to the company, the Bank gave the keys of the godowns to an employee of the company namely V.Kannan, the first petitioner to release the sugar bags and then return the keys to the Bank. Taking undue advantage of this, 1)the first petitioner, Chairman, 2) Second petitioner, Managing Director 3) M.D.N.Prabhakar, General Manager, 4) Jagan Mohan, Manager (Sales) and 5) Aravindan, Godown Keeper hatched a conspiracy to thief the sugar bags. Pursuant to the conspiracy, when the keys of the godowns were handed over to the first petitioner by the Bank, duplicate keys were made without the knowledge of the Bank and then the original keys were returned to the Bank. Using the duplicate keys, the said

officers of the company started to remove the sugar bags from the godowns of the Company, without the knowledge of the Bank and sold them to local traders without any bill. To cover up the removal of the sugar bags, they also erected a steel structure covered with tarpaulin between the stack of sugar bags. This unlawful removal and sale of sugar bags continued till March, 2003. The Company was also required to submit daily and monthly statements, to the Sugar Directorate, Central Excise Department and to the Indian Bank, showing the quantity of production, stock, sales, balance, etc, of the sugar bags. At the instance of the first and the second petitioners, M.D.N.Prabhakar, Jagan Mohan, Manager and Aravindan, false statements were submitted to the sugar Directorate, Central Excise Department and to the Indian Bank, showing different quantities of production, stock, sales, etc., of sugar bags.

3. Further as there was delay in the repayment of KCC loan, Indian Bank has approached High Court of Chennai and based on the orders of the High Court, the sugar bags were sold through M/s.Pondicherry Cooperative Sugar Mills, Pondicherry to various agencies in Pondicherry during 2005-2006. At that point of time it was noticed that there were only 72,000 bags of sugar in good condition and about 10,000 bags of sugar in spoiled condition. The said 72,000 sugar bags as well as Molasses were

sold for Rs.10,00,80,000.00/- by M/s.Pondicherry Cooperative Sugar Mills. About 1,00,000 of sugar bags worth Rs.14 Crores (at the rate of Rs.1390 per bag) instead of the actual quantity of sugar bags numbering 1,81,298 worth about Rs.25 Crores, which showed that the balance sugar bags were clandestinely removed from the KCC godown by using duplicate keys and the cash obtained through such illegal sale were utilised for other purpose than sanctioned for. Further the above said accused persons had submitted falsified documents to government agencies such as Sugar Directorate, New Delhi, Central Excise, Pondicherry and Indian Bank, Pondicherry Main Branch. During the said sale, it was found that about one lakh sugar bags, worth about Rs.14,00,00,000/- were missing. Hence the law was set in motion and the FIR was registered on 31.05.2005, by the SPE:CBI:ACB, Chennai in Cr.No.RC.0027 (A) 2005, for offences under Sections 120 B, 409, 420 and 477 A IPC, against three officers of the Indian Bank, New Horizon Sugar Mills Ltd., and the petitioners herein. On 25.02.2008, the final report was laid by the prosecution against the petitioners and M.D.N.Prabhakar leaving the other persons featured as accused in the FIR, for offences under Sections 120 B, 380 and 477 A IPC, which was taken on file by the learned Judicial Magistrate, Pondicherry in C.C.No.246/2008, for offences under Sections 120 B, 380 and 477 A IPC.

4. The case of the petitioner is that in the case on hand, the prosecution has neither recovered the sugar bags alleged to be theft nor traced the sale proceeds derived out of the stolen sugar bags by the petitioners. There is no piece of material to show that the petitioners have 'wrongfully gained' anything. Similarly, no 'wrongful loss' has been caused to the Bank. As per the notice issued by the Bank to the borrower under Sections 13(2) of the SARFAESI Act, 2002 on 25.09.2004 the amount due to the Bank by the New Horizon Sugar Mills was only Rs.27,19,15,465/-. The FIR would show that the Bank officials inspected the godown "on a particular date" and there were only about 38,000 sugar bags as against a stock of 181000 sugar bags as per record. Though the FIR was registered on 31.05.2005, it is blissfully silent as to when the alleged inspection was done and by whom. Similarly the statement of N.Jayaraman, Chief Manager, Indian Bank, would show that the alleged loss to an extent of 1,00,000 sugar bags is based on the statement of details of sugar sold through Pondicherry Cooperative Sugar Mills pursuant to the order of the High Court. The alleged loss of sugar bags is not based on any discrepancy in the godown register and the bin cards but on the other hand the shortage of sugar is alleged based on the statement of Pondicherry Cooperative Sugar Mills, which was carried out

only on 04.07.2005 on which date the possession of the entire factory, including the sugar godown, was admittedly with Indian Bank. Even on the date when the FIR was lodged on 31.05.2005, the possession of the factory including the sugar godown was with Indian Bank since the Bank had taken possession of the entire premises under the SARFAESI Act on 01.01.2005 itself. Rule-4 of the Security Interest Enforcement Rules, 2002 mandates the Authorised Officer to take possession of any movable property in the presence of two public witnesses and after the panchanama is drawn and signed by the witnesses, as nearly as possible, in Appendix-1 of the Rules and after taking possession in terms of Rule-4(1), the Authorised Officer has to make or caused to be made an inventory of the property as nearly as possible in the form given in Appendix-II and deliver or caused to be delivered a copy of such inventory to the borrower. A charge of theft of sugar could have been alleged, pursuant to such taking of inventory under Rule-4(2) of the Security Interest Enforcement Rules, 2002, if it is found that there was discrepancy between the inventory and the bin cards and godown register maintained by the accused. On the other hand, an FIR is taken on records based on reliable information after five months when the entire movable property was very much in the custody of theft cannot be levelled against the accused in the absence of production of panchanama in

Appendix-I as well as the inventory taken in Appendix-II in terms of Rule-4 (1) and (2) of the Security Interest Enforcement Rules 2002. It was not alleged either in the FIR or in the charge sheet that there was dishonest removal of the property by the Accused after 01.01.2005. On the contrary, the entire allegation appears to be that during the period 1999 to 2004 there had been clandestine removal of the sugar bags by the accused, which charge cannot be levelled unless contemporaneous documents taken at the time of taking possession of the secured assets was produced by the Bank.

5. Even otherwise, the sum and substance of the charge is that by virtue of the removal of 1,00,000 sugar bags, the accused has caused loss to an extent of Rs.14 Crores to the Bank. The Bank took possession of the entire secured assets on 01.01.2005 and issued tender for sale of all movable and immovable properties on 18.03.2005. The tender was opened on 24.03.2005 on which date the successful bidder deposited a sum of Rs.12.60 crores out of the total sale consideration of Rs.50.20 Crores. Though in terms of the tender conditions the successful bidder has to deposit the balance sale consideration within a period of 15 days, in view of pending proceedings in the High Court, the successful purchaser deposited the balance sale consideration of Rs.37.60 crores on

27.07.2005. It may be pertinent to note that on 24.03.2005 itself the sale of the property was confirmed in favour of the purchaser and the Bank, having received a major portion of the sale consideration in terms of the tender, has no lien over the sugar bags, which automatically gets discharged. In fact, it is the Bank which has committed theft and breach of trust after taking possession of the sugar bags on 01.01.2005 and has conveniently laid the blame on the accused. Therefore, neither “wrongful gain” nor “wrongful loss” has been spelt out by the prosecution.

6. Heard both sides and records perused carefully.

7. Learned counsel for the petitioners would submit that the perusal of the FIR would show that when the Bank officials inspected the godown on a particular date and there was only about 38,000 sugar bags as against stock of 1,81,000/- sugar bags as per record. Though the FIR was registered on 31.05.2005, it is silent as to when the inspection was done and by whom and the FIR was lodged on 31.05.2000. The possession of the factory including the sugar godown was with Indian Bank. Since the Bank had taken possession of the entire premises under the SARFAESI Act on 01.01.2005 itself, there is no allegation either in FIR or in charge sheet that there was dishonest removal of the property by the accused.

After 01.01.2005, the entire allegation appears to be that during the period from 1999 to 2004, the sugar bags were removed by the accused and charge cannot be levelled unless the contemporaneous documents taken at the time of possession of the secured assets as produced by the Bank. The ingredients of Sections 120 B, 380, 477 A, IPC are not made out since during the relevant point of time, the possession of the sugar godown was with Indian Bank and not with these petitioners.

8. Further he would submit that the entire loan amount has been recovered from the New Horizon Sugar Mills well prior to the institution of the prosecution. There is no loss to the Bank and there is no direct materials to show that these petitioners/accused committed the offence u/s.120 B, 409 and 420 and 477 A, IPC. Therefore, the charge against the accused is not made out and there is no dishonest intention. Therefore, the criminal proceedings in C.C.No.246/2008 on the file of Judicial Magistrate No.1, Pondicherry is liable to be quashed.

9. Learned Special Public Prosecutor appearing for the respondent would submit that the oral evidence of PW.1 and PW.2 and documentary evidence of D.23 to D.47 and D.50 to D.54 pertaining to godown wise sugar stocks and invoice of sugar sales will prove that the accused

intentionally removed the sugar bags from the godown without the knowledge of Indian Bank on whose possession, the said sugar bags were lying and sold the sugar bags to various parties and wrongfully gained and corresponding wrongful loss to the Bank. Further he would submit that there is sufficient evidence available to prove that the accused have managed to prepare duplicate keys without the knowledge of Bank officials, in respect of the godown keys where sugar stocks were lying and used the duplicate key for committing theft of sugar bags from lawful possession of Indian Bank. This aspect will be proved by PWs.1 to 4 and D.61 and D. 63. There are enough materials to prove the offence under Section 380 IPC.

10. The statement of PW.8 to PW.12 and statements of PW.1 and PW.2 clearly shows that the theft of sugar bags started from the year 1999 by making false keys to the godown. The said stolen sugar bags were sold to PW.8 to PW.12. The documents available and stock statements were falsely prepared and produced to the Bank and it clearly shows the removal of sugar bags by the accused and subsequently sold the same to the other persons. There is sufficient evidence to prove that the stock statements were manipulated at the instance of accused and both the petitioners have admitted their guilt and given confessional statement

clearly indicating the role of the accused in falsification of records. The documents D.23 to D.47 and D.50 to D.54 proved the intention of the accused and the accused have conspired, removed the sugar bags without the knowledge of the Bank from the godown, sold the same to outsiders and falsified the stock statement in order to set off the sugar stock removed from the godown.

11. Since there is sufficient oral and documentary evidences to prove the charges against the accused, the petition filed by the accused is liable to be dismissed. On perusal of the entire records, the case of the prosecution is that the regular case in RC MA1 2005 A 0027 u/s.120 B, 409, 420, 477 A IPC and 13(2) r/w. 13(1) (d) of PC Act, 1988 was registered on 31.05.2005 based on the information received by Mr.K.A.A. Salam, Inspector of Police, CBI:ACB, Chennai. In the FIR, T.Rajendran, then Chief Manager, Indian Bank, Pondicherry Main Branch, C.Balasundaram, V.R.Jothi, Clerk cum Godown Keeper, Indian Bank, Pondicherry Main Branch, entered into a criminal conspiracy with the first petitioner V.Kannan, Chairman and Director and the second petitioner V.Baskaran, Managing Director of M/s.New Horizon Sugar Mills Limited, Pondicherry, during the period between August 1999 and March 2002, at Pondicherry and other places to misappropriate the property of the Bank to

cheat Indian Bank and to commit the criminal misconduct and in furtherance of criminal conspiracy with the knowledge of T.Rajendran, Balasundaram and Jothi, who were custodians of the keys of the godown, where sugar bags manufactured by A4 Company were kept on pledge to the Bank by misusing or abusing their official position enabled the petitioners to fraudulently and dishonestly remove the pledged sugar bags from the godown, thereby causing a loss of Rs.23 Crores respectively to the Indian Bank. Further Rajendran being aware of the removal of the sugar bags pledged to the Bank allowed Balasundaram and V.R.Jothi to handle the keys of the godown, he also by misusing and abusing his official position dishonestly permitted diversion of the funds from OCC account to the tune of Rs.23 Crores, thereby causing a wrongful loss of the nearly Rs.23 Crores to the Bank and corresponding wrongful gain to themselves. After investigation, the prosecution has filed a charge sheet against the accused u/s.120 B, 380 and 477 A, IPC.

12. On perusal of the records, the case of the petitioners is that during the relevant point of time, the possession of the sugar godown was with only the Bank and not with the petitioners and the petitioners are in no way connected with the removal of the sugar bags and they have not caused any loss to the Bank. Further the amount was settled by the

borrower company and there is no loss to the Bank. The ingredients of Sections 120 B r/w. 380 and 477 A, IPC not made out as there is no material to prove the case of the prosecution against these petitioners.

13. A careful perusal of the records, especially final report, filed by the prosecution before the Judicial Magistrate No.1, Pondicherry u/s.173 of Cr.P.C., reveals that there is enough materials to prove the offence against these petitioners. Further the statements of witnesses and the documents filed by the prosecution also revealed that these petitioners have actively involved in the offences. Since there are enough material available to proceed the case further against the petitioners at this stage, the criminal proceedings in C.C.No.246/1994 on the file of the Judicial Magistrate No.1, Pondicherry, cannot be quashed.

14. As already stated from FIR, charge sheet and other documents attached with final report u/s.173 of Cr.P.C., there are enough materials available to proceed against these petitioners. When exercising jurisdiction under Section 482 of CPC., this Court could not ordinarily embark upon an enquiry whether the evidence in question is liable or not or whether on reasonable appreciation of its accusation could not be sustained. That is the function of the trial judge. The scope of the

exercises of power u/s.482 of Cr.P.C., and the categories of cases where the High Court may exercise its power under it, relating to cognizable offences to prevent the abuse of process of any court or otherwise to secure the ends of justice. The powers possessed by this court u/s.482 of Cr.P.C, are very wide and at the same time, the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle the legitimate prosecution.

15. Under the above said circumstances, this court found that enough materials are available against these petitioners to proceed further. Therefore, the petition filed by the petitioners to quash the petition is liable to be dismissed.

In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Since the commission of offence is prior to the year, 2005 the charge sheet filed on 25.02.2008 and C.C.No.246/2008 is pending from the year, 2008, the trial court is directed to dispose the case within a period of three months from the date of receipt of copy of this order.

Index : Yes/No
Internet: Yes/No

P.VELMURUGAN, J.
gv

To

1. The Judicial Magistrate No.1, Pondicherry.

2. The Special Public Prosecutor,
High Court, Madras.

Pre-Delivery Order made in
CRL.OP.No.3726 of 2009
and
M.P.No.1 of 2009

