

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Date of Reservation : 23.11.2016

Date of Pronouncement : 01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case No.1260 of 2016
and
C.M.P.No.11338 of 2016

1. A.P.Velusamy
Director,
M/s.Tirupur Sri Senthil Cotton Mills Ltd.,
S.F.No.302, Mangalam Road, Andipalayam,
Tiruppur.
2. M/s.Tirupur Sri Senthil Cotton Mills Ltd.,
SF No.302, Mangalam Road, Andipalayam,
Thiruppur Petitioners/A1 & 4

versus

The State through the
Inspector of Police,
CBI, Banking Securities and
Fraud Cell, Bangalore ... Respondent

Prayer: Criminal revision petitions filed under Section 397 read with 401 of Cr.P.C., to call for the records in CrI.M.P.No.1289 of 2011 in C.C.No.12 of 2011 from the file of the II Additional District Judge, (CBI Cases), Coimbatore, and set aside the order dated 23.09.2016.

For Petitioners : Mr.M.L.Joseph, for
M/s.Chennai Law Associates
For Respondent : Mr.K.Srinivasan, Special P.P. For
CBI Cases

ORDER

This criminal revision petition has been filed to set aside the order dated 23.09.2016 made in CrI.M.P.No.1289 of 2011 in C.C.No.12 of 2011 on the file of the II Additional District Judge, (CBI Cases), Coimbatore.

2.The brief facts of the prosecution case are as follows:

The first petitioner is the 1st accused and the 2nd petitioner is the 4th accused in C.C.No.12 of 2011 on the file of the II Additional District Judge, CBI Cases, Coimbatore. The respondent, after conducting investigation filed charge sheet against 5 accused. The 2nd, 3rd and 5th accused are bank officials employed in the relevant period at UCO Bank, Tiruppur branch. UCO bank granted the 4th accused credit facilities to the tune of Rs.44.52 Crores under various heads duly supported by collateral security of immovable properties, which was valued @ Rs.103.19 crores. The 4th accused company is a reputed exporter having duly registered with customs and central excise department. It is the allegation that 4th accused submitted 29 bills of various dates between 31.03.2006 to 28.05.2007 for being purchased by the accused Nos.2,3 and 5, which according to the investigating officer and defacto complainant were not acted upon. The original sanctioned limits granted to A4 company by UCO bank was Rs.44.52 crores as against the collateral securities worth of Rs.103.19 crores. During the regular banking transaction much before any recession affected the textile industry, A4 company through A1 to keep its status as UCO Expo Gold Card holder voluntarily repaid in several stages a total sum of Rs.35 crores and subsequent to declaration of NPA, the original liability of Rs.18 crores was added with penal interest and as such, a total liability of Rs.20.69 crores was arrived as the existing book liability.

3.It is the further case of the defacto complainant that the total loss pursuant to the OTS compromise shown as sacrifice under two heads viz., (i)actual sacrifice = 369.38 lakhs and (ii) notional sacrifice = 140.87 lakhs and accordingly, total sacrifice is Rs.510.25 lakhs which was waived by the bank, while considering OTS compromise entered between UCO bank and A4 represented by A1 dated 28.03.2009. OTS time was further extended upto 30.12.2009 by the letter of UCO bank dated 12.05.2009. A4 complied with OTS compromise and paid the entire amount of Rs.17 crores as demanded by UCO bank in its approval letter dated 28.03.2009 and redeemed the respective pro-rata collateral securities and thereby nothing remained to be paid by A4 in any account to UCO bank, Tiruppur pursuant to the agreed terms of one time settlement. Thus, it is clear even the assessment of the alleged sacrifice amount of Rs.510.25

lakhs has been done only after receipt of Rs.17 crores as per the OTS compromise. There was no compulsion of any nature for UCO bank to consider the OTS proposal forwarded by the branch and approved by the committee was not a figure or number suggested by A1 or anybody authorised by A4. It was purely the discretion of UCO bank authorities including the officials in the zonal office at Chennai who later on initiated the malafide complaint with the view to separate cognizable offences from civil recovery in order to specifically file criminal complaint particularly when there was no such discussions in any of the records related to OTS proposal which culminated in the approval order dated 28.03.2009. UCO bank cannot raise any grievance regarding subsequent loss after approving OTS compromise. The allegation against A1 and A4 is that without carrying the exports regarding the 29 export bills for which facilities were availed and formed part of the entire liabilities of A4 company and therefore all the accused are liable to be punished for the offences punishable under Section 120(B) read with 409, 420, 467, 468 and 471 of I.P.C. read with 13(2) (read with 13(1)(d) of Prevention of Corruption Act, 1988.

4. Aggrieved by the said charge sheet, the petitioners/A1 and A4 have filed discharge petition under Section 239 of Cr.P.C. seeking discharge from C.C.No.12 of 2011 stating that since no triable offence has been made out against the petitioners. After hearing both sides, the learned Additional District Judge passed order dated 23.09.2016, dismissing the discharge petition filed by the petitioners as the grounds for discharge petition are unacceptable, unsustainable and untenable in view of the suspicion against the petitioner and other accused regarding their involvement in the occurrence of his case and thereby holding the existence of prima facie case and grounds to frame charges for proceeding with the trial against the petitioners and three other accused. Against which, the present criminal revision petition has been filed.

5. The learned counsel for the petitioners would submit that A1 has already settled the entire liability by paying Rs.17 crores to UCO bank under one time settlement scheme and the UCO bank by freely accepting the one time settlement by receiving Rs.17 crores from A1 and A4 in full and final quit of the claim is not entitled to lodge a criminal complaint alleging that it suffered a loss of Rs.510.25 lakhs and hence, this criminal case itself is not maintainable.

6. Per contra, the learned Special Public Prosecutor would submit that though it is admitted that A1 and A4 have entered into a one time settlement with UCO Bank on 25.03.2009 and paid Rs.17 crores to UCO bank in terms of the said one time

settlement, while securing the release of properties given by them as collateral security, the criminal acts of fabricating forged commercial invoices and using them as genuine one, forgery of export bills and using them as genuine, fraudulent encashment of 27 Foreign Bills, cheating UCO bank and criminal misconduct completed during the year 2006 to 2007. It is further submitted that even though one time settlement has been made by A1 and A4 towards their outstanding to UCO bank, it will not absolve the criminal liability of A1 to A5 in this criminal case, since one time settlement was made only towards civil liability by A1 and A4 and hence, the petitioners are not entitled for discharge placing reliance upon the one time settlement made between A1, A4 and UCO bank. In support of his case, the learned Special Public Prosecutor placed reliance of the decision in the case of Gian Singh V. State of Punjab reported in (2012) 10 Supreme Court Cases 303.

7. In reply, the learned counsel for the petitioners would further submit that even otherwise also the petitioners are entitled to discharge, since as on 31.03.2000, the petitioners paid Rs.17 Crores. In the properties of the petitioners, there were buildings on two survey numbers and the petitioners sold each building, but the bank took considerable time to release the document to the purchasers out of 48 original documents submitted by the petitioners to the Bank at the time of getting the loan. There was no fault on the part of petitioners, but due to inordinate delay on the part of Bank in releasing the documents and adjusting the payments interest was charged in the accounts of petitioners and the interest amount calculated to be collected from these petitioners was Rs.40 lakhs and the liability of the petitioners to pay UCO bank, rent loan was Rs.38.13 lakhs and hence, the total amount arrived to be collected from the petitioners was Rs.78.13 lakhs and for the said outstanding amount, the title deeds of five properties were with held by the bank. The accused had arranged funds from M/s.Top Light Labels, Thirupur and the entire dues were cleared on 27.03.2010. Furthermore, it is submitted that the materials available in the charge sheet does not support the presumption of a prima facie case as no forged documents have been produced by the investigation agency before the Special Court and therefore, the ingredients of Sections 467, 468, 471 of I.P.C. have not at all made out. There is no incriminating documents to demonstrate the existence of a fake document even before the Special Court in the entire compilation of charge sheet and no ingredients of Sections 467, 468 and 471 of I.P.C. can ever be tested in trial and hence, the order passed by the Special Court was without application of mind and the same is liable to be rejected.

8. Heard the learned senior counsel appearing for both the petitioners and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record along with the order passed by the learned Special Judge for CBI Cases.

9. Perusal of the charge sheet filed under Section 173 of Cr.P.C. along with other material documents and dismissal order of the learned Special Judge would show that there are incriminating materials against the petitioners and other accused. 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 Special Court need not to conduct any roving enquiry regarding the oral and documentary evidence collected by the prosecution. The Special Court considering all the materials collected during the investigation found that there is prima facie case as against the petitioners 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 Special Court has correctly come to the conclusion that there is prima facie case made out as against the petitioners and others to frame charges.

10. On a perusal of the entire records furnished to the petitioner and all the documents produced before the Special Court under Section 173 of Cr.P.C. and the order passed by the Special Court, this Court finds that there are incriminating materials against these petitioner to frame charges. Further, as submitted by the learned Special Public Prosecutor, the compromise entered into between the parties will not absolve the cases.

11. At this stage, it is worthwhile to refer the decision of the Hon'ble Supreme Court reported in (2012) 10 Supreme Court Cases 303 - Gian Singh Vs. State of Punjab and another, wherein, the Apex Court has held as follows:

"Heinous and serious offences of mental depravity, murder, rape, dacoity, etc., or under special statutes like Prevention of Corruption Act or offences committed by public servants while working in their capacity as public servants, cannot be quashed even though victim or victim's family and offender have settled the dispute and such offences are not private in nature and have a serious impact on society."

12.Considering the facts and circumstances of the case, I am of the view that the Special Court has correctly come to the conclusion that there is prima facie case made out as against the petitioners and others to frame charges and at this stage, the order passed by the Special Court cannot be interfered by exercising the revisional jurisdiction under Section 397 read with 401 of I.P.C.

13.In this regard, 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 whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

27. Now, reverting to the limit of the scope of jurisdiction under Section 397 Cr. P.C., which vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

28. It is useful to refer to judgment of this Court in Amit Kapoor and Ramesh Chander and Another, (2012) 9 SCC 460, where scope of Section 397 Cr. P.C. have been succinctly considered and explained. Para 12 and 13 are as follows:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, 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 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."

Considering the above said settle proposition of law along with the facts and circumstances of the present case, there is no imperative or illegality in the order passed by the learned Special Judge and the same does not warrant any interference by this Court, by exercising the revisional jurisdiction under Section 397 read with 401 of Cr.P.C. and this criminal revision fails and the same is liable to be dismissed.

14.In the result, this criminal Revision Case is dismissed.
Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Inspector of Police,
CBI, Banking Securities and
Fraud Cell, Bangalore
- 2.The II Additional District Judge, (CBI Cases), Coimbatore.
3. The Public Prosecutor
High Court, Madras
- +1 CC to M/s.Chennai Law Associates, sr 39465

Criminal Revision Case No.1260 of 2016
and
C.M.P.No.11338 of 2016

KJ(CO)
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