

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Date of Reservation : 02.12.2016

Date of Pronouncement : 01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case No.1296 of 2013

D.Kalaichelvan Petitioner/A1

versus

State represented by
The Inspector of Police,
Central Bureau of Investigation,
Bank Securities & Frauds Cell
Bangalore,
R.C.No.7(E)/2008 Respondent/Complainant

Prayer: Criminal revision petition filed under Section 397 read with 401 of Cr.P.C., to call for the records in C.C.No.46 of 2009 from XI Additional Special Judge for CBI cases relating to Banks and Financial Institutions, Chennai -1 and to set aside the order dated 17.05.2013 passed in CrI.M.P.No.731 of 2011 in C.C.No.46 of 2009 and to discharge the accused from the offence mentioned in the charge sheet.

For Petitioner : Mr.A.V.Somasundaram for
M/s.Lakshmipriya Associates

For Respondent : Mr.K.Srinivasan, S.P.P. For CBI cases

ORDER

The criminal revision has been filed to call for the records in C.C.No.46 of 2009 from XI Additional Special Judge for CBI cases relating to Banks and Financial Institutions, Chennai -1 and to set aside the order dated 17.05.2013 passed in CrI.M.P.No.731 of 2011 in C.C.No.46 of 2009 and to discharge the accused from the offence mentioned in the charge sheet.

2.The case of the prosecution is that the accused M/s.Kannya Electronics Pvt. Ltd., Chennai (A4) represented by Shri B.Subash (A2), Managing Director and Shri P.N.Ramakrishnan

(A3), Director, approached the Nungambakkam Branch of Union Bank of India at Chennai, to take over its liabilities from State Bank of India, citing the reason of interest rate difference. The Union Bank of India officials sanctioned Cash Credit limit of Rs.5 crores and Inland LC/PAD limit of Rs.4 crores and the limits were released by Shri.Kalaiselvan(A1) by issuing a Pay Order for Rs.4.79 crores for taking over the account of the company from SBI and further issued a Letter of Comfort favouring the SBI for outstanding LC liability of Rs.3.04 crores with SBI. A vacant land measuring 7.90 crores at Sholinganallur valued at Rs.12.64 crores owned by Shri P.N.Ramakrishnan, Director of M/s.Kannya Electronics Pvt. Ltd., which was offered as security for the loan by the company, was found to be already disposed off, even before creation of EM by the company. The account turned irregular and was categorized as NPA on 22.10.2007. Thus, the company and its Directors had fraudulently created mortgage of a property, for which they did not have valid title and removed the stocks hypothecated without the knowledge of the Bank. By the above, acts, the accused defrauded the Union Bank of India to the tune of Rs.8.44 crores. Therefore, a case in RC 7(E)/2008/CBI/BS&FC/BLR was registered on 25.09.2008 for the offence under Section 120(B) read with 420, 467, 468 and 471 of I.P.C. and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 against A1 to A6 as their complicity in the criminal conspiracy and the preparation of the fraud had come to light. The prosecutor, after completion of investigation, filed final report against all the accused. The present petition is arrayed as A1 and charge sheet has been filed against him for the offences punishable under Sections 120 (B) read with 420, 467, 468 and 471, 420 of I.P.C. and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and since A1 has retired from the bank services on superannuation on 31.10.2009, no sanction is required to prosecute him. Aggrieved against the said charge sheet, the present petitioner/A1, has filed discharge petition before the trial Court in CrI.M.P.No.731 of 2011. However, the learned Special Judge, after hearing both side and considering the documents available on records, found that there are prima facie materials available to frame the charge against the petitioner and dismissed the discharge petition filed by the petitioner. Against, which, the present criminal revision has been filed.

3.The learned counsel for the petitioner would submit that the petitioner had acted in accordance with the guidelines prescribed by the Bank and CBI falsely charge sheeted. Document No.122, the Credit Information Report of SBI reveals that the account of M/s.KEPL is classified as standard assets and satisfactory. The petitioner has not concealed any matter with regarding M/s.KEPL dealing with State Bank of India from the purview of his superior officer including Regional office. As

per document No.166, State Bank of India, Commercial Branch, Chennai opened LC's inspite of their decision not to allow fresh LC's for M/s.KEPL on 19.06.2006. The legal heir certificate was scrutinized by panel advocate who has given a positive opinion. Document No.122 is the credit information report of State Bank of India on M/s.KEPL, where it is mentioned that M/s.KEPL is banking with them since 01.07.2002. They have sanctioned the limit against the stock of computer spares and accessories, which were duly insured with M/s.New India Assurance Corporation Ltd., and hence, the stock statements, sundry data statements submitted by them does not gave room for suspicion as they were banking with Premier Bank more than four years. No discrepancy was found between the property identified by each Bank. Document No.164 is the approval of Deputy General Manager, Union Bank of India, Regional Office, Chennai for the modification of import LC limit as import/Inland LC. Document Nos.7, 21, 33, 61 are the LCs opened by SBI, Commercial Branch, Chennai in favour of M/s.System and Networks and those outstanding liabilities were taken over by them, while taking over the account of M/s.KEPL from State Bank of India. Document No.288 is the credit report given by State Bank of India realized, where they are banking as the conduct of the account is satisfactory and regular because of this. It never created any suspicion with them about the company system and network. In support of his contention, he cited the decision of this Court reported in (2011) 4 MLJ (Cr1) 593 - Malini and Others V. Gunavathy.

4.The learned counsel for the respondent would submit that it was the primary duty of the petitioner to conduct proper verification of the accounts of the accused company maintained by A2 in State Bank of India. The petitioner also accepted the false balance sheet and income tax returns which are vital documents to consider for recommendation for sanctioning of credit facilities. Thus, the active connivance of the petitioner to cheat the Bank along with the other accused persons by abusing his official position was established through the oral and documentary evidence. The petitioner did not properly verify the claims of A2 directly with State Bank of India to protect the interest of the Union Bank of India even after the sanction of credit facilities by 28.12.2006. The petitioner asked State Bank of India, Commercial Branch, Chennai regarding the outstanding in the account of M/s.KEPL, which was replied by State Bank of India, Commercial Branch on 08.02.2007 mentioning the outstanding as Rs.4,79,00,000/- in CC Account and LC liabilities of Rs.3,04,00,000/-. The petitioner, with an intention to favour the accused company, overlooked this fact and further processed the taking over of the accounts from State Bank of India. The petitioner, with an intention to favour the accused company, blindly accepted the copies of orders furnished

by the accused company and a report of Chartered Accountant and forwarded to the Regional Office, without proper verification of the documents furnished by the accused company at the time of take over process of the loan account of the accused company. The above facts are proved through the oral evidence of L.W.2 and other bank officials. The petitioner accepted the false and fabricated statements viz., stock statements, list of sundry debtors, etc., furnished by A2 Subash to calculate the drawing power and further the petitioner accepted the bogus title deeds furnished by A3 P.N.Ramakrishnan as collateral security. It is the primary duty of the petitioner to make thorough scrutiny of the documents furnished by the company and fully satisfy with the contents in the documents. The statement of witnesses recorded under Section 161 of Cr.P.C., especially the witnesses from Union Bank of India and the relevant documents produced in support of the prosecution case for the alleged offence of criminal conspiracy and criminal misconduct and other offences against the petitioner/Accused No.1 and others would clearly establishes a prima facie case against the petitioner/A1 and hence, the petitioner is not entitled for discharge from the offence.

5.It is further submitted by the learned Special Public Prosecutor appearing for the respondent that Subash and B.Gowtham, who are arrayed as A2 and A5 respectively in this case have filed criminal revision petitions before this Court in CrI.R.C.Nos.153 and 154 of 2015 against the dismissal orders of discharge petitions filed by the above accused in CrI.M.P.No.5375 of 2013 and 3742 of 2013 respectively in C.C.No.46 of 2009 and this Court, after considering all the facts and circumstance of the case, dismissed the said criminal revision cases vide order dated 19.11.2015 and he has produced the copy of the said order.

6.Heard the learned counsel for the petitioner and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record along with the dismissal order passed by the learned Special Judge.

7.The petitioner was arrayed as A1 in C.C.No.46 of 2009 and he was charged for the offences under Sections 120(B) read with 420, 467, 468 and 471, 420 of I.P.C. and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. At the time of filing charge sheet, the petitioner was retired from bank services on superannuation and hence, no sanction is required to prosecute him.

8.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 Special Judge 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 and at the stage of framing of charge, probative value of the materials on record cannot be gone into and the what the trial Court is required to consider only the police report under Section 173 of Cr.P.C and documents annexed with it. The only right of the accused is being heard and nothing beyond that. Of course, at that stage, the accused may be examined but that is a prerogative of the court only. The duty of the court is not to examine and assess in detail on materials placed before it, it has to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons.

9. 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 Judge 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 affirmative, the Judge 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.

10. 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 learned Special Judge, 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, there is no need to interfere the order passed by the learned Special Judge by exercising the revisional jurisdiction under Section 397 read with 401 of I.P.C.

11. 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 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 aforesated. 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*."

12. Considering the facts and circumstances along with the above said decision, 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 framed charges against them and there is no imperative or illegality in the order passed by the learned Special Judge. Further more, perusal of the order dated 19.11.2005 of this Court made in CrI.R.C.Nos.153 and 154 of 2015 would show that co-accused, who are arrayed as A2 and A5 have filed criminal revisions against the order of dismissal of the discharge application were also dismissed. Therefore, considering all the facts and circumstances of the case, I am of the view that the learned Special Judge has correctly dismissed the discharge application filed by the petitioners 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.

13.In the result, this criminal revision case is dismissed.
The order passed in CrI.M.P.No.731 of 2011 in C.C.No.46 of 2009
dated 17.05.2013 by the trial Court is confirmed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
Central Bureau of Investigation,
Bank Securities & Frauds Cell
Bangalore,
2. The XI Additional Special Judge
for CBI cases relating to Banks
and Financial Institutions,
Chennai -1.
3. The Public Prosecutor for CBI Cases,
High Court Madras.

+1cc to M/s.Lakshmi Priya Associates in Sr.No.39808

Criminal Revision Case No.1296 of 2013

KS(CO)
NR(08/06/2017)

सत्यमेव जयते

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