IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 21.07.2017

ORDER PRONOUNCED ON: 09.08.2017

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.389 of 2016

State represented by
CBI, ACB, Chennai. .. Petitioner

vs.

Thangavinayagam
Manager,
Sri Ramajayam Tractors,
No.4, Lakshmipuram, Gandhi Nagar,
Bye-pass Road, Thiruvannamalai,
R/o.No.383, Mettu Street,
Uppanatham Village, Chengam Taluk,
Thiruvannamalai District 606 710. .. Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. to call for the records on the file of XI Additional City Civil & Session Judge for CBI cases, Chennai and set aside the order dated 10.02.2015 in Crl.M.P.No.176 of 2015 in C.C.No.5 of 2012.

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

For Respondent : Mr.Sivanandh
for M/s.Sivanandh Associates.

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ORDER

This criminal revision is filed to call for the records on the file of XI Additional and Special Judge for CBI cases, Chennai and set aside the order dated 10.02.2015 in Crl.M.P.No.176 of 2015 in C.C.No.5 of 2012.

2. The brief facts of the prosecution is as follows:-

Based on the complaint given by one R.S.Raghavan, Assistant General Manager, Union Bank of India, Regional Office, Salem against G.Kasinathan, the petitioner/respondent CBI registered a case in RC.No.23(A)/2010-CBI, ACB, Chennai. The allegation is that during the period from 15.12.2008 to 29.06.2009, G.Kasinathan, while working as Branch Manager of Thiruvannamalai Branch entered into a criminal conspiracy with others and in pursuance of the same, deliberately sanctioned and disbursed agricultural loans which includes crop loans on different dates to the borrowers who were canvassed and brought by the dealers for purchase of Power Tillers, by abusing his official position and by violation of Bank's laid down norms and procedures and caused huge loss to the Bank. Further, G.Kasinathan sanctioned and disbursed crops loans by knowingly accepted forged and fabricated documents and also without creating adequate primary security for the loans. After investigation, petitioner/respondent CBI has found that the accused A1 to A12 have committed the offence punishable under Section 120-B r/w 409, 467, 468 and r/w 471 and 477A IPC and Section 13(1) (d) of Prevention of Corruption Act, 1988 and substantive offence thereon. The sanction order dated 26.07.2011 issued to prosecute G.Kasinathan A1 and Kannan A2 under Section 120 (b) r/w 409, 420, 467, 468 r/w 471 IPC and Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.

3. After investigation, CBI has filed the charge sheet before the XI Additional City Civil and Sessions Judge for CBI cases, Chennai (CBI cases relating to Banks and Financial Institutions). The Special Court has taken the cognizance of the offence in C.C.No.5 of 2012. During pendency of C.C.No.5 of 2012 before the Special Court, the respondent filed a petition under Section 239 of Cr.PC for discharge. The Special Court after filing of the counter by the CBI passed an order by discharging this respondent herein and petitioner/A4 therein. Aggrieved by the order passed by the Special Judge the CBI has preferred the present revision petition.

4. The learned Special Public Prosecutor appearing for CBI would submit that the trial Court has discharged the respondent/A4 Thangavinayagam on the main ground that Thangavinayagam is not an employee of M/s.Shri Ramajayam Tractors and thus he has no connection to the fraud. Further, the investigation

reveals that the respondent/A4 availed loan for the borrowers from the Union Bank of India. Without quotation the materials were received from other agencies like M/s.Sakthivel Engineering for Power Tillers and the transaction was between A4 Thangavinayagam and another accused who is an employee of M/s.Shri Ramajayam, who in turn used to avail loan and the said loan amount was utilised by M/s.Shri Ramajayam Tractors for the purpose of selling the tractors. Therefore this revision is filed against the order of discharge passed by the trial Court. Further the learned trial Judge has found that there is no documentary evidence to substantiate the case against the petitioner in the absence of any prima facie oral and documentary evidence. No charge can be framed against the respondent/A4 and the charge against A4 is groundless, since the court found that no prima facie case against the respondent/A4 to frame the charge, therefore the trial Court discharged the A4. But, on charge sheet there are 3 instances have been mentioned and in all the three instances the allegation leveled against the petitioner and the statement recorded from LW26 one Arun Kumar has also spoken about the involvement of the respondent/petitioner A4, then the hand written expert opinion also reveals the involvement of the petitioner, therefore there is an allegation against the petitioner. Charge sheet, documents produced, statement of witnesses and other materials produced by the prosecution reveals that there are incriminating materials available against the respondent A4.

5. Further he would submit that the trial Court failed to look into the above aspects and simply has held that there was no oral and documentary evidence against the respondent/A4 and discharged him and further he would submit that the detailed analysis of evidence is not required and what is necessary and what is needed to be considered is whether there was a ground for presuming that the offence had been committed and not to look for the grounds to convict the accused at the stage of framing of charges. The Court below, erroneously held that there is no sufficient evidence to frame charges against the 4th accused/respondent. The attention of the trial Court was drawn to various decision of the Hon'ble Supreme Court regarding the appreciation of evidences by the trial Court at the stage of framing of charges. Instead of subscribing these settled position of law the trial Court had deviated from the established legal proposition proceeding to conduct a mini trial thus arriving at an erroneous conclusion that the charges are not prima facie substantiated against the accused and discharge him of all the offence.

6. Further the learned Special Public Prosecutor would submit that it is well settled proposition of law that at the stage of framing of charges, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion as to the materials produced are

sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further, then the charges has to be framed. The Court is not required to marshal materials on record and weight the evidence. It is further well settled that at the stage of framing of charges, the defence of the accused cannot be put forth or considered.

7. He further would submit that the Hon'ble Apex Court held that charges can be framed on the strength of a police report, statements of witnesses and the documents annexed with it. The Court need not look into the defence or the probable defence of the accused at this stage. Prima facie evidence is sufficient to frame charges. Moreover, as per the ruling ***Nirmaijit Singh Hoon Vs State of West Bengal reported in AIR 1972 SC 2639***, the Hon'ble Supreme Court of India held that the test is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction and where there was prima facie evidence, even though the person charges might have a defence the matter has to be left to be decided by the appropriate forum at the appropriate stage. This stand was upheld by the Hon'ble Supreme Court in ***State of Bihar Vs Ramesh Singh reported in AIR 1977 SC and Superintendent and Remmembrancer of Legal Affairs, West Bengal Vs Anil Kumar Bhunja reported in 1979 Cr.L.J. 1990*** wherein, the Hon'ble Apex Court has observed that strong suspicion against the accused is sufficient for framing

charges. In another ruling ***Niranjan Singh Punjab Vs State of Maharashtra reported in AIR 1990 SC 1962,*** the Hon'ble Supreme Court has held that at the stage of framing of charge, the duty of the Court is only to evaluate the materials and documents to find out whether facts emerging there from disclose all the ingredients of the alleged offence.

8. The learned Special Public Prosecutor relied upon the decision of the Supreme Court in the case of ***State of Jammu & Kashmir Vs Sundarshan Chakkar reported in 1995 of Cr.L.J.*** the Hon'ble Supreme Court held that at the time of framing of charge, the Court should find its attention only to the documents produced with the final report. The Hon'ble Supreme Court, while explaining the requirements U/s 227 & 228, 239 & 240 and 245 (1) & (2) categorically stated that test of existence of prima facie if there is ground for presuming that the accused has committed the offence, it can be said that a prima facie case has been made out against the accused even if the Court think that the accused might have committed the offence, it can frame the charges at the state of framing charge, probative value of the materials on record cannot be gone into. In the case of ***State Anti Corruption Bureau, Hyderabad and another Vs P.Suryaprakasam reported in 1999 Supreme Court cases (Crl) 373,*** the Hon'ble Supreme Court has observed that at the stage of framing of charge what the trial Court is required to and can consider are only the polic

report U/s 173 Cr.P.C. and documents sent with it. The only right of the accused is of being heard and nothing beyond that. This position was again confirmed by the Hon'ble Supreme Court in State of Orissa Vs Debendranath Padhi reported in 2004 (8) SC 568 Supreme. In another case ***State of Delhi Vs Gyan Devi and others reported in 2001 M.L.J. (Crl.) 117*** the Supreme Court held that at the stage of framing of charges, duty of the court is not to examine and assess in detail 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. The learned trial Judge has gone beyond the scope of Section 239 of Cr.P.C and has erroneously discharged the respondent/petitionerA4. The trial Court failed to appreciate the entire facts on its face value and in proper prospective to conclude that there is a prima facie case against the respondent A4, in deciding the issue under Section 239 of Cr.P.C. and hence the order passed by the Special Judge is liable to be set aside.

10. Per contra, the learned counsel for the respondent/ A4 would submit that there is no iota of evidence against the respondent in this case and no witness spoke about the over tact alleged to have been committed by the respondent/A4. Further he would submit that there is no oral and documentary

evidence to support the prosecution case against the respondent/A4 and he has not got any monetary benefit out of the alleged fraud. The respondent was working as an employee at M/s.Sakthivel Engineering and he has no direct knowledge regarding the alleged forgery in this case and it is a mere creation of false documents without the knowledge of the respondent/A4. There is no sufficient materials to frame charge against the respondent/petitioner. The respondent /A4 only obeyed the order of his employer and he never visited the Bank or played any role in the loan transaction and therefore the trial Court has rightly accepted the submissions made by the respondent/A4 and since prima facie case is not made out against the respondent/A4, rightly discharged the respondent/A4. There is no perversity or infirmity in the order passed by the trial Court. Therefore no valid ground has been put forth before this Court to interfere with the order passed by the trial Court and hence this revision petition is liable to be dismissed.

11. Heard both sides.

12. This Court has carefully perused the records such as charge sheet filed by the prosecution, material annexed with it, discharge petition filed by the respondent/petitioner before the trial Court, counter filed by the revision petitioner/respondent before the trial Court, the grounds of revision filed by

the revision petitioner/respondent CBI before this Court and the order of discharge passed by the trial Court and further considered the rival submission made by both the learned counsel for the parties.

13. As contended by the learned Special Public Prosecutor CBI, the respondent has been shown as A4 in the charge sheet and there is a prima facie allegations leveled against this petitioner in the charge sheet, though the charge sheet contains 3 instances, in all the 3 instances the allegations has been leveled against this respondent and further on perusal of statement of LW26 Arun Kumar, he has spoken about the involvement of this petitioner in this case, then further hand written expert also has spoken about the signature of this petitioner in this case. Therefore as contended by the learned counsel for the revision petitioner/CBI, at the time of framing of charges, the truth, veracity and the effect of the evidence should not be meticulously judged. The magistrate has to consider the existence of prima facie of the ingredients of the offence on a general consideration of the materials placed before him by the Investigating Officer. Further it is well settled law that at the time of framing of charge, Court is required to consider only police report and documents sent with it under section 173 Cr.P.C. it is also relevant to mention that at the time of framing of charges the Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for

convicting the accused. From the various decisions of Hon'ble Supreme Court (Supra) it is well settled proposition that at the time of framing of charge the Court has to consider the final report filed by the police and documents sent with it under Section 173 of Cr.PC. whether the prima facie case made out against the accused or not. At that stage, this Court is not expected to go deep into the probative value of the materials on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not to look for a ground for convicting the accused.

14. On a perusal of the above materials, this Court has found that prima facie case has been made out against the respondent/A4 and incriminating materials are available to proceed against him further in this case. The reasons stated in the impugned order passed by the trial Court for discharging the respondent are not legally sustainable and the same warrant interference by this Court.

15. The Special Court is directed to frame charge against 4th accused and proceed the case in accordance with law.

16. In the light of the above discussion and also the various decisions

referred to by the learned Special Public Prosecutor, the order passed by the trial Court in Crl.M.P.176 of 2015 in C.C.No.5 of 2012 dated 10.02.2015 is set aside and the criminal revision is allowed.

09.08.2017

Index:yes/no
Internet:yes
dpq

To

1. The XI Additional City Civil & Session Judge for CBI cases,
   Chennai

2. The Special Public Prosecutor for CBI Cases,
   High Court, Madras

P.VELMURUGAN, J

dpq

Pre Delivery Order
in
Crl.R.C.No.389 of 2016

09.08.2017