

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Date of Reservation : 29.11.2016

Date of Pronouncement : 01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case No.607 of 2016
and
C.M.P.No.4215 of 2016

J.Swaminathan
Petitioner/A3

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versus

The State rep. by
The Inspector of Police,
Central Bureau of Investigation,
SPE:EOW, Chennai.
Respondent/Complainant

Prayer: Criminal revision petition filed under Section 397 read with 401 of Cr.P.C., to call for the records culminated in order dated 04.03.2016 in CrI.M.P.No.3100 of 2015 in C.C.No.82 of 2014 pending on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai and set aside the same and consequently, discharge the petitioner.

For Petitioner : M/s.BFS Legal Associates

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

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ORDER

The criminal revision has been filed against the order dated 04.03.2016 in CrI.M.P.No.3100 of 2015 in C.C.No.82 of 2014 pending on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai and set aside the same and consequently, discharge the petitioner.

2.The case of the prosecution is that the petitioner is

A3 and the petitioner along with other accused entered into a conspiracy and cheated Canara Bank, Overseas Bank, Chennai by availing various credit facilities, by fraudulently not submitting the true and factual financial status of the accused firm, by preparing and submitting forged Hundis, Invoices, Delivery Challans, to fraudulently avail the funds through Inland letter of Credit and Bill of Exchange, without any genuine trade transaction, non maintaining the stocks and non-adherence to the terms of sanction and misappropriating the loan proceeds sanctioned by the bank and thereby caused wrongful loss of Rs.1256 lakhs including interest to Canara Bank, Overseas Branch, Chennai and corresponding wrongful gain to themselves and thereby committed offences punishable under Sections 120(B), 420, 467, 468, 471 of I.P.C and substantive offence under Sections 420, 467, 468 and 471 of I.P.C. The respondent filed charge sheet in RC 13/E/2012 of CBI EOW, Chennai dated 07.09.2012. Since, there is no material on record in respect of forgery, fabrication of records or falsification of accounts and in particular, there is nothing on record to link the petitioner/3rd accused to the alleged offence, the charge against the petitioner is groundless and hence, the petitioner filed discharge application in CrI.M.P.No.3100 of 2015. However, the learned Additional Chief Metropolitan Magistrate, after hearing both sides and considering the documents available on records, found that there are prima facie materials available to frame the charge against the petitioner and others 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 intention of the accused was not to cheat Canara bank, but, to settle the liabilities to Canara Bank. The offence of cheating is not at all made out and the allegations pertaining to the same are baseless and the petitioner is liable to be discharged. The Hon'ble Supreme Court has laid down that where there has been repayment of money to banks, even if there is a default, subsequently, the same will not amount to cheating. None of the documents or materials on records would show any involvement of the petitioner/3rd accused in the above process. There is no material on record to even remotely show that the petitioner herein gave any records to the Auditor to prepare the Audited balance sheet. In any event, handing over of records will not in any manner show commission of any offence. The petitioner/3rd accused was never a partner of the fourth accused firm. The respondent has attempted to mislead this Court by showing two isolated instances of small amounts given by the petitioner herein to the fourth accused as "Partners Loan"and the same is ground less. There is no prima facie case against the petitioner to proceed further. However, the trial Court failed to consider the materials on records and mechanically

dismissed the application filed by the petitioner.

4. The learned counsel for the respondent would submit that A4 availed various financial facilities from Canara Bank and that the funds were diverted for the purpose other than sanctioned and the packing credit availed by the fourth accused in 2008. The petitioner/accused entered into a criminal conspiracy and cheated Canara bank, Overseas branch, Chennai. The accused including the petitioner herein fraudulently submitted annual balance sheet of the firm with false financial status of the accused firm as earning profits by suppressing the true and factual status of the firm suffering losses every year and having huge outside borrowing. The accused including the petitioner herein fraudulently availed the funds through fraudulent and accommodative Inland Letter of Credit and Bill of Exchange without any genuine trade transaction and submitted by preparing and submitting forged Hundis, Invoices, Delivery Challans. The accused did not maintain the stock and did not adhere to the terms of sanction and dishonestly misappropriated the loan proceeds and thereby caused wrongful loss of Rs.1256 lakhs to the bank. The accused including the petitioner/A3 knowing fully well that the company is suffering losses year after year, dishonestly suppressed the loss and presented false picture before Canara bank for renewal and enhancement of credit limit and played deception on the bank. On this deception, Canara bank was induced to deliver property sanctioned and enhanced credit limit to the accused including the petitioner, which was subsequently misappropriated by way of repayment of other loans availed by the company from other private borrowers including private bank and others. The petitioner/A3 fraudulently and dishonestly prepared a forged requisition in the letter head of Sai Enterprises and signed as a fictitious authorised representative of Sai Enterprises, addressed to South Indian Bank, for discounting the ILCs and transferring the proceeds through RTGS to the account of Sai Enterprises held at IDBI, Bangalore and fraudulently withdrew the proceeds for their use. The complicity and involvement of the accused petitioner has been unearthed during the investigation and the evidence has been unearthed to prove the role played by the petitioner/3rd accused. The charge sheet contains specific charges against the petitioner and each charge is supported by the evidence on record to establish a prima facie case against the petitioner/3rd accused. Therefore, the contention of the petitioner is not acceptable and the trial Court has correctly found from the available materials that there is prima facie materials against the petitioner/3rd accused and dismissed the application filed by the petitioner and there is no reason to interfere with the order passed by the trial Court and the petition is liable to be dismissed.

5. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record.

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 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 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."

10. 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 there is no imperative or illegality in the order passed by the learned Additional Chief Metropolitan Magistrate 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.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Arul/gv

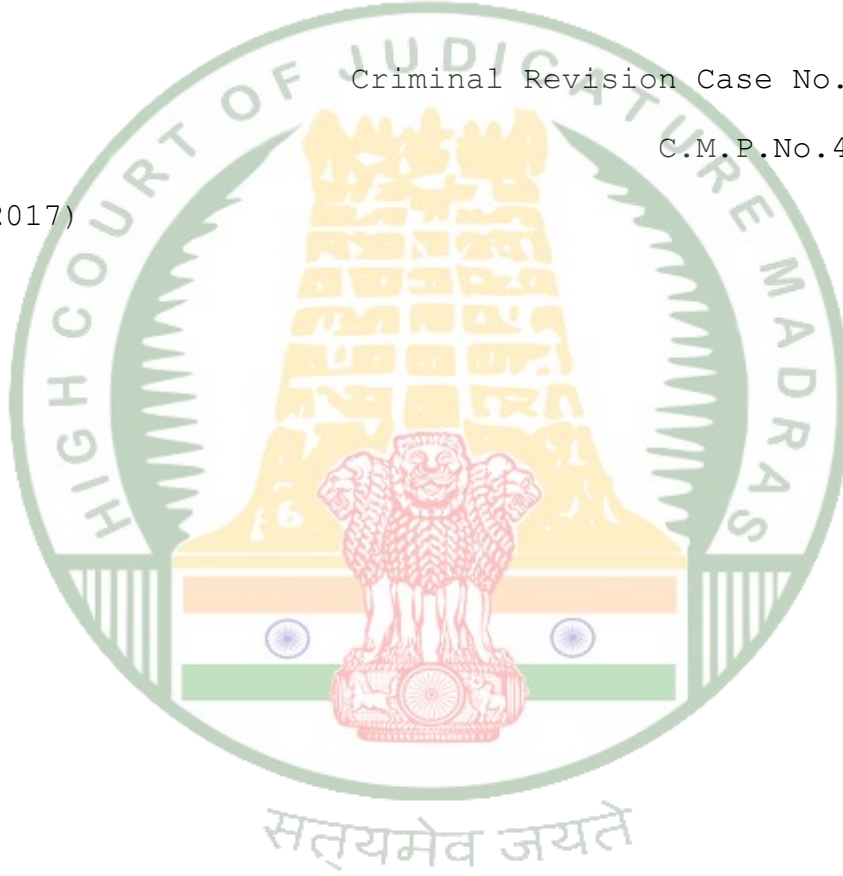
To

1.The Inspector of Police,
Central Bureau of Investigation,
SPE:EOW, Chennai

2.The Additional Chief Metropolitan Magistrate,
Chennai.

Criminal Revision Case No.607 of 2016
and
C.M.P.No.4215 of 2016

NR II (CO)
RS (09/06/2017)



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