

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.O.P.Nos.18322 of 2016

and 17311 of 2016

M/s.Trans India Resorts
having its Reg.Office
at No.37/10,Sarojini Street, T.Nagar
Chennai-17

rep. By its Director Mr.Marimuthu

... Petitioner in
Crl.O.P.No.18322 of 2016

M.Manivannan

.. Petitioner in
Crl.O.P.No.17311 of 2016

Vs.

The State rep. By
The Additional Superintendent of Police
SPE/CBI/ACB/Chennai
Chennai-600 006

.. Respondent/Complainant

Criminal Original Petitions filed against proceedings in
C.C.No.15945 of 2003 on the file of Additional Chief
Metropolitan Magistrate Court, Egmore, Chennai.

For Petitioners :Mr.P.Chandrasekar for petitioner
in Crl.O.P.18322/2016
Ms.S.Karpagavarthini
for petitioner in Crl.O.P.17311/2016

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI

COMMON ORDER

These Criminal Original Petitions have been filed by the
petitioners, seeking to quash the proceedings in C.C.No.15945 of

2003 on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The petitioner in CrI.O.P.No.18322 of 2016 is M/s.Trans India Resorts and is represented by its Director Mr.Marimuthu and has been arrayed as A-3. The petitioner in CrI.O.P.No.17311 of 2016 is Mr.M.Manivannan, is alleged to be a staff of TIRL, have obtained the signature of notary in the share pledged agreements and also obtained the false Notary Certificates from the notary Shri.Radhakrishnan. The petitioner in CrI.O.P.No.17311 of 2016 has been arrayed as A-4. The charge sheet has been filed against the above accused persons for the alleged offences under Sections 120-B r/w.420, 467, 468, r/w.468 IPC, in C.C.No.15945 of 2003. Since the issues involved in both the CrI.O.Ps, are one and the same, these Original Petitions are disposed of by way of this common order. For the sake of convenience, the petitioners are hereinafter referred to as per their ranking in C.C.No.15945 of 2003, viz., A-3 and A-4.

3.1. The brief facts of the prosecution case is as follows:- M/s.Trans India Resorts Limited (in short TIRL) is a public limited company incorporated in the year 1991, with the objective of developing modern resorts. Smt.Vasumathi Marimuthu/A1 is the whole time Director of TIRL, looking after its day-to-day affairs and her husband Marimuthu/A2 is the Chief Promoter of TIRL. TIRL proposed to set up two holiday resorts at Ooty and Kodaikanal, at an estimated cost of Rs.23.22 crores.

The project was to be financed by promoters equity of 1.6 crores, public issue of partially convertible debentures for Rs.9.6 crores and internal time share rentals of Rs.12.02 crores. On behalf of TIRL, A-1 applied for Bridge loan of Rs.4 crores to IDBI Bank on 05.08.1994, suppressing the fact that on behalf of TIRL, A-1 and A-2 had already availed a short term loan of Rs.2 crores from State Bank of Travancore, against public issue of TIRL. On 12.08.1994, the Deputy Manager of IDBI Bank viz., one Mr.T.Prakash forwarded the loan proposal of TIRL, for sanction of bridge loan for Rs.1.20 crore, to the Manager of the IDBI Bank viz., one K.P.Ramakrishnan. Then the said K.P.Ramakrishnan recommended for sanction of Rs.1 crore. In order to avail the bridge loan of Rs.1 crore, on certain conditions, on behalf of TIRL, the accused 1 and 2 pledged 1670483 IHFD shares of individuals and other companies, amount to Rs.1,67,04,830/-, as security, along with 17 notarised share pledge agreements.

3.2. According to the prosecution, one of the said 17 share pledge agreements, 7 agreements are forged and fabricated. The said share pledge agreements were produced before the notary Mr.Radhakrishnan and the signature of Radhakrishnan was obtained by A-4 Manivannan, a staff of TIRL, in a fraudulent manner. The 4th accused Manivannan obtained the false Notary Certificates from approver Mr.Radhakrishnan, in connivance with accused 1 and

2 represented by TIRL. Subsequently the accused persons failed to repay the loan amount.

3.3. According to the prosecution, the accused 1 to 4 entered into a criminal conspiracy to commit criminal misconduct and cheat the IDBI Bank. The said acts of the accused persons prima facie constitute the offence punishable under Section 120 (B), r/w.420, 467, 468 r/w.471 IPC. On source information, a case in RC MA1-1999-A0016 was registered by the 1st respondent-police on 17.06.1999 for the above said offences. After completion of investigation, charge sheet has been filed against the accused 1 to 4 and the same was taken on file as C.C.No.15945 of 2003 on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai. Thereafter, A-1 and A-2 had filed discharge petitions before the trial court, but the said discharge petitions were dismissed by the trial court vide order dated 28.07.2016 made in Crl.M.P.Nos.2106 and 1011 of 2009. Aggrieved by the same, A-1 and A-2 filed Crl.R.C.Nos.1032 and 1033 of 2010 before this court. This court, by order dated 03.08.2016, allowed the Criminal Revision Cases and discharged the petitioners from the offences alleged against them by observing as under:-

" 18. Considering these factual aspects of the case as well as taking note of the fact that the matter has already been settled as the loan amount has already been settled with the Bank before the DRT proceedings, I am of the opinion that the continuation of the criminal proceedings against the petitioners is going to be only a futile exercise in this matter, particularly in the circumstances where there is no material to frame charge against the petitioners. Therefore, I am of the opinion that revision deserves to be allowed."

4. The learned counsel appearing for the petitioners submitted that the case has been registered against these petitioners by the respondent-CBI only on a source information. The crux of the allegations made by the prosecution is that the petitioners herein have availed bridge loan to the tune of Rs.1 crore from IDBI Bank and at the time of availing loan, 17 share pledge certificates of IHFD were given by A-1 and A-2, as security for the loan amount, to the IDBI and that out of 17 share pledge certificates, the signatures in 7 share pledge agreements did not belong to the persons indicated in the said 7 agreements. It is submitted by the learned counsel for the petitioners that the 7 share certificates produced along with the disputed share pledge agreements to the Bank are genuine, valid and issued by IHFD as borne out in the statutory registers and are enforceable/valuable security. The learned counsel for the petitioners further submitted that loan amount is only to

the tune of Rs.1 crore, whereas as security to the loan amount, A-1 and A-2 had offered their property worth about Rs.14 crores in Ooty and the property at Kodaikanal worth about Rs.10 crores and further A-1 and A-2 have settled the loan amount with the IDBI bank, in a DRT proceedings. Thus, the learned counsel for the petitioners submitted that the matter has been settled and the main accused A-1 and A-2 who are the whole time Director of TIRL and Chief Promoter of TIRL have been discharged from the offences alleged against them, by the order of this court dated 03.08.2016, there will be no sufficient ground for the trial to go on against these petitioners for the offences alleged against them.

5. On the other hand, counter affidavit has been filed by the respondent wherein, it is stated that the accused had deliberately inflated the pledged shares value to cheat IDBI and they forged and fabricated documents to obtain bridge loan from IDBI which shows that there is a criminal conspiracy among the accused. It is further stated in the counter that the accused persons are delaying the trial proceedings for the past 13 years by filing vexatious petitions. It is also stated that the one time settlement between accused company and IDBI bank will not absolve the criminal liability of accused company as decided in Rakesh C.Jain & others Vs. CBI and another. It is further stated that IDBI Bank had suffered wrongful loss as it could not collect entire loan outstanding and interest accrued in one time settlement.

6. Mr.K.Srinivasan, learned Special Public Prosecutor appearing for the State CBI/respondent herein submits that the offences alleged against the accused is sustainable as the compromise between bank and accused will not absolve the criminal liability of accused/petitioners in taking bridge loan of Rs 1 crore by presenting fabricated, forged and false documents to cheat IDBI. However, he added that the main accused A-1 and A-2 who are the whole time Director of the TIRL and the Chief Promoter of the TIRL have been discharged as per the order of this court dated 03.08.2016 in CrI.R.C.Nos.1032 and 1033 of 2010 and no appeal is preferred against the said order by the prosecution before the Apex Court. The learned Spl.P.P., also produced a copy of the letter in No.C7/16/99/CBI/ACB/Chn/485 dated 28.12.2016 from the Central Bureau of Investigation, Anti-corruption Branch, to that effect before this court. The learned Special Public Prosecutor also fairly conceded that A-1 and A-2 had already settled the loan amount with the Bank concerned and in such circumstances, he has no serious objection to entertain the plea raised by the petitioners herein.

7. I have carefully considered the submissions made before

this court. It is seen that the present case has been filed only on the basis of the source information. Apart from the ground of settlement arrived at between the A-1 to A-3 and the Bank, no other materials are available to frame charges against these petitioners since A-3 is the company who is represented by the Director viz., M.Marimuthu, who had already been discharged from the offences alleged against him and further A-4 is only the employee of the company and in no way, connected with the affairs of the company. In this regard, it would be appropriate to place a reference in the ruling in the case of Nikihil Merchant Vs. CBI reported in (2008) 9 SCC 677, wherein, it is held as follows:-

" On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S.Joshi's case and the compromise arrived at between the company and the bank as also clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise."

In Gian Singh Vs. State of Punjab and another reported in (2012) 10 SCC 303, the Larger Bench of the Hon'ble Supreme Court has held as follows:-

"54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or

offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

55. B.S. Joshil¹, Nikhil Merchant², Manoj Sharma³ and Shiji alias Pappu³³ do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshil, Nikhil Merchant², Manoj Sharma³ and Shiji alias Pappu³³, this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482."

8. Considering the above rulings of the Supreme Court and also the facts of the case as well as taking note of the fact that A-1 and A-2 had already been discharged from the offences alleged against them by the order of this court dated 03.08.2016 in CrI.R.C.Nos.1032 and 1033 of 2010, the charges framed against the petitioners herein viz., A-3 and A-4 are not sustainable and hence, the proceedings in C.C.No.15945 of 2003 against the petitioners herein are liable to be quashed. Accordingly, these

Criminal Original Petitions are allowed. The proceedings in C.C.No.15945 of 2003 as against the petitioners herein viz., A-3 and A-4, on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai is quashed.

sd/
Assistant Registrar(CCC)

/true copy/

Sub Assistant Registrar

nvsri

To

- 1.The Additional Superintendent of Police
SPE/CBI/ACB/Chennai
Chennai-600 006
 - 2.The Additional Chief Metropolitan Magistrate, Egmore, Chennai
 - 3.The Public Prosecutor,
High Court, Madras.
- +3cc to Mr.P.Chandrasekar, Advocate SR.No.3948.

Cr1.O.P.Nos.18322 of 2016
17311 of 2016

SS(CO)
GN(08/02/2017)

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