

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2017

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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.4900 of 2016

P.Balasubramanian

... Petitioner

Vs

State rep. by
Inspector of Police,
SPE CBI ACB, Chennai

... Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the records in C.C.No.3 of 2015 on the file of the Special Judge for CBI Cases at Coimbatore and quash the same.

For Petitioner : Mr.S.Venkatesh

For Respondents : Mr.K.Srinivasan
Spl. Public Prosecutor for CBI

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.3 of 2015 on the file of the Special Judge for CBI Cases at Coimbatore and quash the same.

2. The case of the petitioner is as follows:-

As per the scheme, the prime security for the advances was the landed property, factory land, building and lands through Manager of 1.51 acres in the name of Shri.P.Balasubramanian (A5) and 0.50 acres in the name of Shri.Poomathal, mother of Shri. P.Balasubramanian (A5) apart from this hypothecation of machinery raw materials, stocks in process and receivables were also taken as security for the credit facilities. Based on the fabricated records by the accused persons, the market value of the immovable property was arrived at Rs.3,41,60,000/- i.e., to comply with 60% norms envisaged in the scheme term loan of Rs.0.45 crores and cash credit for working capital requirement of Rs.1.50 crores totalling to Rs.1.95 crores were sanctioned. Investigation also revealed that had the original valuation report issued by Shri.A.S.Balu, valuer who submitted the value of the above said property as Rs.2,41,00,000/- reached the Bank, then Shri.V.R.Varahagiri (A1) would have granted only 60% of Rs.2.41 crores amounting to Rs.1.45 crores only and not Rs.1.95 crores. As on 30.09.2014, the facilities were non performing. The accused borrower remitted the over dues and made it performing prior to 15.11.2014 itself. Even then, this cannot absolve the crime (of collusion with other accused, preparation and submission of the fabricated valuation report for the purpose of cheating the Bank) committed by the accused.

5. The learned counsel for the petitioner submitted that the petitioner

is the absolute owner of the land and building in survey No.338 which was offered as collateral security. The petitioner has not produced any valuation certificate. The petitioner remitted the over dues even prior to 15.11.2014. The Bank gave a complaint dated 11.02.2015 and the FIR was registered on 16.02.2015. The petitioner never approached L.W.3 Balu for the valuation report. The petitioner has not over valued the property and there is no complaint in this regards. The petitioner is no way connected with the alleged offence. Therefore without any material the prosecution has made a false allegations against this petitioner, proceedings are liable to be quashed.

6. The learned Special Public Prosecutor for the respondent would submit that the materials produced by the prosecution would show that prima facie case is made out to proceed against the petitioner and with the final report under Section 173 Cr.PC also squarely reveals the involvement of this petitioner/accused. Therefore the proceedings cannot be quashed under Section 482 Cr.PC, hence, this petition is liable to be dismissed.

7. Heard both sides.

8. On perusal of the final report filed by the respondent under Section 173 Cr.P.C. and also the list of witnesses, as well as the materials annexed

with the final report, reveals that there is a prima facie case and also

incriminating materials available against this petitioner. Though this Court has got enormous powers under Section 482 of Cr.P.C. for quashing the proceedings, the inherent powers of the High Court to quash the FIR and Criminal proceedings should be exercised sparingly as per the guidelines laid down by the Hon'ble Apex Court. The jurisdiction of invoking Section 482 of Cr.P.C. is not an automatic one and there are sufficient materials available on record against the petitioner to face the criminal proceedings.

9. The limits within which the jurisdiction under Section 482 can be exercised was again precisely stated in the case of Divine Retreat Centre Vs State of Kerala reported in AIR 2008 SC 1614 wherein, Apex Court observed, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 of the Code. The power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the Section itself. It is well settled that Section 482 does not confer any new power on the High Court but only saves the inherent power which the Court possessed before the enactment of the code. There are three circumstances under which the inherent jurisdiction may be exercised namely (i) to give effect to an order under the code (ii) to prevent abuse of the

process of Court, and (iii) to otherwise secure the ends of justice.

10. On perusal of the records and other materials placed before this Court, it reveals that there is prima facie case made out against the petitioner and no grounds are made out to quash the proceedings. Under such circumstances, this Court is not inclined to exercise its inherent jurisdictional power vested under Section 482 of Cr.P.C., as no ground has been made out by the petitioner to invoke the provisions under Section 482 Cr.P.C. Accordingly this petition is dismissed, however, petitioner is at liberty to raise all the points before the trial Court during trial.

Index:Yes/No
dpq

01.08.2017

सत्यमेव जयते

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P.VELMURUGAN, J

dpq

To

1. The Special Judge for CBI Cases
Coimbatore.
2. The State rep. by
Inspector of Police, SPE CBI ACB, Chennai.
3. The Special Public Prosecutor for CBI cases,
High Court, Madras.



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