HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2397 of 2016

ORDER:

The revision petitioner/A.2 maintained the present revision impugning the dismissal order dated 21.08.2014 of his discharge petition filed under Section 239 Cr.P.C. in Crl.M.P.No.1780 of 2011 in C.C.No.18 of 2008 by the I Additional Special Judge for CBI Cases, Hyderabad.

2. The C.C.No.18 of 2008 supra is outcome of crime No.RC1(A)/2006-CBI/HYD for the offences punishable under Sections 120-B, 419, 420, 465, 471 & 109 r/w 419 IPC & Section 13(2) r/w 13(1)(d) of PC Act against as many as 8 accused of whom the petitioner is 2nd accused and the State represented through CBI/SPE, Hyderabad, filed the charge sheet against them. Learned Special Judge taken cognizance for the offences supra and accused put forth their appearance and the stage before hearing of charges, this petitioner filed the petition supra seeking to discharge in so far as against him for the offences 120-B, 419, 420, 468 & 471 IPC.

3. The grounds of revision vis-à-vis the oral submissions of the learned counsel for the revision petitioner/A.2 are that the lower Court ought to have allowed the discharge petition by appreciating the submissions made by the petitioner instead of dismissing it and the lower Court ought to have appreciated the submission that he is a practicing Chartered Accountant for the past 15 years and he has prepared the company balance sheet and profit and loss accounts while discharging his duties

bonafidely and the petitioner is nothing to do with the A.1 and the Syndicate Bank as he is a third guarantor at their request. The lower Court ought to have seen that the petitioner was not signatory of the balance sheet and profit and loss account for the year 2000-2001 filed before the IT Department and also the loan in question is not granted based on balance sheet and profit and loss account for the year 2001-2002, but on the basis of entire loan documents submitted by A.1 and the petitioner cannot be made liable for giving third party guarantee. It is the submission of the learned counsel for the petitioner that even if the allegations leveled against him are taken to be true, no prima facie case since is made out against him and thereby he need not undergo the ordeal of trial for conducting trial against him would be an exercise in futility and also no witness spoke against him in Section 161 Cr.P.C. statements and the allegations made against him in the final report are false and sought for setting aside the dismissal order of discharge petition by allowing the revision.

4. Sri K. Jaya Balan, learned Standing Counsel for CBI submits that the order of the lower Court holds good and for this Court while sitting in revision there is nothing to interfere and hence to dismiss the revision.

5. Heard both sides and perused the material on record.

6. The charge sheet filed by the CBI, ACB Hyderabad which is outcome of crime No.RC 11(A)/2006-CBI/HYD dated 28.04.2006 for the offences supra from the investigation and in so far as the petitioner/A.2 (A.4 of the FIR) shows the accusation for the offences supra is that he entered into a criminal conspiracy

with A.1-Sri V.Manohar (A.2 of FIR) being Managing Director of M/s. Mayuri Engineers Private Limited, besides accused Nos.3 to 8, Sri Ch.V.V.Prasad-Sub Divisional Engineer, BSNL, Sri K.Narasimha Raju Business Man, Sri R. Vijay Kumar, the then Senior Manager of Syndicate Bank, M/s. Mayuri Engineers Private Limited represted by Sri V.Manohar supra, Smt. Prema Ayer, Sri M.V. Gopalakrishna, the then Assistant Manager, Syndicate Bank, in the matter of submitting false and fabricated balance sheet in respect of said firm Mayuri Engineers Private Limited (MEPL) (A.6)=A.11 of FIR in availing secured over draft facility from the Syndicate Bank, Golconda Branch by A.1 Sri V.Manohar representing the entity A.6 supra.

7. The allegations show that A.1-Manohar and his wife Smt. V.Swarupa Rani were promoter directors of MEPL to execute works awarded by DoT/BSNL of laying of cables, manholes, pillars etc., as an approved contractor for the year 2000-2001 up to July end of 2002 and MEPL opened current account with Syndicate Bank on 26.12.2001 and applied for Secured Overdraft (SOD) of Rs.13,00,000/- towards working capital for the works awarded by BSNL/DoT. It is further averred that in the loan application one Smt. G.V.Ramanamma was also shown as Director of MEPL whereas in the current account application opened on same day said G.V.Ramanamma was not shown as Director of MEPL. However, the Registrar of Companies records said Smt. G.V.Ramanamma also one of the Directors of the Company since 28.11.2000, however Form-32 showing her appointment as Director submitted to Registrar of Companies was only on 24.12.2001, which is before submission of the loan

application and the then Senior Branch Manager Vijay Kumar (A.5) sanctioned the SOD limit of Rs.9.75 lakhs within its powers by getting collateral security of plot No.60 (admeasuring 365.35 sq.mtrs.), Madannapet, Hyderabad belongs to Smt. G.V.Ramanamma supra and obtained equitable mortgage that was created of the property worth Rs.21.18 lakhs shown by the panel valuer, M/s. V.Jagannadha Rao & Associates approved the value without conducting any revaluation by the Bank. With loan application photo copies of the work orders issued in the name of MEPL for Rs.7.3 crores by BSNL were enclosed and the investigation revealed the work orders sanctioned by one Ch.V.V.Prasad (A.3) SDE, which are fake. Sri U.Srinivas, Area Manager, BSNL (not accused) intimated that the work orders were not genuine and not issued by BSNL and said K.Vijay Kumar (A.5) present SDE stated that the work orders were not issued from their office to MEPL or Sri Manohar (A.1) during 2001-02 and no bills were also processed in the name of MEPL during that period and SDE is not competent authority to issue work orders but for by the Divisional Engineers only and Sri K.Muthyala Swamy, Section Supervisor, working in the Office of SDE (Cables) stated the work orders were not issued by their office, however the stamps affixed as well as stationary used are genuine, showing the four work orders for Rs.7.3 crores submitted by the borrower are fake and fabricated and the signatures thereon show that pertains to Ch.V.V.Prasad, the then SDE (A.3) identified by Sri Muthyala Swamy, Section Supervisor and one Ashok Agarwal (A.8) stated that a meeting took place between Vijay Kumar and Ch.V.V.Prasad and Ashok (A.8) asked for verification of authenticity of work orders. Then those were sent to GEQD for opinion and received opinion of the questioned signatures, are of Ch.V.V.Prasad (A.3). The SOD for Rs.9.75 lakhs sanctioned by Sri. R.Vijay Kumar (A.5) was disbursed and the property at plot No.60, Madannapet was pledged as collateral security. Investigation revealed that legal opinion in the case given by Sri P.Pavan Kumar, panel advocate of the Bank and the title deeds submitted by the Bank is also fake as per the statement of Sri Mohd. Aleemuddin, Junior Assistant, SRO, Azampur. According to him, the original title deed available in SRO Office shows the property in the name of Smt. G.V.Ramanamma was dated 28.09.1974 and the same is not tallying with the title deed submitted to the Bank for the property in the name of G.V.Ramanamma resident of Mehaboobnagar, who denied she pledged her property to the Bank and the original title deed is still in her possession. That was collected during investigation besides her specimen signatures which are not tallying with the purported signatures of G.V.Ramanamma in the bank loan documents which shows there is impersonation of Smt. G.V.Ramanamma, the original owner of the property and the impersonator, as Smt. Prema Iyer, was identified during investigation as per the directions given by the friend of her husband, Sri Manohar and the specimen signatures of Smt. Prema Iyer tallied with the signatures in the bank documents. Sri R.Vijay Kumar allowed excess OD withdrawals during April to June 2002 and the balance outstanding by 03.06.2002 raising to Rs.14.07 lakhs and Sri Vijay Kumar did not inform the Zonal Office about excess withdrawals nor did he get approval to regularize the overdrawl allowed by him though competent to sanction up to Rs.10 lakhs and in his tenure as Branch Manager prior to he was relieved of the charge on 08.06.2002 he allowed certain fictitious credit and debit entries into the account of MEPL during April and May 2002 in the computer to show deposit of few lakhs in the cash deposit with corresponding entry of withdrawal through self cheques by Sri Manohar as part of their conspiracy to show as if there is greater turnover of company to facilitate enhanced limits at a future date by inflating the turnover artificially and the three cashiers of the relevant period stated there was no physical movement of cash and those are the adjustments as per the directions of Vijay Kumar supra. The charge sheet further speaks that MEPL submitted a request for enhanced OD limit to Rs.54 lakhs in April 2002 that is forwarded to Vijay Kumar to the Zonal Office and the DGM Sri P.Madhusudhan sought for certain clarifications and additional information and the Branch Manager Sri T.Subrahmanyam recommended for enhancement of SOD limit to Rs.50 lakhs who is not one of the accused. While requesting enhancement, the party offered additional collateral security of landed property of Sri PJV Prasad Rao by plot No.27, S.No.204/2 of Ramachandrapuram, Medak District valued by Sri V.Jagannadha Rao of worth Rs.87.27 lakhs which is measuring 502 square yards with 4 floors with carpet area of 12,000 square feet by obtaining legal opinion by Sri P.Pavan Kumar opining subject to approval of lay out and to get latest EC in respect of each unit. However the bank without obtaining latest EC obtained collateral security and ZO sanctioned an enhanced SOD limit of Rs.40

lakhs limit as per the communication to the branch dated 02.09.2002 and the outstanding amount of Rs.24.87 lakhs was adjusted by debiting the same to the new OD account and the balance amount was withdrawn by MEPL by cash and the outstanding rose to Rs.39.97 lakhs against the sanctioned OD limit of Rs.40 lakhs on the day of sanction itself. In the same sanction order, the ZO cancelled earlier OD limit of Rs.9.75 lakhs. Right from December 2001 to September 2002 MEPL did not received any payment from BSNL pertaining to work orders of Rs.7.3 crores that was submitted to the branch with loan application and the branch did not even question the borrower in this regard. The outstanding amounts due by the borrower as on 31.12.2002 was Rs.46 lakhs and the part payment of Rs.4,00,000/- made and the remaining is outstanding with interest. In this regard so far as respective roles of each accused concerned, coming to the petitioner/A.2, Chartered Accountant in the charge sheet page No.22 Para 2 he prepared the balance sheets, profit and loss account, current assets, loans and advances, cash budget etc., pertaining to MEPL. Investigation revealed that the balance sheet prepared by him were manipulated and were not tallying with the IT returns filed by MEPL to IT department. He is also stood as one of the guarantors for SOD limit of Rs.9.75 lakhs applied by MEPL knowing fully well that MEPL submitted false and fabricated documents are submitted to the Bank and liable for conspiracy and cheating.

8. The enclosures to the charge sheet from the memo of evidence referred at page No.31 of the charge sheet concerned at serial No.22 by name Sri Kesanupally Purnachandra Rao referred

to speak that as per the request of Sri V.Ramachander Rao, CA, he arranged guarantor Sri AK Singh, the then AGEQD, who is his friend for the loan availed by Sri Manohar. Among 37 witnesses cited by the prosecution, but for LW.22 K.Purnachandra Rao there is no other witness to speak any role of A.2 Ramachander Rao. Among 64 documents referred in the memo of evidence appended to the charge sheet from page Nos.35 to 46, document No.8 is the profit and loss account for the year ending 31.03.2002 submitted by MEPL to the Bank (17 sheets), document No.10 is the photocopy of search report of Sri V.Ramachander Rao, CA, dated 24.12.2001 in respect of MEPL showing Sri Manohar, V.Swarupa Rani and Smt. G.V.Ramanamma are the MD and Directors of the company (one sheet), this will show search conducted by A.2 with Registrar of Companies. Coming to the statement of LW.22 so far as petitioner/A.2 concerned from what is referred supra, he deposed that he is doing private business and he know Sri Y.S.Prasad, AGEQD, working at Ramanthapur who introduced him to Sri A.K.Singh, the then AGEQD for financial services. During the course of business transactions, he came into contact with Sri V.Ramachander Rao, CA, who requested him that he should arrange a guarantor for availing house loan from Syndicate Bank, Golconda Branch Lungerhouse and he asked AK.Singh, the then AGEQD to help him in the form of guarantor required by CA and Sri AK.Singh visited Syndicate Bank and signed on the loan documents as guarantor and towards arranging the guarantor Sri Ramachander Rao given him Rs.1,000/- towards incidental expenses and he has not seen Sri V.Manohar and any other persons connected with the loan availed from Syndicate Bank and he knows Ramachander Rao who informed and needs a guarantor and arranged the same. Even therefrom there is nothing to show that the petitioner/A.2 manipulated the profit and loss account knowingly and deliberately but for at best to show he asked his friend LW.22 Purnachandra Rao to arrange a guarantor for availing of housing loan. The statement of Sri A.K.Singh, LW.23 shows he signed as a guarantor towards the security overdraft facility availed by Sri Manohar, MD of MEPL at the request of Purnachandra Rao-LW.22 who is known to him while he was working as private financial consultant and for he knows him from several years. There is nothing in the statement of Sri A.K.Singh about A.2 Ramachander Rao, CA, much less on request of Ramachander Rao he signed in loan document even to corroborate the version of Purnachandra Rao from the version of Sri A.K.Singh and there is nothing shown about A.2 from A.K.Singh. Coming to the statement of LW.24 one J.Ramesh Reddy, SI Lungerhouse P.S. that he issued FIR in crime No.321/2003 dated 30.10.2003 based on written complaint of Sri K.Ramanajulu, Senior Branch Manager of Syndicate Bank against accused persons where Sri V.Ramachander Rao, who is the present revision petitioner was also named. The standing as guarantor for Sri V.Manohar, by A.2-Ramachander Rao, CA, cannot be called outcome of privy that too from the charge sheet averments referred supra the original loan amount SOD limit of Rs.9.75 lakhs to which he stood as guarantor was liquidated by adjustment of subsequent enhanced credit limit of SOD. It is not even a case from the investigation that A.2/petitioner withdrawn any amount and the only role is he prepared profit and loss account as CA. As a CA from the information furnished by any debtor to submit to the Bank of profit and loss account and the preparation of profit and loss account cannot be called that he is a privy, but for at best to say from it is not tallying with the income tax returns of the entity of the relevant periods, the CA if at all obligated would have been verified and the non-verification tantamounts to negligence, which is different from the criminal intention with *mens rea* much less to conspire with the entity MEPL and it's Managing Director or others, much less in creating any documents for no further role and even the oral statements of LWs.22 and 23 referred supra, no way correlated one instance to other, so far as any role of the petitioner (A.2) concerned.

9. Having regard to the above, it is difficult to say from the prosecution material of the petitioner/A.2, CA, is privy and conspired with any of the accused persons in order to cheat the Bank or in created forged and fabricated documents and using as if genuine for purpose of cheating Bank much less by any impersonation of any persons in the place of original owner. Having regard to the dismissal of the discharge application by the lower Court by the impugned order dated 21.08.2014 in Crl.M.P.No.1780 of 2011 is unsustainable. What the lower court stated at Para 12, by reproducing from the specific role of A.2 referred above from the charge sheet and by simply reproducing the contention of the learned counsel for the petitioner, without even discussing the statements of LWs.22 and 23 supra and ultimately concluded at Para 21 as if in the light of facts and circumstances, the petitioner seeking discharge is not merited for

consideration and was dismissed. It is not the disposal on merits by judicial application of mind.

10. In fact the Apex Court in **Sushil Suri Vs. C.B.I. and Another**[1] in a quash petition observed that on the allegation of appellant and other directors of a company alleged to have in collusion with CA in forging documents and vouchers to show purchase of machinery as a pre-condition for release of installments by duped revenue by claiming depreciation of non-existing machinery by cheating public exchequer that is not liable to be quashed. There it is against the accused persons who were the executive directors of the entity in charge of the affairs with specific roles. There were specific allegations against the CA therein by name Sanjay Malik and Bipin Kakkar in their role in opening several fictitious accounts in the names of certain concerns with an intention and object to facilitate the diversion of bank finance availed by various public limited companies for purpose other than what is stated in the loan application. Here it is not even the allegation with any basis that the C.A. has played any role with animus other than preparing the profit and loss account and standing as guarantor to the loan account. Needful to mention here the settled legal position that apart from there are no precedents on facts, even in application of principle of law to facts each case depends upon its own facts and any change in facts even little may tilt the result.

11. Having regard to the above, the Crl.R.C.No.2397 of 2016 is allowed by setting aside the dismissal order of the

[1] AIR 2011 SC 1713

discharge application in Crl.M.P.No.1780 of 2011 and by allowing the same and by discharging the petitioner/A.2 from the accusation in respect of the offences leveled against him.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

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JUSTICE Dr. B.SIVA SANKARA RAO

Date: 11.04.2017
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