HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.10793 of 2015

ORDER:

This criminal petition has been filed by the petitioner/accused No.4 in C.C.No.22 of 2009 on the file of the Principal Special Judge for CBI Cases, Hyderabad, under Section 482 Cr.P.C. to quash the proceedings pending against him from the cognizance taken by the Special Judge supra for the offences punishable under Sections 420, 419, 468 and 471 r/w 120-B IPC and Section 13(1)(d) of Prevention of Corruption Act (for short 'PC Act').

2. The grounds of the criminal petition vis-à-vis the oral submissions of the learned counsel for the petitioner/accused No.4 are that the investigating officer has filed the charge sheet against the petitioner as A.4 without conducting any proper investigation worth with the allegations of criminal conspiracy, forgery and submitting forged documents etc., that the petitioner was alleged as if Director of Sita Electronics Private Limited (for short 'SEPL') and Suri Instruments Private Limited (for short 'SIPL') with an omnibus allegation of criminal conspiracy attributed against him along with other accused though he was not at all Director in any of the two entities at any point of time and the investigating officer without filing any relevant documentary evidence like Form-8 from the Registrar of Companies to substantiate the allegation of the petitioner was Director of above companies at any time much less at relevant point of time and the prosecution of the petitioner amounts to abuse of process of law.

3. The petitioner was Director of SIPL supra only from the year 1992 as also proved from the plaint filed on 10.12.1991 in the Senior

Civil Judge Court, Ranga Reddy District at Saroor Nagar by State Bank of India, Nacharam Branch against SIPL and Sri S.Prem Kumar, Sri S.Rama Krishna and Sri S.Gururajan S/o. Rama Krishna for recovery of Rs.7,30,079/- due on the cash credit limits of outward bills, mundy type and hypothecation respectively sanctioned in February 1988 to SIPL and the other defendants stood as guarantors, the Board of Directors of SIPL authorized defendant Nos.2 and 3 supra to sign the loan documents and to get enhanced limits by resolution dated 10.02.1988 and they acknowledged the loan liability subsequently on 09.01.1991 and also by subsequent letters of 13.03.1991, 15.03.1991 and 10.09.1991 and the petitioner was not one of the Directors much less executant of any of the documents and thereby not shown as one of the defendants.

4. It is further contended that the FIR in RC.No.6(E)/97, dated 27.12.1997 which set the criminal law in motion registered against 15 accused by showing him as A.4 viz., Sri S.Ravi Kumar, Managing Director of SIPL and on which the entire investigation was based, does not even show the petitioner as one of the Directors of it at the relevant point of time, for he is nothing to do with the transactions of above entities and attributing the allegation of criminal conspiracy against the petitioner is thus illegal and unsustainable.

5. The charge sheet states out of about 17 accused that A.1 and A.2 in connivance with accused Nos.4, 5, 7 to 9 with dishonest and fraudulent intention induced the Bank of Nova Scotia to part with the valuable security since the accused were aware that the 15 LC's were bogus and thereby caused wrongful loss of revenue to the State Bank of India, Secunderabad Branch and this alleged bogus LC transaction involves SEPL, M.K. Agencies, Srinidhi Enterprises, Bank

of Nova Scotia and CRB Capital Markets, though he has nothing to do with the affairs of said entities.

6. It is further contended that the prosecution failed to specify who forged whose signature or writing in any document enlisted with the charge sheet to bring the charge of forgery under Section 468 IPC and what material against the petitioner. There is nothing indicates from investigation that petitioner either was aware of nature of the LC's or any attempt to induce Bank of Nova Scotia to part with valuable security and LW.19 R. Narayana also stated that the petitioner never met or spoke to or knows any of the representatives of Bank of Nova Scotia.

7. The other contention is that the petitioner was not one of the Directors of above entities is even substantiated by some of the prosecution documents relied upon in the charge sheet i.e., document Nos.943, 924, 633 and 655 respectively and the Section 161 Cr.P.C. statements of listed witnesses Nos.1, 3, 4 and 5 also clearly indicates the petitioner's stand that he was never the Director of above entities but for SIPL from 1992 and the unsubstantiated and baseless allegations contra are false.

8. It is also the contention that D.201 memorandum of the Zonal Office of SBI addressed to their local board stating SIPL's sales during 1991-93 was satisfactory since achieved a turnover of Rs.54 lakhs against the target of Rs.60 lakhs and able to rise net worth capital and bring turnover into positive though the projected turnover not achieved by fallen short of 10% and D.166 report of the Bank indicates the SIPL account and turnover is satisfactory and comprehensive insurance covering all possible risks for value of the

stock is taken. All the companies in the Suri Group availed orders from the reputed government institutions like ISRO, NRSA, ECIL, CMC, TCIL, IR and C-DoT during relevant period showing quality of technology developed by Suri Group of Companies that floated front companies in order to divert funds and cheat SBI is nothing but maligning the good work done and reflects investigating agencies hasty conclusion with lack of knowledge related to business and there is nothing to show alleged cheating much less from inception. The prosecution allegation of diversion of funds to a tune of Rs.14.98 lakhs from SIPL is a vague allegation with no basis and no break up of cash withdrawals provided as to when and how much withdrawn. In early 1990s most business paid salaries in cash with revenue receipt voucher from employees, excise duty remitting in cash, D.170, 173 & 174 show SIPL drew cash for genuine purposes and Rs.54 lakhs turnover achieved routed through SBI, Secunderabad Branch from the quality of goods and various levies like excise duty etc., paid besides salaries and the products satisfied by Government agencies stringent quality test and no money diverted and the criminal proceedings thereby are unsustainable and the investigating agency suppressed vital facts in relation to collateral security covered by land and building provided to cover the loans and advances availed by SIPL and the Bank realised entire amount with interest and no loss sustained from the properties located in prime area and were auctioned and proceeds realised even without due information to the borrowers and the prosecution is thereby liable to be quashed, in particular, against the petitioner/A.4.

9. From the above contentions, it is the sum and substance of the submission to quash the proceedings against the petitioner/A.4.

Whereas it is the submission of the learned Special Public Prosecutor representing CBI that there is prima facie accusation against the petitioner/A.4 also being privy to the offence of cheating by conspired with other accused including the Bank officials in creating forged documents to cheat and using as if genuine the forged documents and once the crime registered from the accusation also against the petitioner as privy that is substantiated by the charge sheet averments of the substance of the investigation and from the face value of the material in taking cognizance and the Court framed charges also against the petitioner/A.4 from the hearing and on the material, but for to face trial there is nothing to quash the proceedings against the petitioner/A.4 and thereby the petition is liable to be dismissed.

10. Heard and perused the material on record.

11. The FIR shows it is based on the report of the Deputy General Manager Vigilance of SBI, Hyderabad dated 20.12.1997 against A.1 to A.15 which includes the petitioner as MD of SIPL shown as A.4 and other unknown persons in committing forgery and fraud on the Secunderabad Branch of the Bank by causing wrongful loss to a tune of Rs.8.94 crores between 1985 to 1994 and as on 30.06.1997 by M/s. Suri Group of six Companies viz., (a) Sita Electronics Private Limited (SEPL), (b) Suri Computers Private Limited (SCPL), (c) Suri Instruments Private Limited (SIPL), (d) Suri Electronics Private Limited (SUEPL), (e) Suri Software Private Limited (SSPL), and (f) Suri Agencies Private Limited (SAPL), of which (a), (b) and (c) supra are financed by SBI, Secunderabad Branch and other three by other Branches and of whom Sri Ravi Kumar is the MD of SIPL, Sri Prem Kumar is MD of SEPL and Sri Gunaranjan is the MD

of SCPL. M/s. M.K. Agencies, M/s. Shankar Agencies and M/s. TRI (rep. by M.K.Prasad and P.P.Emmanuel and or one Srinivas) are three bogus firms floated by Suri Group of Companies through their employees to avail financial assistance from Banks by presenting the bogus firms as suppliers of raw material to Suri Group of Companies. Among those, SCPL was set up as an export unit of computer software services to USA and Canada, rep. by its MD Gunaranjan, availed term loan of Rs.44.46 lakhs on 29.08.1985 and on 24.05.1988 interim clean cash credit limit of Rs.5.75 lakhs sanctioned to it besides regular CC limit on 04.07.1988, later converted on 02.01.1989, as export packing credit limit of Rs.10.50 lakhs to meet expenses including for foreign travel expense. On 29.12.1988, SCPL obtained banker's cheque from the term loan account for Rs.1.30 lakhs for payment of imported machinery and the cheque was credited to CCC account on 01.01.1989 that was not utilised for the purpose for which it was issued, the cash credit account became irregular and as on 23.08.1991 the outstanding was Rs.73.23 lakhs and as on 04.09.1993 the entire outstanding comes to Rs.109.33 lakhs. 11 Non LC export bills for Rs.41.09 lakhs were accepted by SBI, Secunderabad from October 1989 to September 1990 were unpaid, debited to CC account since Bank not received payment by foreign buyers and the SCPL was not having by then foreign bills discounting facilities. A draft for Rs.4 lakhs drawn by SBI, Kakinada of SBI, Lalaguda favouring SCPL presented at Lalaguda Branch that was credited to account of SSPL on request, which was a deliberate diversion of funds to its sister concerns. SCPL presented cheque for Rs.7,20,277/- which was given in MR drawn by Asian Institute of Continuing Education at Behrad, that was purchased by SBI, Secunderabad and proceeds credited to CCC Account of SCPL. The cheque was returned unpaid and amount debited to CC account of SCPL and that cheque was issued by brother of Sri S.Rama Krishna. SEPL engaged in manufacturing of computer hardware system for digitizing equipments to NRSA, Secunderabad and formatting terminal for DoT Hyderabad. Prem Kumar brother of Ramkrishnan is MD of SEPL the limit sanctioned by local Head Office of SBI disbursed by Secunderabad Branch in January 1986 of CC hypothecation Rs.44 lakhs, LC Rs.35 lakhs and Bank Guarantee Rs.20 lakhs that was revised from Rs.44 lakhs to Rs.120 lakhs on 08.11.1987 and later on review reduced to Rs.20 from Rs.35 and Rs.10 from Rs.20 and another Rs.15 from Rs.35; on 28.03.1992 Rs.100 lakhs sanctioned as adhoc CC limit for opening LCs against Rs.2.48 crores order placed by DoT and another LC limit of Rs.75 lakhs sanctioned in June 1993 for executing orders received from ET & T. SEPL was resorting to accommodate LCs since February 1989 to purchase raw material. 32 LCs to a tune of Rs.281.63 lakhs on 6 local firms of which 21 LCs were to a tune of Rs.204.21 lakhs on the 3 bogus firms supra. SEPL allowed excess drawings in cash from current account to CC loan account from 16 cheques for Rs.48.77 lakhs in favour of different entities in different types of business not related to business of Suri Group of Companies, but utilised to rise funds from SBI, Secunderabad and SEPL taken bank guarantee for Rs.15.08 lakhs in favour of M.K. Agencies also utilised for raising funds by utilizing bank guarantee. Sri GVLN Sastry. Field Officer of Secunderabad transferred as Branch Manager to Lingala Branch in June 1993, in connivance with the officials of Secunderabad Branch like Rajavardhan, clandestinely issued 19 LCs to a tune of Rs.9 crores through bills raised favouring M.K. Agencies and the LCs are outside the purview of the SBI Branch and the LCs were encashed at Bank of Nova Scotia, Mumbai, Andhra Bank, Secunderabad and ANZ Grindlays, Secunderabad.

12. SIPL with Ravi Kumar as its MD availed finance from SBI, Nacharam on 09.02.1986 and Bank filed civil suit against it and the company obtained banker's cheque for Rs.8 lakhs by debit to CC account through cheque drawn by M/s.DPL by its MD Sri G.Sampath besides Srinivasan, Senior Accountant and Natarajan, Manager of DPL, DPL was financed by SBI, Secunderabad. SIPL was sanctioned CC limit of Rs.8 lakhs on 30.04.1992 besides bank guarantee limit of Rs.6 lakhs that were revised by the Branch on 16.07.1992 and sanctioned on the strength of orders submitted by SIPL said to have been issued by M/s. TRI (a bogus firm) and obtained enhanced limit to Rs.10 lakhs in July 1992. SIPL had drawn cheques and obtained banker's cheques in favour of M.K. Agencies and Shankar Agencies (bogus companies) and not submitted stock statements or books of account or financial statements and the outstanding as on 31.01.1994 was Rs.32.32 lakhs. SIPL availed cheque discounting facility from SBI, Secunderabad drawn by TRI that was returned unpaid and also availed clean LC of Rs.9.98 lakhs on 16.07.1992 favouring M.K. Agencies and the bills were not met by SIPL and the LC was dissolved and paid by debiting CC account of SIPL. SIPL also availed cash drawing by cheques drawn in favour of M.K. Agencies and Shankar Agencies. M/s. DPL with Sampath as MD also financed by SBI, Secunderabad, and DPL operated several transactions through CC account and one of them was through cheque for

Rs.8,00,025/- drawn and the bankers cheque obtained by SIPL to utilise the proceeds to close the suit filed by SBI, Nacharam.

13. M/s. RDCL with Niranjan Rao as MD was also financed by SBI, Secunderabad that availed 8 inland LCs and Bank guarantees from September 1992 to November 1993 upto Rs.112.20 lakhs to purchase aluminum scrap from GSL and Srinidhi, Hyderabad, which have nothing to do with aluminum scrap but created for accommodating Suri Group of Companies in collusion with RDCL Manager (Finance) by name Govindappa and SIPL Director Ravi Kumar.

14. There was outstanding from said 3 accounts of Suri Group of Companies by 30.06.1997 of Rs.894.05 lakhs. Sri GVLN Sastry, Deputy Manager of the Bank from June 1988 to June 1993 established from inland LCs without proper verification and he increased the irregularity in CC account permitting unauthorizedly the indiscrete debit by cash withdrawals or to issue bank guarantees or transfers to current account that facilitated SEPL to make a turnover of several crores.

15. Sri C. Rajavardhan, Officer of the Bank from June 1991 to July 1994 established several bogus inland LCs amounting to several crores outside the books of the Branch and also established inland LCs for DPL without enquiry of the beneficiary bonafides and issued bank guarantee for RDCL by violation of the sanctioned terms.

16. Thus the Directors and employees of Suri Group of Companies and other connected firms viz., S. Ramakrishna, S. Ravi kumar, Prem Kumar, Gunaranjan, M.K. Prasad, Emmanuel, Srinvas Rao, Shankar, Sampath, Natarajan, Srinivasan, Niranjan Rao and

Govindappa in connivance with SBI, Secunderabad Officials viz., GVLN Sastry, Rajavardhan and other unknown persons cheated the SBI to a tune of Rs.8.94 crores as on 30.06.1997 by cause loss to the Bank from the transactions fraudulently, hence to take action. The crime registered is therefrom on 27.12.1997.

17. Among 35 witnesses examined during investigation, so far as the quash petitioner Ravi Kumar and the entity SIPL concerned, is stated SIPL account during February 1988 to June 1988 was handled by him as Field Officer of Nacharam IA branch of SBI where he worked during July 1985 to July 1989. He stated that SIPL had their account at Anna University, Madras in 1987-88 with sanctioned limit of Rs.2 lakhs against the CC limit of Rs.6.75 lakhs that was transferred to Nacharam Branch and he conducted pre sanction inspection on 21.01.1988. He deposed that a copy of appraised memorandum comprised of Anna University branch sent along with party's request letter for paid facilities and Prem Kumar was the MD of SIPL while Ravi Kumar, Professor Rama Krishna and Gunaranjan were other Directors. He further stated in his inspection of unit's stock on 10.02.1988 available in inspection letter there was little confusion of office premises of SIPL, office premises of SEPL and SCPL and SIPL not conducted any operations in the CC account and discussed with Prem Kumar, MD of SIPL to operate their account it was with no use. Later SIPL raised bill on 15.02.1988 for Rs.2,27,695/- and party's account was credited to Rs.1,70,700/- after margin of 25% and there was another bill on 05.03.1988 raised that was restricted for not to exceed Rs.2 lakhs limit. SIPL submitted a bill on 13.04.1988 of Rs.50,700/- within CCOWB and after 25% margin amount credited through CC account and the bill was

returned unpaid. PW.1 claimed sent irregularity report on 14.04.1988. Ravi Kumar on behalf of the company acknowledged memo containing irregularities on 22.08.1989. PW.13 Rajan one of the Directors of Beta Automation a private limited stated that they were supplying computers and accessories to SIPL rep. by Ramakrishna, Prem Kumar and all known to him and major turnover used to be from account of SEPL and he conducted genuine business transactions with them. In 1993 Ravi Kumar contacted him and explained some problem with bank and LC limit and not in a position to establish LC and wanted certain computers and accessories with a promise to get LC established by RDCL and having obliged they supplied the same to SEPL, even by then SEPL was with heavy outstanding and also stated that at the instance of Ravi kumar responsible for the transactions including with RDCL or Srinidhi Enterprises. LW.29 R.Suryanarayana Rao, Chief Manager (Audit Administration) who worked as Chief Manager, SIB Division who worked during August 1992 to September 1994 stated that at request of Ravi Kumar and Ram Kumar the SIPL account originally with Anna Nagar Branch of SBI, Madras transferred to Nacharam branch and provided with additional facilities and the Bank filed civil suit for recovery and directors of SIPL approach for fresh account in name of SIPL with enhanced limits and the LHO directed that unless suit account closed it cannot be initiated and therefrom the suit account was closed.

18. The charges framed so far as the petitioner/A.4 by the learned Special Judge (trial Court) were four in number for the offence under Sections 120-B, 420, 468 and 471 IPC with some of the other accused.

19. The main allegation against A.4 Ravi Kumar as MD of SIPL for all the charges. It was not shown he was MD of SIPL originally. The civil suit referred supra no where shows he is MD of SIPL or holding any post as Director in other entities, but for he is one of the family members related to the originator Sri Suri Bagwantham. The Suri Group of Entities one or the other is with that surname. There is nothing to show he was part of the criminal conspiracy to attract the offence under section 120-B against him as he was shown from the SIPL established in 1986 or so, only became MD in 1992 and he was not even its MD by the time the suit filed in 1991 December as referred supra to believe and sustain any charge in that regard against him. Coming to the offence of cheating under Section 420 IPC even, in the absence of showing from the inception of availing the loan in 1986 and onwards it is with dishonest intention he was privy with other accused to cheat the Bank, the charge under Section 420 IPC is hardly sustainable against him, same is also substantiated by the expression of the apex Court in **Vesa Holdings Private Limited Vs. State of Kerala**[1] of culpable intention must be from the inception of the contract failing which no offence under Section 420 IPC that can attract, by relying to that conclusion the earlier expressions in **Vijayander Kumar Vs. State of Rajasthan**[2], **V.Y. Jose Vs. State of Gujarat**[3], **All Cargo Movers (India) Pvt. Ltd. Vs. Dhanesh B. Jain**[4] and **Uma Shankar Gopalika Vs. State of Bihar**[5] and from other expression of the Apex Court **Vir Prakash Sharma Vs. Anil Kumar Agarwal**[6] that was referred and relied in **V.Y Jose supra**. There is

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[1] (2015) 8 SCC 293
[2] (2014) 3 SCC 389
[3] (2009) 3 SCC 78
[4] (2007) 14 SCC 776
[5] (2005) 10 SCC 336
[6] (2007) 7 SCC 373

nothing to show he was party to the forgery of documents much less of forged for purpose of cheating even to sustain the charge under Section 468 IPC. However there is something to show he was one of the parties including from the statements referred supra including after he became MD of SIPL in 1992 January onwards also there were drawal of the amounts by using the fake entities in using as genuine some forged documents and thus only the charge under Section 471 IPC that is sustainable against him, also from the facts discussed supra of the statements of LW.1 B.Venkaramaiah at Para 3 end shows for SIPL originally Prem Kumar was the MD and Ravi Kumar is one of the Directors, however there is nothing to show from that statement any role of him of party to any cheating or forgery for purpose of cheating but for at best showing from report of said witness some irregularities noticed and Sri Ravi Kumar (A.4) also acknowledged the irregularities on 22.08.1989 of the original cash credit sanctioned, balance sheet not submitted and account became irregular for non-payment of interest and sale proceeds are not routing through the account and not submitting stock statements and even from LW.13 Rajan's statement referred supra only speaks of Beta Automation entity to which he was Director that was set up in 1991 and during 1992-94 they used to supply computers to Suri Group and all the business transactions used to with Ravi Kumar and Prem Kumar of SEPL. In fact Ravi Kumar is not shown as connected to SEPL even however this witness stated during 1993 Ravi Kumar contacted about the problem with Bank and about the LC limit utilised and not in a position to establish LC and wanted to supply of computers with accessories and promised to get LC established by M/s. RDCL. RDCL is claimed as one of the fake entities from the investigation however the witness stated obliged said Ravi Kumar. Even from the statement of LW.29-R.Suryanarayana Rao there is reference at Page 5 of at request of Ravi Kumar of SIPL, LC was opened on 14.05.1993 favouring M.K. Agencies and said M.K. Agencies is also shown as one of the bogus entities and the witness further stated at Page No.10 of the filing of suit by SBI, Nacharam in 1991 December and the Directors of the SIPL approached the later Secunderabad for fresh account in the name of SIPL for enhanced credit limits and on condition to clear the suit limit to consider the suit account was closed and SIPL produced letter to Secunderabad branch and fresh sanction limit sanctioned therefrom by the then AGM.

20. Though it is one of the contentions that this is purely a civil dispute and even the offence under Section 471 IPC has no application so far as petitioner A.4 concerned, apart from same is barred by limitation is not tenable from what is discussed supra to face the trial on said charge No.4 by him and any plea of bar of limitation is also left open to urge during trial on the said charge.

21. Accordingly and in the result, the Criminal Petition is allowed in part by setting aside the cognizance for the offences under Sections 120-B, 420, 468 IPC and the charges 1 to 3 framed by the trial Court in relation to the said offences, however by upholding the charge No.4 for the offence under Section 471 IPC to face trial on said charge.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 18.04.2017
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