THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2283 of 2017

ORDER:

Aggrieved by the order dated 05.05.2017 passed in Crl.M.P.No.1469 of 2016 in C.C.No.26 of 2014 by the Principal Special Judge for C.B.I. Cases, visakhapatnam preferred this revision under Section 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") and prayed to set aside the order passed by the Principal Special Judge for C.B.I. Cases, visakhapatnam and discharge the petitioner/accused No.3 for the offences punishable under Sections 120-B read with 420, 471 and 477-A of Indian Penal Code (for short "I.P.C.")

The petitioner is a resident of Ambedkar Colony, Ponnur Municipality, Guntur District and he is a diploma holder in Autocad. He went to Doha Qatar in 2009 and worked there as an Autocad operator. While he was working in Qatar, he was called by officials of CBI and informed him that a case is pending against him and he has to appear before the Court on 09.11.2015. On appearing before the Court, he received copies of documents and came to know about the fraud played by Leopoid King Nemani and his brother GPA holder Nemani Pruthvi Raj. Respondent – C.B.I. filed charge sheet against the petitioner herein and other accused for the offences punishable under Sections 120-B read with 420, 471 and 477-A of I.P.C. Petitioner also came to know that while he was processing to obtain working VISA, he handed over Xerox copies of his Pan Card, birth certificate, passport, ration card, educational certificates and other documents containing his personal details to one Leopoid King Nemani who is also an employee working in the same company and who processed the VISA documents of petitioner in good faith and Xerox copies were given to him. The said person along his brother Pruthvi Raj in active collusion with bank officials of IDBI Bank in a fraudulent manner by forging signatures of petitioner and created GPA as if the petitioner executed the same in favour of one fictitious person namely T.Satish Kumar and also opened NRI Bank account in IDBI Bank by forging his signatures and operated the said account in collusion with bank officials.

The said Leopoid King Nemani represented by the alleged GPA holder Pruthivi Raj in collusion with the bank officials created an agreement of sale dated 07.05.2010 as if Leopoid King Nemani represented by Pruthivi Raj executed the same agreeing to sell the dry land of Ac.0.14 cents which is western part of total extent of Ac.0.28 cents in Patta No.425, S.No.345/5 of Kapulappada village, K.Nagarapalem Panchayati, Bheemunipatnam Mandal, Visakhapatnam District to the petitioner. Subsequently, a sale deed was also executed by said Nemani Leopoid and registered the same in Sub-Registrar office, Bheemunipatnam impersonating the petitioner by forging his signatures, taking advantage of copies of PAN card and household card for a sum of

Rs.7,00,000/-. Basing on the said registered sale deed dated 26.06.2010, the said Leopoid King Nemani in collusion with the bank officials, Nemani Pruthvi Raj, T.Satish Kumar obtained loan of Rs.56 lakhs in petitioner's name by mortgaging the said property and amount was taken by Leopoid King Nemani and his brother.

After registration of the case, C.B.I. authorities never contacted the petitioner nor taken any statement from him and straightaway filed charge sheet arraying the petitioner as accused No.3 without conducting proper and detailed enquiry into the matter as the real culprits are the said Leopoid King Nemani and Nemani Pruthvi Raj and T.Satish Kumar, who conspired together and got loan of Rs.56 lakhs and transferred to their accounts and caused huge loss to the Bank and implicated the petitioner in this criminal case by forging signatures, impersonating him, taking advantage of having Xerox copies of petitioner's identity and residential proofs. The petitioner is innocent and he never executed the alleged GPA and not opened NRI Bank account in IDBI Bank and not taken any loan by mortgaging the said property and requested the Court below to discharge him for the offences punishable under Sections 120-B read with 420, 471 and 477-A of I.P.C.

The respondent – C.B.I. filed counter denying the material allegations made in the petition and contended that A.1 and A.2 in pursuance of criminal conspiracy abusing their official position as public servants, knowing fully well that A.4 to A.8 have given positive reports in favour of the borrowers and property without conducting any verification, sanctioned Rs.56,86,800/- on 17.06.2010 and disburse the same on 24.06.2010 to petitioner/A.3 and Tamalapakula Satish Kumar and thereby A.1 to A.8 caused loss to a tune of Rs.60,06,000/- and corresponding wrongful gain to themselves and thereby committed offence punishable under Section 120-B read with 420, 468, 471 and 477-A of I.P.C. and 13 (2) read with 13 (1) (d) of P.C. Act, 1988.

It is also averred in the counter that the petitioner submitted agreement of sale for Rs.71,24,000/- executed by Leopoid King Nemani represented by GPA holder Nemani Pruthvi Taj in his favour regarding Ac.0.14 cents in Patta No.425, S.No.345/5, Kapuluppada Village, Bheemunipatnam, Visakhapatnam. The sale deed was also executed by the said vendor on 26.06.2010 on behalf of petitioner - Arun Kumar Tamalapakula and presented in Sub-Registrar office, Bheemunipatnam. The property was earlier owned by Leopoid King Nemani for whom the Bank has funded for the same in November, 2009 for Rs.30,49,000/-. On visit to the residence of Sri Satish Kumar i.e. G.P.A. holder, no such person was found in the said address. When issue was raised with Field Investigation Agency, they have confirmed that their first report is positive but it was re-verified and it was negative. When the GPA was executed by petitioner, he was in Qatar but it appears as per recitals of GPA he was in India. In passport also there is no immigration entry to show that he travelled to India. Hence, with dishonest intention he created false documents and cheated IDBI Bank. In section 161 Cr.P.C. statement L.W.9 stated that driving license of petitioner submitted to the Bank is fake and fabricated. L.W.5 stated that while sanctioning loan to petitioner/accused No.3 there are sanction deviations, disbursement deviations, procedural lapses, legal and technical lapses and it is supported by documentary evidence. The acts of petitioner/accused No.3 in submitting false reports pertaining to the said loan constitute an offence against him and prayed to dismiss the petition.

Upon hearing argument of both counsel, the Court below dismissed the application having found that there is *prima facie* material to proceed against the petitioner for the offences punishable under Sections 120-B read with 420, 471 and 477-A of I.P.C. and the statements of L.Ws.4, 5 and 9 recorded under Section 161 Cr.P.C. disclosed *prima facie* material to show that the petitioner committees such offences.

Aggrieved by the order passed by the Court below, the present revision is filed reiterating the same grounds before this Court mainly contending that the prosecution against the present petitioner is groundless and the petitioner is not in India and never obtained any loan. With the active collusion between Leopoid King Nemani and his brother GPA holder Pruthvi Raj Nemani and T.Satish kumar, the transaction was created without the knowledge and information to the petitioner. Therefore, the petitioner is not responsible for any such offences and prayed to discharge the petitioner by setting aside the impugned order passed by the Court below.

Sri Lasetty Ravinder, learned counsel for the petitioner, while reiterating the grounds urged in the revision petition, would draw the attention of this Court to the statements of L.Ws.4, 5 and 9 recorded under Section 161 Cr.P.C. to contend that the petitioner herein has nothing to do with the offences punishable under Sections 120-B read with 420, 468, 471 and 477-A of I.P.C. and prayed to set aside the order passed by the Court below and also contended that the Court below committed manifest error while passing impugned order.

Whereas Sri K.Surender, Special Public Prosecutor for C.B.I. supported the order passed by the Court below while contending that there is *prima facie* material on record to proceed against the petitioner for the serious offences punishable under Sections 120-B read with 420, 468, 471 and 477-A of I.P.C. and that apart the petitioner herein along with other accused committed serious economic offence i.e. fraud against the bank, which is pubic institution and such person is disentitled for discharge of charges framed against him and the contentions of the petitioner are to be decided at the end of trial but not at this stage, and he cannot be discharged for the offences punishable under Sections 120-B read with 420, 468, 471 and 477-A of I.P.C.

Considering rival contentions and perusing material available on record, the point that arises for consideration is as follows:

> ***"Whether the prosecution against the petitioner herein is groundless, if not, whether the Court below can proceed against the petitioner for the offences punishable under Sections 120-B read with 420, 468, 471 and 477-A of I.P.C.?"***

P O I N T:

The present revision is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals.

The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case? The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

According to section 239 of Cr.P.C. if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate or Sessions Judge thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

The documents referred to in Section 207 of Cr.P.C. also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, it includes the hearing of the evidence if needed. The word “groundless” would mean the absence of reasonable ground to expect a conviction. “Groundless” is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 238 and 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not relevant considerations at the stage of framing of charge as held by the Apex Court in "***P.Vijayan v. State of Kerala***[1]"

During hearing, learned counsel for the petitioner would contend that there are no specific allegations against the petitioner to proceed against him for the charges framed against him. But curiously, copy of the charge sheet filed along with the petition clearly disclosed the role played by the petitioner and he was arrayed as accused No.3. The specific allegation made against the petitioner is as follows:

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[1] AIR 2010 SC 663

"The credit interview of a person purported to be Sri Satish Kumar Tamalapakula was conducted on 15.06.2010 by Sri D.Karthik (A.2), knowing fully well that RCU verification report dated 30.05.2010 on the residential address of Sri T.Satish Kuamr has come negative and Sri D.Karthik (A.2) failed to verify the same during credit interview. Sri D.Karthik (A.2) conspired with Sri Surendranath Datti (A.1) by recommending the loan approval note on 17.06.2010 without ascertaining whether the person who has come for the credit interview is Sri Satish Kumar or not, Sri T.Arun Kumar (A.3) has executed the GPA in India and the sanctioning authority did not establish any proof to confirm that the Sri T.Arun Kumar (A.3) was present in India at the time of execution of GPA in favour of Sri T.Satish Kumar on 22nd May, 2010. However, as per copies of passport submitted by the borrower, there is no immigration check-in to India from Qatar during that period. Sri Surendranath Datti (A.1) and Sri D.Karthik (A.2) have neither ensured whether GPA was in force as on the date of application nor ascertained the fact whether Sri T.Arun Kumar (A.3) was in Visakhapatnam on 22.05.2010 before sanctioning the loan and thereby disbursed the loan without checking/verifying the borrower's profile, creditworthiness and actual value of the property."

As seen from the said allegations, there was no immigration check-in to India from Qatar on the date of alleged execution of G.P.A., which is the basis for sale of property and mortgaging the property with the bank. More so, the statements recorded by investigating agency during investigation more particularly statements of L.Ws.4, 5 and 9 pointing out the complicity of the petitioner *prima facie*. However, whether the petitioner entered into India from Qatar on the date of alleged execution is a question of fact to be decided only at the end of trial. Though, the petitioner contended that he did not execute GPA in favour of T.Satish

Kumar, such question of fact has to be decided only at the end of trial and such fact has to be proved by adducing cogent evidence during trial. Therefore, such questions cannot be decided at this stage on considering the application filed under Section 239 of Cr.P.C.

It is also contended that when the prosecution is groundless, the Court cannot proceed, since, it would amount to harassment. No doubt, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused as held by the Apex

Court in "***Pepsi Foods Ltd. v. Special Judicial Magistrate***[2]"

While deciding a petition filed under Section 239 of Cr.P.C. the Court has to look into the entire material on record including the evidence oral and documentary, taken together must justify framing of a charge for an offence as held by the Apex Court in "***R.S.Nayak v. A.R.Antulay***[3]"

In the present case, the Court below based on the statements of L.Ws.4, 5 and 9 recorded under Section 161 of Cr.P.C. by investigating agency during investigation and other material including the allegations made in the charge sheet concluded that there is *prima facie* material to proceed against the petitioner further. Such finding recorded by the trial Court cannot be disturbed while exercising power of revision under Sections 397 and 401 of Cr.P.C. unless there is manifest perversity or apparent error.

Therefore, when the findings recorded by Court below that there is *prima facie* material to proceed against the petitioner; this Court cannot interfere with such findings recorded by the Court below, more particularly in a case where serious economic offence is allegedly committed.

In "***State v. R.Vasanthi Stanley***[4]" the Apex Court held that in economic offences Court must not only keep in view that money has been paid to the bank which has been

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[2] AIR 1998 SC 128
[3] AIR 1986 SC 2045
[4] AIR 2015 SC 3691

defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is a well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy.

By applying the principle laid down in the above judgment, it is difficult to interfere with the findings recorded by the trial Court to discharge the petitioner for the offences punishable under Sections 120-B read with 420, 471 and 477 of I.P.C. Hence, I find no ground to interfere with the impugned order passed by the Court below. Consequently, the criminal revision case is liable to the dismissed as it is devoid of merits.

In the result, the criminal revision case is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

31.08.2017
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