IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.02.2018	Pronounced on: 05.03.2018

Coram

The Honourable Dr.Justice G.Jayachandran

Criminal Revision Petition No.163 of 2018

Dr.Meermustafa Hussain ... Petitioner/Accused
in Crl.R.C.No.163 of 2018

/versus/

State, rep. by The
Inspector of Police
Vigilance and Anti-corruption (City 1), Dett,
R.A.Puram,
Chennai-600 029. ... Respondent/Complainat
in Crl.R.C.No.163 of 2018

PRAYER in Crl.R.C.No.163 of 2018: Criminal Revision Petition are filed under Section 397(1) and 401 of Cr.P.C r/w 27 of Prevention of Corruption Act 1988, to call for the entire records in C.C.No.15 of 2015 pending on the file of the learned Special Judge for the cases under Prevention of Corruption Act, Chennai and set aside the charges framed in Crl.M.P.No.2318 of 2017 respectively against the petitioner/accused dated 06.01.2018.

For Appellant : Mr. A.V.Somasundaram
in Crl.R.C.No. 164 of 2018

For Respondent : Mr. P.Govindarajan,
Additional Public Prosecutor

ORDER

The Revision Petitioner herein was former Vice-Chancellor of The Tamil Nadu Dr.MGR Medical University, Chennai. He is facing trial in C.C.No.15 of 2015 on the file of Special Court for cases under Prevention of Corruption Act at Chennai.

2. The case of the prosecution is that, the petitioner herein while serving as Vice Chancellor in Tamil Nadu Dr.M.G.R.

Medical University was invited to attend the NAFSA-2008 Annual Conference in Washington [USA] from 25.05.2008 to 30.05.2008. He booked a Ticket through BTGT Services Agent in the Executive Class of Lufthansa Airlines for his travel to USA on 24.05.2008 and returned to Chennai on 22.06.2008. The University sanctioned a sum of Rs.2,99,673/- towards the Airlines fare for the petitioner for his travel to Washington [USA] in the Executive Class. However, the petitioner has cancelled the Executive class ticket and travelled in the Economy class, but submitted TA bill enclosing the cancelled Executive class Ticket. Thereby cheated the University claiming a excess sum of Rs.2,22,332/-.

3. Similarly, when he has called to attend AMEE 2008 Annual Conference Prague, Czech Republic from 30.08.2008 to 03.09.2008, he booked ticket in Executive Class in Lufthansa Airline for his Travel on 29.08.2008 through BTGT services Agent and a sum of Rs.2,72,386/- was paid for his executive class ticket. However, he booked two economy class fight tickets in his name and name of his son through the same travel agent BTGT service in Lufthansa Airlines and travelled along is son in Economy class. Though he cancelled the executive class ticket and travelled in economy class along with his son, he has submitted the TA bill enclosing the cancelled Executive Class Ticket and has also claimed the balance amount as if he travelled in the Executive class and has unlawfully enriched himself a tune of Rs.2,01,088/-. Thus totally sum of Rs.4,23,420/- had been unlawfully misappropriated by the petitioner by producing forged document as if it was genuine, in order to cheat the University. He being the Vice Chancellor he had been entrusted domain over the fund to University. He by abusing his official position has obtained illegal gain.

4. Based on the material placed by the prosecution, the Trial Court has framed charges under Section 409 IPC(2 counts), 420 IPC(2 Counts), 468 IPC(2 counts), 471 IPC (2 counts) and Section 13(2) r/w 13(1)(c)(d) of Prevention of Corruption Act.

5. The petitioner herein has filed a petition under Section 216(1) of Cr.P.C before the Trial Court to amend the charges framed against him. The reason stated in his petition to amend the charges is that the alleged occurrence is taken place on 19.07.2007 to 06.05.2008 therefore, there must be one single count.

6. The charges has framed is contrary to the provisions under Section 212 (2) of C.P.C and Section 23 of Prevention of Corruption Act. The period of alleged offence has been clubbed together without mention any specific or exact the date between the offences when framing the charge under Section 13 (1)(c)&(d) of Prevention of Corruption Act. For, the offence under Section

13(1)(c) & 13(1)(d) separate charge should have been framed.

7. The Trial Court after considering the petition to amend the charges has held that two distinct offences has been committed by the petitioner, amounting to embezzlement of money over which he as Vice Chancellor of the University have dominion. Thereby committed Criminal breach of Trust, forgery for the purpose of cheating and had used forged document as genuine. Since, two distinct offences of same kind were committed within a period of one year, two counts for each offence has been properly framed. Therefore, there is no error in framing 2 counts of charge under Section 409, 420, 468, 471 IPC.

8. Whereas, in respect of charge framed under 13(1)(c)&(d) of Prevention of Corruption Act, the trial Court has accepted the plea of the petitioner and splitted the charges in such way that the offence under Section 13(1)(c)&(d) of Prevention of Corruption Act are delinked under two different charges. Thus the petition partly allowed.

9. Aggrieved by the above said order, the petitioner has filed the Revision petition contending that there should not be a charge under Section 420 IPC since there is no ingredient in the final report to charge the petitioner under Section 420 IPC. He has again reiterated that proviso to Section 212 Sub Clause (2) of Cr.P.C prohibits splitting of an offence committed with the span of one year.

10. In the written submission submitted by the counsels has added more ground stating, in view of charge framed under Section 409 IPC no charge can be framed under Section 420 IPC. Since both the charges will not go together, no forged document as defined under Section 463 of IPC and 464 IPC had been made or created by the petitioner. Therefore, the charge framed under Section 468 IPC as well as 471 IPC have to be dropped. There is no material to frame the charge under Section 13(1)(c) of Prevention of Corruption Act and therefore the charges framed against the petitioner should be setaside. He should be tried only for offence under Section 409 IPC [1 counts] and under Section 13(2) and 13(1)(c) of Prevention of Corruption Act alone.

Points of consideration

Whether there is any error or irregularity leading to failure of justice in the charges framed by the Trial Court?

11. The accused who was serving as Vice Chancellor of Tamil Nadu Dr.M.G.R. Medical University had travelled abroad on various dates at the cost of University. The investigation had unearthed the fraudulently act of the petitioner/accused creating false document namely travel ticket as if he has

travelled in executive class/business class and had got the travel fare of executive class. In fact he has not travelled in the executive class/business class but had cancelled the ticket and had made the same travel agency to purchase ticket for himself and for his family members in economy class. After completing the tour abroad with his family, he had submitted TA and DA bills producing the executive class ticket which he has cancelled. The material placed before the prosecution, prima facie reveals that false document has been produced by him with intention to make the University to believe that it is a genuine document in which he has travelled abroad. By forging document for the purpose of cheating, He has committed offence attracting Section 409, 420, 468 and 471 of IPC. He being a public servant his conduct to make unlawful gain by abusing his official position has also been prima facie made out. Hence, the Trial Court after considering the material place before it, had proceeded against the petitioner while framing charges under appropriate provisions of law. It has also had considered the error in framing single charge under Section 19(1)(c) and (d) of Prevention of Corruption Act and had splited up into 2 charges. When there are materials to show that during the given point of time within 1 year the petitioner/accused had abused his position as Vice-Chancellor and had made pecuniary gain by way of producing forged documents as genuine thereby had cheat the University, the charges as framed by the Trial Court carries no error.

Under Section 212 Cr.P.C reads as under;

Particulars as to time, place and person.

> (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.
>
> (2) When the accused is charged with criminal breach of trust or dishonest misappropriation of 'money or other moveable property, it shall be sufficient to specify the gross sum or, as the case may be, described the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:
> Provided that the time included between the first and last of such dates shall not exceed one year.

Section 218 of Cr.P.C. reads as under

218. Separate charges for distinct offences.

(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub- section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.

Illustration A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Section 219 of Cr.P.C. reads as under
Section 219 in The Code Of Criminal Procedure, 1973

219. Three offences of same kind within year may be charged together.

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law: Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

12. While Section 212 of the Cr.P.C permit Courts, in case of Criminal breach of Trust or dishonest misappropriation to frame charge without specifying particular as to dates and time.

The code further makes it clear that it is sufficient to specify the gross sum or describe the movable property in respect of each offence alleged to have been committed.

13. A conjoined reading of these provisions clarify that generally for each distinct offence of which any person accused, there shall be separate charge and every such charge shall be tried separately. As an exceptions, three offences of same kind within a year may be charged together. This does not mean that even if the offences of same kind arises out of different transaction it should be construed as single offence. The law as it is drafted and understood to add rightly, "same kind of offence" and "number of offence of same kind" are entirely different. If the kind of offence is same, upto 3 such offence can be tried under one charge. However for each distinct transactions, that number of counts to be mentioned and for each count punishment to be imposed if found guilty of the said charge.

14. It is contented by the learned counsel for the Revision Petitioner that Section 409 IPC and Section 420 IPC are mutually exclusive and in the present case ingredient for Section 409 IPC alone is made out. To charge under Section 409 IPC, the essential ingredient is either entrustment or dominion over the property. If the case of the prosecution fall under entrustment then dishonest inducement to deliver the property which is the necessary ingredient for offence under Section 420 IPC may not arise, whereas in case of dominion over the property, dishonest inducement is possible. Since, dominion does not always mean physical dominion. As in this case, the petitioner who was the Vice Chancellor at the relevant point of time, as the Head of the institution had the dominion over the financial affairs of the institute. The records reveals he had dishonestly induced the ministerial staff to reimburse the money for Executive Business class fare which he never travelled. Therefore, his act falls within the meaning of cheating as defined under Section 415 of IPC and explained in illustration [f] of the said section. Hence the petitioner herein is liable to be charged both under Section 409 IPC and 420 IPC. It is reiterated that, Section 409 and 420 IPC are not mutually exclusive penal provisions as contended by the petitioner's counsel.

15. The reading of the amended charge framed by the Trial Court, the charge is with date, amount and nature of offence alleged to have been committed by the petitioner. He being a well educated persons and had the fortune to hold the post of Vice Chancellor of the Medical University in the State Government and travelled world wide along with his family at the cost of the State it is difficult to accept that he is unable to understand the charge framed against him to face the Trial.

This Court could see that by way of filing the Revision Petition, the petitioners intention is to delay the process of trial and nothing else. Even after the charges altered by the Court on his petition and the amended charges does not have error or omission which may lead to failure of justice, the present Revision petition is filed with oblique motive.

16. Hence, this Revision Petition is dismissed with the direction to the Trial Court to take up the trial on day to day basis, as far as possible and complete the trial within four months from the date of this order.

17. In the result, the Criminal Revision petition No.163 of 2018 is dismissed with above direction.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

bsm

To

1. The learned Special Judge for the cases
Prevention of Corruption Act, Chennai

2. The Inspector of Police
Vigilance and Anti-corruption (City 1), Dett,
R.A.Puram,
Chennai-600 029..

3. The Additional Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.V.Somasundaram, Advocate SR.No.16613

Criminal Revision Petition No.163 of 2018

PPA(CO)
GN(14/03/2018)