

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.R.C.NO.580 OF 2018  
AND CRL.M.P.NO.6848 OF 2018

P.Balasubramanian

... Petitioner/Accused-5

Vs.

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

.... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order passed by the learned II Additional District Court (CBI Cases) at Coimbatore dismissing the petition filed U/s 239 of Cr.P.C. In Crl.M.P.No.148 of 2016 in C.C.No.03 of 2015 dated 28.03.2018.

For Petitioner : Mr.C.D.Johnson

For Respondent : Mr. K.Srinivasan, Spl.PP

ORDER

Heard the learned counsel for the petitioner.

2 It is contended by the learned counsel for the petitioner that the petitioner has been arrayed as 5<sup>th</sup> accused in the case registered against him and others, under Section 120 B r/w 420, 467, 468, 471 of IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

3 The contention of the petitioner is that he and the other accused have been implicated on the allegation of availing loan from Bank of Maharashtra in the name of M/s. Shri Amman textiles by inflating the account, forging Profit and Loss account statement, Annexure to Balance Sheet and other connected records, so as to induce the Bank to extend excessive loan. The Auditor is also arrayed as A6, who has assisted and aided A5, the petitioner herein to prepare the forged accounts.

4 The contention of the learned counsel for the petitioner is that even before the receipt of complaint dated 11.02.2015 and registration of FIR dated 16.02.2015, the petitioner herein had cleared all the loan due to the Bank as

early as on 15.11.2014. Therefore, on the date of complaint there were no cause of action for taking complaint for investigation and registration of FIR but the investigating agency has proceeded with the complaint and filed final report for the offence under Section 120 B r/w 420, 467, 468, 471 of IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

5 When the petition to discharge has been filed before the Court under Section 239 of Cr.P.C., the Trial Court after considering the plea of the petitioner as well as submission made by the prosecution, held that the material placed by the prosecution disclosed prima facie ingredient for framing charge against the accused.

6 The learned counsel appearing for the petitioner would submit that the Trial Court while dismissing his discharge petition, has not considered the fact that even prior to lodging the complaint the petitioner has cleared all the dues to the complainant bank viz., Bank of Maharashtra.

7 The averment of the charges against the petitioner and others is that they all entered into criminal conspiracy and in furtherance of criminal conspiracy, to cheat the Bank of Maharashtra, by inducing to advance loan based on fabricated documents such as Profit and Loss account statement, Annexure to Balance Sheet, Details of unsecured loan and fabricated valuation report.

8 The Trial Court is supposed to find out whether the loan availed by dishonest inducement or not. Even, if the loan availed through dishonest inducement is repaid later, it will mitigate the sentence. Therefore, this Court finds no error in the order of the Trial Court dismissing the discharge petition. It is always open to the petitioner to canvas that there was no criminal intention or dishonest inducement to advance loan or in alternate to canvas or repay the loan received and such a plea is available to the petitioner only during trial or after trial and not at this stage.

9 Hence, this Court finds no merit in this revision petition, this petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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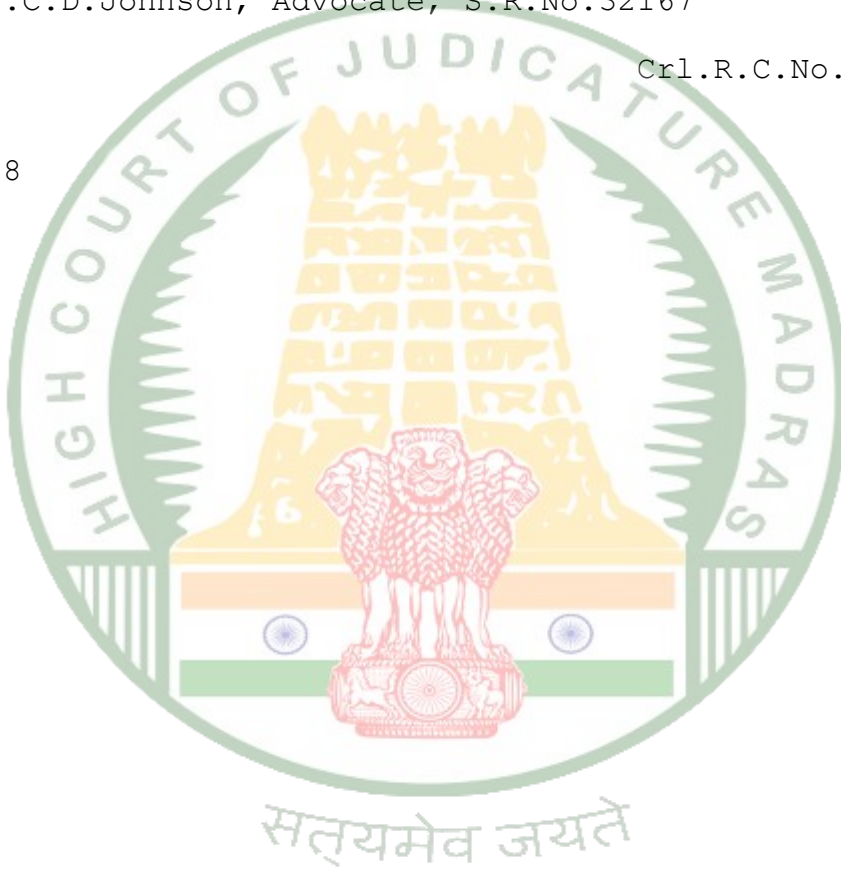
To

- 1 The II Additional District Court (CBI Cases),  
Coimbatore.
- 2 The Inspector of Police,  
SPE, CBI ACB,  
Chennai
- 3 The Special Public Prosecutor for CBI,  
High Court, Madras.

+lcc to Mr.C.D.Johnson, Advocate, S.R.No.32167

Cr1.R.C.No.580 of 2018

GJ(CO)  
CS/30/05/18



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