IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2018

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.9369 of 2014

K.Saravanan ... Petitioner/accused

Vs.

State represented by
The Inspector of Police,
CBI, BS & FC,
36, Bellary Road, Ganga Nagar,
Bangalore. ... Respondent /Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire proceedings pending on the file of the learned Chief Judicial Magistrate at Coimbatore in C.C.No.54 of 2013 and quash the same as abuse of process of law as unwarranted and illegal.

For Petitioner : Mr.S.Xavier Felix
For Respondent : Mr.K.Srinivasan
Special Public Prosecutor
for CBI

ORDER

This Criminal Original Petition has been filed to quash the criminal prosecution launched against the petitioner in C.C.No.54 of 2013 on the file of the learned Chief Judicial Magistrate, Coimbatore.

2 The contention of the petitioner arrayed as A1 is that two First Information Reports were registered by CBI on two different dates on same set of facts. The averments alleged in both the final reports are one and the same. The loan availed from the consortium of the banks namely State Bank of Mysore, State Bank of India and Union Bank of India alleging that the M/s.Asian Health & Nutri Foods Limited, in which, the accused is a Director had defaulted in repaying the loan amount and also alleging that he fabricated accounts to show as if huge sale receivable from eight debtor units and thereafter, dishonestly and fraudulently written of most of the sale receivable and showing the company under loss. By falsely claiming that the company had incurred huge loss requested BIFR to declare the company as sick company and declare it a NPA.

3 The allegations is that the company has fraudulently written in the books of accounts with intension to cheat the consortium of the bank consisting of State Bank of Mysore, State Bank of India and Union Bank of India. The first First Information Report was registered under RC 7E/2012 dated 05.07.2012, based on the information given by V.Pattabiraman, Chief Vigilance Officer, State Bank of Mysore and the second FIR was registered under RC 2E/2013 dated 21.02.2013, based on the information given by Mr.K.D.Menon, Deputy General Manager, State Bank of India.

4 On the premise that for the same transaction, there cannot be two prosecution the present petition is filed to quash the charge sheet arising out of RC 2E/2013, which is final report based on the complaint given by Mr.K.D.Menon, Deputy General Manager, State Bank of India, which has culminated in C.C.No.54 of 2013.

5 The learned Special Public Prosecutor drew the attention of this Court to the two final reports, which has culminated in C.C.No.39 of 2013 and C.C.No.54 of 2014 arising out of RC 7E/2012 and RC 2E/2013 respectively. The comparative reading of these two final reports, this Court finds that though, the modes operandi in availing the loan was one and the same, but in fact, the total loan amount sanctioned to the company M/s.Asian Health & & Nutri Foods Limited was 86 crores rupees (36 crores towards working capital limit and 50 crores towards term loan) the same has been shared between three banks, which has constituted a consortium in the following manner:-

Name of the Bank	Working Capital	Term Loan	Total
State Bank of Mysore	16.50	20.00	36.50
State Bank of India	14.80	20.00	34.80
Union Bank of India	4.70	10.00	14.70
Total	36.00	50.00	86.00

6 Now, the final report regarding the complaint given by V.Pattabiraman, Chief Vigilance Officer, State Bank of Mysore, it is in respect of the loss caused to the State Bank of Mysore to the tune of Rs.35.52 crores by willful manipulation of records and fraudulent diversion of bank funds by the Directors of M/s. Asian Health & Nutri Foods Limited. The final report pertaining to the complaint given by K.D.Menon, Deputy General Manager, State Bank of India cheating to the tune of Rs.34.96 crores. The total outstanding as on date of One Time Settlement agreement after apportioning Rs.10 crores paid by the petitioner among the three banks constituting the consortium, the loss caused to the State Bank of Mysore is arrived as 22.35 crores. Thus, it is very clear

that the transaction, which have the over lapping effect in both the FIRs are definitely not one and the same, to plead that for the same act, the petitioner is forced to face two trials.

7 The learned counsel for the petitioner would submit that pending this petition, the entire due to the consortium of the banks had been cleared. State Bank of Mysore, State Bank of India and Union Bank of India have given individual letters certifying that there is no due payable by M/s. Asian Health & Nutri Foods Limited.

8 The learned Special Public Prosecutor would submit that after filing this Criminal Original Petition to quash the C.C.No.54 of 2013, the petitioner herein had filed a discharge petition before the trial Court in other C.C.No.39 of 2014, which is pending.

9 Taking note of the submission made by the learned counsel for the petitioner as well as the learned Special Public Prosecutor for CBI, while dismissing this quash petition as devoid on merits, this Court hastened to add that the alleged MOP adopted by this petitioner and the documents related to the petitioner to avail loan from the consortium of the banks are common in both in C.C.No.39 of 2014 and 54 of 2013. It is advisable for the trial Court to have a joint trial of both cases or simultaneously by exercising power under 218 of Cr.P.C. While deciding the case on merit, the trial Court shall also take note of the subsequent events, which has been brought to the notice of this Court in respect of discharge the debt and pass appropriate orders.

Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
1 The Chief Judicial Magistrate, Coimbatore.

2 The Inspector of Police,
CBI, BS & FC,36, Bellary Road, Ganga Nagar,Bangalore.

3 The Special Public Prosecutor for CBI,
High Court, Madras.

Crl.O.P.No.9369 of 2014

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ASK(28/08/2018)