IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 02.03.2017	Date of pronouncing the Judgment: 24.01.2018

CORAM:
THE HONOURABLE MR. JUSTICE S.BASKARAN
Crl.R.C.No.800 of 2014
Crl.R.C.No.548 of 2015
Crl.R.C.No.774 of 2015

Crl.R.C.No.800 of 2014
State by
Inspector of Police
CBI / EOW / Chennai ... Petitioners / Complainant

Vs.

V.S. Vasan
No.5, Murugesan Street,
Theyagaraya Nagar,
Chennai-600 017 ... Respondent/Accused No.3

Crl.R.C.No.548 of 2015

Central Bureau of Investigation,
Represented by
Deputy Superintendent of Police
EOW / Chennai ... Petitioners/ Complainant

Vs.

Shri Nataraj Kumar,
S/o. Shri S. Chandrasekaran,
Flat No.3, GRN Srivaru,
No.5, Palat Narayaniammal Road,
Mahalingapuram,
Chennai-600 034 ... Respondent/Accused No.2

Crl.R.C.No.774 of 2015
Central Bureau of Investigation,
Represented by
Deputy Superintendent of Police
EOW / Chennai Petitioner/ Complainant

Vs.

Shri Sreyas Sripal,
D-277, Ground Floor,
Defence Colony,
Delhi-24. ... Respondent/Accused No.1

Prayer :- Criminal Revision Cases filed under Section 397 & 401 of Code of Criminal Procedure, 1973, praying to set aside the Orders dated 20.10.2014 in Crl.M.P.No.47 of 2013, Crl.M.P.No.825 of 2014 and Crl.M.P.No.824 of 2014 in C.C.No.31289 of 2004 on the file of the learned Additional

For Respondents : Mr.A.Ramesh, Senior Counsel
for Mr.K.Suresh Babu.
(in Crl.R.C.No.800 of 2014 and
Crl.R.C.No.774 of 2015)
Mr.B.Kumar for
Mr.S.Ramachandran
(in Crl.r.C.No.548 of 2015)

COMMON ORDER

These three Criminal Revision Cases have been filed under Section 397 & 401 of Code of Criminal Procedure, 1973, praying to set aside the Orders dated 20.10.2014 in Crl.M.P.No.47 of 2013, Crl.M.P.No.824 of 2014 and Crl.M.P.No.825 of 2014 in C.C.No.31289 of 2004 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The Respondent in Crl.R.C.No.800 of 2014, Respondent in Crl.R.C.No.548 of 2015, and Respondent in Crl.R.C.No.774 of 2015 are arrayed as Accused Nos.3, 2 & 1 respectively, in C.C.No.31289 of 2004 on the file of Additional Chief Metropolitan Magistrate, Chennai. The Petitioner / CBI registered F.I.R. on 20-08-2002 against M/s. Pan Clothing Consolidated Co. Limited & Directors of the Company along with Senior Manager of Punjab & Sind Bank, Mount Road Branch, Chennai and unknown persons. The core of the allegation is that the Senior Manager, Punjab & Sind Bank along with Managing Director and Directors of M/s. Pan Clothing Consolidated Co. Limited and other unknown persons entered into a criminal conspiracy during the period from 1997 to 2000 to cheat Punjab & Sind Bank by committing criminal misconduct and in furtherance of the criminal conspiracy various credit facilities were sanctioned to M/s. Pan Clothing Consolidated Co. Ltd., from the bank. Based on the forged and fabricated property documents, a loss to the tune of Rs.42.97 crore is caused to the above said Bank. After investigation, the Revision Petitioner herein/Complainant filed Police Final Report on 15-12-2004, wherein twelve persons have been shown as Accused. The learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, has taken the case on file in C.C.No.31289 of 2004 and issued necessary process.

3. The Accused Nos.1 to 3/ Respondents herein have come forward with Petitions u/s. 239 of C.P.C. under C.R.M.P.Nos.47 of 2013; 824 of 2014 and 825 of 2014 in C.C.No.31289 of 2004 before the Trial Court, seeking to discharge them from the Proceedings.

4. The allegations leveled in the respective petitions in common is as follows :-

The Petitioners were Directors of M/s. Pan Clothing Consolidated Co. Ltd. The Company availed financial facilities from various banks including M/s. Punjab & Sind Bank, Anna Salai Branch, Chennai. During the interregnum on account of insurmountable difficulties created by one of its other bankers, the Company was struggling to sustain themselves. At that point of time, the very same banker withdrew the financial facilities suddenly. In such circumstances, the company due to various coercive demands and other factors was not in a position to meet preferred appeal in O.S.A.No.27 of 2005 and O.S.A. No.304 of 2005, and during the course of hearing of the appeals, the parties therein reached a compromise and the Hon’ble Court passed common judgment dated 27-04-2007 in terms of Memorandum of Compromise. On the basis of the Memorandum of Compromise, the matter was settled and the bank also agreed to withdraw all the proceedings initiated before the Debt Recovery Tribunal and accordingly, the Company discharged the dues and the bank also withdrew various proceedings initiated against the Company. In the circumstances, the criminal prosecution initiated by the Complainant has lost its relevance on the basis of the Ruling of Hon’ble Division Bench of Madras High Court dated 27-04-2007 passed in O.S.A.No.27 of 2005 and O.S.A.No.304 of 2005. Further, no prosecution was initiated for want of sanction for prosecution from the competent authority. The civil dispute has been overtones to criminal facets. Hence, the Petitioners may be discharged.

5. Counter of the Complainant filed before the Trial Court in brief is as follows:

A1 to A13 entered into a criminal conspiracy during the period 1997 to 2000 and with an intention to cheat Punjab & Sind Bank, they dishonestly submitted fraudulent, false stock statements and book debts as primary security knowing fully well that they are forged and obtained sanction of various facilities for the company. In this aspect, the statement of witnesses and also relevant documents were filed before the Trial Court and in these circumstances, because of the compromise reached between the Company and the Bank before the Civil Forum will not absolve the criminal prosecution and so, the petition may be dismissed.

6. The Trial Court relied on various rulings cited by the Respondents/Accused herein in CBI/ACB/Mumbai vs. Narendralal Jain & others 2014 (Web) 140SC; Jagdeesh Chandra Nijhawan vs. S.K. Sarraf AIR 1999 SC 217 and gave a finding to the effect, since the Petitioner and their Company has honestly settled the amount by way of compromise with the bank, there may not be any fruitful result in the further proceedings of this case and allowed the petition filed by the Accused 1 to 3 herein and they were discharged from this case. Aggrieved over the orders of discharge passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, the Revision Petitioner / Complainant preferred these revisions.

7. The learned Special Public Prosecutor for the Revision Petitioner submitted that the materials produced before the Trial Court clearly match out offences under various provisions of IPC, the Trial Court failed to consider the same and discharged the Respondents herein mainly on the sole ground of compromise arrived between the bank and the Respondents herein and the view taken by the Trial Court is against the principle laid down by the Hon’ble Apex Court in Parbatbhai Ashir alias Parbatbhai Bhimsinhbhai Karmur & others vs. State of Gujarat and another 2017 SC 1109. Hence, the Prosecution sought to set aside the Impugned Order, by allowing the Revisions, so that trial can be proceeded with in accordance with law.

8. On the other hand, the learned Counsel appearing for

there is no need for proceeding with criminal case and the learned Additional Chief Metropolitan Magistrate has elaborately discussed and arrived at the correct conclusion to discharge the accused and the order of the learned Additional Chief Metropolitan Magistrate does not warrant any interference and no ground is made out for the same.

9. I have considered the rival submissions and perused the materials available on record.

10. M/s. Pan Clothing & Consolidated Co. Ltd. availed various credit facilities from various banks and financial institutions including the Punjab & Sind Bank, Annasalai Branch, Chennai. The said fact is not disputed. The allegation of the Prosecution is that based on the forged and fabricated property documents, various loans was obtained by the above said Company and fictitious firm was also created in the same premises and the said Firm also obtained various loans from the bank without any trade transaction and diverted the funds. In that regard, A1 to A13 conspired to commit fraud on the bank and caused loss to the tune of Rs.42.97 crore and allowed the company to go for liquidation. The Respondents/Petitioners/Accused 1 to 3 are the Directors of M/s. Pan Clothing & Consolidated Co. Ltd. Necessary materials is available on record to show that all the Accused conspired together and they obtained loan from various banks by producing false and fabricated documents and diverted the amount to their personal use. It is contended that the available materials on record would be sufficient to presume that the Petitioners have committed offences under the various provisions of IPC. Further, it is contended by the Prosecution that even if the entire amount is settled that cannot be a ground to terminate the criminal proceeding. In support of the same, he relied upon the Ruling reported in 2017 SC 1109 [PARBATBHAI ASHIR ALIAS PARBATBHAI BHIMSINHBAI KUMAR AND OTHERS Vs. STATE OF GUJARAT AND ANOTHER], wherein it is held as follows:-

> 13. The same principle was followed in Central Bureau of Investigation vs. Maninder Singh ((2016) 1 SCC 389) by a bench of two learned Judges of this Court. In that case, the High Court had, in the exercise of its inherent power under Section 482 quashed proceedings under Sections 420, 467, 468 and 471 read with Section 120-B of the Penal Code. While allowing the appeal filed by the Central Bureau of Investigation Mr. Justice Dipak Misra (as the learned Chief Justice then was) observed that the case involved allegations of forgery of documents to embezzle the funds of the bank. In such a situation, the fact that the dispute had been settled with the bank would not justify a recourse to the power under Section 482.
>
> "…… In economic offences Court must not only keep in view that money has been paid to the bank which has been 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 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 proceedings merely

merely because dispute had been settled with the bank, the same would not justify discharging the accused. Further, as far as discharging the accused is concerned, available materials on record produced by the prosecution only are to be taken into consideration and to ascertain as to whether the accused has committed the offences or not and not the materials produced by the defense. In the present case, the defense produced the materials relating to compromise made in the cases relating to Writ Petition O.A. of Debt Recovery Tribunal and O.S.A. No.304 of 2005 on the file of Hon'ble Division Bench of Madras High Court and on that basis, the Trial Court has come to the conclusion that no fruitful result will occur by further proceedings of this case. The view taken by the learned Additional Chief Metropolitan Magistrate is against well settled proposition of law. In these circumstances, the discharging of the Accused by the Trial Court on the ground that the Company has honestly settled the amount is not correct and the same cannot be sustained, in view of the ruling of the Hon'ble Apex Court cited supra.

12. (1) On the other hand, refuting the same, the Respondent relying upon the Ruling reported in (2008) 5 SCC 668 [MAKSUD SYED Vs. STATE OF GUJARAT] contended that the trial court is correct in discharging the accused from the case. In the said Ruling, it is held as follows:-

> "It appears to the Court that the learned Chief Judicial Magistrate has not applied his mind while passing the order under Section 156(3) of the Criminal Procedure Code directing the police to investigate in the matter. The impugned order, on the face of it, reveals that he has not gone through the complaint. He has stated in the order that the Accused Nos.1 to 10 are Manager and Branch Manager of Dena Bank. As a matter of fact, the Accused No.1 was the Ex-Chairman and Managing Director of Dena Bank, and the Accused No.2 was the Executive Director. The Accused Nos. 3 to 10 are Directors of Dena Bank. None of these persons are Managers or Branch Manager. Despite this, the learned Chief Judicial Magistrate has mentioned in his order that they are Managers or Branch Managers. With regard to the prospectus, he has simply stated that the Bank has issued prospectus for its public issue and at Page No.87 false informations were given so as to cause damage to the Company and to jeopardize the reputation of the Company. Despite the fact that the litigations are pending before the Civil Court he has mentioned about non-returning of export bills etc. On these facts he has passed order under Section 156(3) of the Criminal Procedure Code, directing the PSI, Sayajiganj Police Station to make inquiry in the matter."

The matter involved in the case before the Apex Court is related to non-returning of export bills by the bank, but the learned Chief Judicial Magistrate in that case directed police investigation and in the order it is stated that the Accused No.1 to 10 are Manager and Branch Manager of the Dena Bank, but the Accused are Chairman and Managing Director, Executive Director and Directors. Hence, the Hon'ble Supreme Court held to have been committed by the Company as the bank drafts drawn in the name of the Company in respect of the goods to be delivered and in the circumstances the Hon'ble Apex Court held that the drafts were drawn in the name of the Company, even if the Appellant was its Managing Director, he cannot be said to have committed an offence u/s 406 IPC. But, the case in our hand is that the Directors of the Company conspired together with other persons obtained loan in the name of the Company and diverted the same. Thus, the Directors are specifically said to have committed the alleged offence.

(3) Another ruling relied upon by the Respondents/Accused is in the case of ANEETA HADA AND OTHERS Vs.M/S.GODFATHER TRAVLES AND TOURS PVT. LTD., reported in CDJ 2012 SC 309. The said case is in respect of offence u/s 138 Negotiable Instruments Act, 1881. In this case, the Company is alleged to have committed offence and as such, it is held that without arraying the Company as an Accused, the Directors or others cannot be prosecuted. The Respondents/Accused alos relied upon the Ruling reported in the case of ANIL KUPTA Vs. STAR INDIA PVT LTD., reported in 2014 AIAR (Criminal) 796.

13. As far as the present case is concerned, the allegation is that the Directors of the Company who are arrayed as Accused and other Accused conspired together and committed the offences alleged by the prosecution and in the circumstances, the last two cited rulings relied on by the Respondents herein is not applicable to the facts of the case in our hand.

14. Thus, in the light of the above said discussion and the materials available on record, it is apparent that there are sufficient evidence available to presume that a prima facie case exist against the respondents as alleged by the prosecution and in such circumstances, the finding of the trial Court that the accused deserves to be discharged is unsustainable since the matter is settled with the bank and entire amount is paid. It is also pointed out that matter is settled only after criminal proceeding was initiated. On that ground also, the Plea of the Petitioner has to fail and the order passed by the learned Additional Chief Metropolitan Magistrate, Egmore, dated 20.10.2014, is liable to be set aside.

15. In the result, these Criminal Revision Cases are allowed and the order passed by the learned Additional Chief Metropolitan Magistrate, Egmore, dated 20.10.2014 in Crl.M.P.No.47 of 2013, Crl.M.P.No.824 of 2014 and Crl.M.P.No.825 of 2014 in C.C.No.31289 of 2004 are set aside. The Court below is directed to proceed with the matter as per law.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

3.The Inspector of Police,
CBI / EOW / Chennai

4.The Special Public Prosecutor,
For CBI Cases,High Court,
Chennai-104.

Copy To

The Section Officer,
Criminal Section, High Court,
Madras-104.

+4cc to Mr. K.Suresh Babu, Advocate, S.R.No. 5290
+1cc to Mr. S.Ramachandran, Advocate, S.R.No. 6327

Crl.R.C.No.800 of 2014
Crl.R.C.No.548 of 2015
Crl.R.C.No.774 of 2015

KGK(CO)
GN(28/11/2018)