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.O.P.No.14464 of 2015
and M.P.No.1 of 2015

K.S. Selvakumar
S/o. K. Santhanam,
No.39, Guruvappa Street,
Ayanavaram,
Chennai - 600 023. ... Petitioners / Accused No.9

Vs.

State represented by
Deputy Superintendent of Police
CBI /BS & FC / Chennai ... Respondent/ Complainant

This Criminal Original Petition has filed under Section 482 Cr.P.C., to call for the records in C.C.No.31289 of 2004 pending on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai and quesh the proceedings.

For Petitioner : M/s. C. Rajan
V.K. Sathiamurthy

For Respondents : Mr. K. Srinivasan,
Special Public Prosecutor
for CBI cases

ORDER

This Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, 1973, praying to call for the records in C.C.No.31289/2004 pending on the file of learned Additional Chief Metropolitan Magistrate, Chennai and quash the proceedings.

2. The Brief fact of the case is as follows:-
The Respondent / 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, causing loss to the tune of Rs.42.97 crores to the bank . After investigation, the Respondent /Complainant herein filed Final Report on 15-12-2004 and Supplementary Charge Sheet was filed on 09.07.2008, wherein thirteen persons have been arrayed 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 Petitioner herein is A-9 in the above C.C. No.31289 of 2004 on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai. The allegations against this Petitioner is that the documents pertaining to the seven flats at West K.K. Nagar, Chennai, valued Rs.82.50 lakhs, submitted as collateral for the advance of Rs.200.00 lakhs, in the names of Sri Vasan, Sri Shreyas Sripal, Sri T.P. Anand and Shri Narayan Vyas were forged and the signature of the seller of the property namely, K.Alagar and signature of the then Joint Sub Registrar, Virugambakkam, namely Mr.S.Kannan, the seal of the Sub Registrar Office, seal and signature of the Stamp Vendor Sri.Ramalingam and signature of the Document Writer Sri.D.Nagabushanam are all forged and these documents were forged by C.J. Thomas, A-10 on the instructions of this Petitioner, who is arrayed as A-9. The further allegation is that the document for the second property offered as collateral security 5/9 grounds at Purasawalkam, Chennai, in the names of Shreyas Sripal, T.P.Anand and Sri Narayan Vyas was also forged and the finger prints of the sellers of this property namely, Smt.M.K.Sumathi, Smt.M.K.Kavitha, Sri.M.K.Sathyarana, Sri.M.K.Ravindranath and Sri.R.Sivaprakasam, found on the document is not theirs, whereas the same is that of the 10th Accused.

4. The Petitioner herein had filed a petition in Crl.M.P.No.328 of 2013 before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, to discharge himself from the case and the learned Additional Chief Metropolitan Magistrate allowed the same and discharged the Petitioner herein. Against the same, the Respondent herein filed Crl.R.C.No.1129 of 2014, challenging the order of discharge and praying to set aside the order passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

5. During the pendency of the above Crl.R.C.No.1129 of 2014

before this court, the Petitioner herein has filed this present petition seeking to quash the proceedings.

6. The learned Counsel for the Petitioner/A-9 submits that as per the available material on records, no offence is made out against the Petitioner herein and as compromise has been entered into between the parties and the entire amount has been settled to the Bank and the bank officials have already been discharged from the case, the question of criminal conspiracy does not survive in this case and in the circumstances, there is no possibility of conviction in this case and the continuation of the criminal trial would put the Accused to great hardship and injustice. Thus, the Petitioner contends that though the alleged offences u/s. 120-B r/w 420, 467, 468 & 471 IPC, is not compoundable, this Court in exercise of the powers u/s 482 Cr.PC has to quash the proceedings pending before the Trial court by allowing the Petition.

7. Per contra, the learned Special Public Prosecutor would submit that this Petitioner was instrumental for the preparation of bogus documents and he conspired together with other accused, prepared forged documents and the same were produced before the Banks concerned by M/s. Pan Clothing Consolidated Co. Ltd., and also obtained huge amount of loan by utilising the forged documents and the amount was diverted to other sources, whereby, causing wrongful loss to the Punjab & Sind Bank to the tune of Rs. 42.97 crores. The learned Special Public Prosecutor also contended that subsequent compromise between the parties in Civil Proceedings and discharge of loan amount has nothing to do with the criminal case and once the offence is committed, the criminal proceeding has to continue unless the matter is compounded u/s 320 of Crl.P.C., if the offences are compoundable. Further, it is pointed out that though this Petitioner and other co-accused were discharged by the Additional Chief Metropolitan Magistrate, Chennai, the Respondent herein has preferred revision before this court and the revisions were allowed and the order of learned Additional Chief Metropolitan Magistrate, Chennai, was set aside. As far as this Petitioner is concerned, Crl.R.C.No.1129 of 2014 was allowed and the order of discharge passed by the learned Additional Chief Metropolitan Magistrate in Crl.M.P.No.328 of 2013 was set aside by this Court. Thus the Prosecution contends that once the Criminal R.C. is allowed and the discharge order passed by the learned Additional Chief Metropolitan Magistrate is set aside, petition to quash proceedings is not maintainable. Further, it is submitted by the learned Special Public Prosecutor that this petition was preferred by the Petitioner only after Crl.R.C.No.1129 of 2014 challenging the order of discharge passed by the learned Additional Chief Metropolitan Magistrate, was filed and pending. Hence, it is pointed out

that the Petitioner had no locus standi to file this petition since no case was pending against him on the date of filing of this petition as he was discharged by Trial court and on that ground also, this petition had to be dismissed in limine. Further, the learned Special Public Prosecutor relied on the ruling of the Apex Court in Parbatbhai Ashir @ Parbatbhai Bimsinhbhai Karmur & others vs. State of Gujarat & Another reported in CDJ 2017 SC 1109, to substantiate his contention.

8. In such circumstances, it is to be seen as to whether the Proceedings pending before the Additional Chief Metropolitan Magistrate, Egmore, Chennai, in C.C.No.31289 of 2004 is to be quashed.

9. Heard both sides arguments and perused the entire records available on record.

10. The allegation by the Prosecution is that this Petitioner who was a Stamp Vendor instructed the 10th accused to forge documents and they together prepared forged document by forging the signatures of original owners of the property. Further, the documents prepared by others were utilized for the purpose of availing loan from various banks and caused loss to the tune of Rs.42.97 crores to Punjab & Sind Bank and subsequently the amount was diverted from the Company. Liquidation proceedings was initiated and cases were initiated under Debt Recovery Tribunal and the matter is pending before this court in O.S.A.No.27 & 304 of 2005. Thereafter, the parties to the Proceedings settled the matter and judgment was delivered in the above O.S.As. in terms of compromise and the loan was discharged based on the terms of compromise.

11. Now, it is to be seen as to whether the subsequent settlement of dues to the Bank by the Company is a ground to quash the criminal proceedings. In that context, it will be appropriate to rely on the Reported Ruling in the case of Central Bureau of Investigation vs. Maninder Singh ((2016) 1 SCC 389), which negatived the plea of discharge, even if the matter is settled. In the said Ruling, it is held as follows:-

> "12. In recent decision in Vikram Anantrai Doshi Vs. State of Maharashtra through CBI vs. Vikram Anantrai Doshi and Ors., 2014 (10) SCALE 690 (supra), this Court distinguished Nikhil Merchant's case and Narendra Lal Jain's case where the compromise was a part of the decree of the court and by which the parties withdrew all allegations against each other. After referring to various case laws under subject in Vikram Anantrai Doshi's case, this Court observed that cheating by bank exposits fiscal impurity and such financial fraud is an offence against society at large in para (23), this Court held as under:-

“23. …Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominantingly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a “no due certificate” and enjoy the benefit of quashing of the criminal proceedings on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The court’s principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible".

13. In this case, the High Court while exercising its inherent power ignored all the facts viz. the impact of the offence, the use of the State machinery to keep the matter pending for so many years coupled with the fraudulent conduct of the respondent. Considering the facts and circumstances of the case at hand in the light of the decision in Vikram Anantrai Doshi's case, the order of the High Court cannot be sustained."

12. The Hon'ble Apex Court, in another ruling in the case of STATE OF TAMIL NADU Vs. R.VASANTHI STANLEY reported in (2016) 1 SCC 376, held as follows:-

"A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled, it should be quashed to avoid the load on the system."

So, from the above decisions of the Hon'ble Apex Court, it is clear that no criminal proceedings particularly in respect of grave criminal offence or serious economic offence or any other matter as stated in the above said ruling should not be quashed only on the ground of settlement arrived at between the parties. It is pertinent to note that the F.I.R., in the case on hand, was registered in the year 2002, and the civil suit for recovery of money was filed in the year 2004. Thereafter only the settlement was arrived at in the year 2009. Thus, it is clear that the settlement has not been arrived at immediately or voluntarily but only long after initiation of criminal prosecution and filing of civil suit for recovery of amount due to the Bank. In these circumstances, the settlement arrived at by the party before this Court on the civil side in O.S.A.Nos.27 & 304 of 2005 and the loan amount was discharged in terms of the judgment of this Court, which was delivered on the basis of compromise is not at all a ground to quash the proceedings pending before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

13. Further, the learned Special Public Prosecutor contended that the contention of the Petitioner herein that the criminal proceeding is to be quashed as the dispute has been settled between the parties cannot be considered in view of the above Rulings of the Apex Court (cited supra) and the fact that the order of discharge passed by the trial court was subsequently set aside by this court in Crl.R.C.No.1129 of 2014, will make the plea of the petitioner untenable. The learned Special Public Prosecutor also pointed out that when this petition was filed, no case was pending against the petitioner, as he was discharged by the trial court at that point of time. Even though, as stated above, subsequently, the order of discharge was set aside and in the present circumstances also, it is contended by the Prosecution that the plea of the petitioner cannot be entertained since the petitioner/A-9 along with co-accused conspired and presented forged documents to the Banks to avail loan. In this case, the role of the petitioner in the scheme of conspiracy hatched by the accused persons is very predominant and the petitioner is alleged to have played active role in preparing the fraudulent documents, which was made use of to avail loans from the Bank. It is therefore clear that the intention to cheat the Bank was very obvious and the modus operandi of the Petitioner along with other accused allegedly undermines the economic well being of the State cannot be ignored at this stage only on the ground that the matter has been settled among the parties.

14. The learned Special Public Prosecutor also pointed out that the reasons stated by the Petitioner/A-9 to quash the proceedings is unsustainable. Even though Section 482 Cr.P.C., reserves the inherent power of this court to prevent the abuse of process of any court, the same cannot be invoked to quash the criminal proceedings on the ground of settlement being arrived at between the parties. The learned Special Public Prosecutor also pointed out that the settlement has been arrived at only after initiation of criminal proceedings and that itself will make it clear that the parties were forced to settle the matter due to the proceedings initiated against them. Further as the issue involved in the proceedings before trial court relates to economic

well being of the State, the consequence of the acts of the accused which will amount to economic dent which weigh the minds of the court to decide the issue in question. Hence, the learned Special Public Prosecutor seeks for dismissal of the Petition.

15. Considering the above said factors and the fact that the Petitioner/A-9 is alleged to have played a major role in the fraudulent transaction involving several crores of rupees, causing loss to the Bank to the tune of Rs.42.97 crores and also the fact that discharge of the Petitioner in the case is already set aside by this court, this court is of the view that the plea of the Petitioner cannot be entertained and the same has to fail. In such circumstances, this Court finds no merit in this petition and accordingly this Criminal Original Petition is dismissed. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.

2.Deputy Superintendent of Police,
CBI /BS & FC / Chennai.

3.The Special Public Prosecutor,
High Court, Madras-104.

Copy To

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

+2cc to Mr. C.Rajan, Advocate, S.R.No. 5196

Crl.O.P.No.14464 of 2015

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