



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. (MD) No.23388 of 2016
and
Crl.M.P. (MD) No.12325 of 2016

1.R.Siva Subramaniam

2.S.Alwar Sivasubramaniam

... Petitioners / A7 & A8

vs.

The Inspector of Police
Central Bureau of Investigation
Anti-Corruption Branch
Shastri Bhavan, Chennai-600 006

... Respondent/Complainant

PRAYER: Criminal original petition filed, under Section 482 Cr.P.C., to call for the records in C.C.No.24 of 2012, on the file of the II Additional Sessions Judge-cum-Special Judge for C.B.I.Cases, Madurai and quash the same as against the petitioners.

For Petitioners : Mrs.M.Parameswari
for Mr.S.M.S.Johny Basha

For Respondent : Mr.N.Ashok Kumar Gowtham
Special Public Prosecutor for C.B.I.Cases

O R D E R

The petitioners are facing prosecution in C.C.No.24 of 2012, before the learned II Additional Sessions Judge-cum-Special Judge for C.B.I.Cases, Madurai, for the offences under Sections 120-B r/w 420 I.P.C., and Sections 13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988, along with 11 other persons. Seeking to quash the prosecution in C.C.No.24 of 2012 as against the petitioners herein, they have filed the present criminal original petition.

2. The case of the prosecution as set out in the charge sheet is as follows:

"THAT (A-1) Shri.G.Balasubramanian, Chief Manager, Indian Overseas Bank, Regional Office, Erode while he was working as Chief Manager, Indian Overseas Bank, Palayamkottai Branch, Thirunelveli, during 2007-2009, entered into a Criminal Conspiracy with (A-2)



Shri.S.P.Shenbagamoorthy, S/o.Pavanasa Nadar, Proprietor of M.s.Pavana Steels allegedly functioning at No.182, E 3/1, S.N.High Road, Tirunelveli-627 001, (A-3) Dr.Ammamuthu, S/o.Late.Muthuramalingam Pillai, R/o. No.79, Srinivasa Nagar, V.M.Chathiram, Thirunelveli-11, (A-4) Shri.N.Kalayanasundaram, S/o.T.S.Narayanan, R/o.Flat No.F-2, First Floor, 17-A/28, 6th Main Road, Nanganallur, Chennai-600 061. (A-5) Shri P.Shahul Hameed, Partner, M/s.Indian Steel Corporation, No.188/G, Schafer High School Building, S.N.Road, Thirunelveli 627 001, (A-7) Smt.N.Shakeena W/o.Shri P.Shahul Hameed, Partner, M/s.Indian Steel Corporation, No.188/G, Schafer High School Building, S N Road, Thirunelveli 627001, (A-8) Shri R.Sivasubramaniam S/o.Shri Ramasamy, Proprietor, Mariegold Agro Exports, R/o No.178, 7th Street, Main Road, Perumalpuram, Thirunelveli-627 007, (A-9) Smt.Alwar Sivasubramaniam W/o Shri R.Sivasubramaniam, No.39, 7th Street, Perumalpuram, Thirunelveli-627007, (A-10) Shri R.Arumugam S/o.Shri Ranganatha Pillai, Proprietor, M/s.Arumugam Traders, No.178, 7th Street, Main Road, Perumalpuram, Thirunelveli-627007, (A-11) Shri R.Shanmugham, Proprietor, M/s.Saravana Traders, No.39, Main Road, Perumalpuram, Thirunelveli-7, (A-12) Shri P.Rajasamuel, Partner, M/s.Jeyas Ayush Hospital, No.199, Main Road, Perumalpuram, Thirunelveli-7, (A-13) Dr.K.Ramalekshmi W/o Shri P.Rajasamuel, Partner, M/s.Jeyas Ayush Hospital, No.199, Main Road, Perumalpuram, Thirunelveli-7 and (A-14) Shri A.Udhaya Raj @ Chinnamani S/o.Arunachalam Nadar, Partner, M/s.Jeyas Ayush Hospital, No.199, Main Road, Perumalpuram, Thirunelveli-7 and others with intention to cheat Indian Overseas Bank, Palayamkottai Branch, a Public Sector Undertaking, in the matter of sanctioning and disbursing various loan facilities such as Cash Credit (CC) hypothecation loans, Term Loan, Vehicle loans, Packing Credit (PC) against Letter of Credit (LC) etc. In furtherance of the said criminal conspiracy, Shri G.Balasubramanian (A-1) by corrupt or illegal means or otherwise by abusing his official position as public servant dishonestly sanctioned and disbursed Cash Credit Hypothecation, Term, Vehicle and Packing Credit loans without following Bank's norms and procedures and by accepting false documents etc, thereby caused a wrongful loss to the tune of Rs.1,57,40,211/- to Indian Overseas Bank and



corresponding wrongful gain to the accused persons.

THAT during the course of investigation, the following facts and circumstances was revealed that a series of frauds was perpetrated by Al Shri. Balasubramanian (A1) while functioning as Chief Manager, IOB, Palayamkottai branch during the period 2007-2009, in sanctioning and disbursing various loan facilities to different sets of borrowers as mentioned in the FIR, in wilful and flagrant violation of the bank norms and procedures and all the loan facilities to disbursed by Al Shri.G.Balasubramanian became bad, resulting in wrongful loss to IOB and corresponding wrongful gain to the accused borrowers. Investigation revealed that the deviant role played by Al Shri.G.Balasubramanian runs through the entire length of the conspiracy like an axis and as the wheel of the conspiracy rolled on, many accused borrowers joined at different points of time and derived undue pecuniary advantage from the overt acts of A1 in as many as seven instances as below..."

3. From a reading of the charge sheet, it is seen that Siva Subramaniam / A7, who was the Proprietor of M/s.Marie Gold Agro Exports, in collusion with his wife Alwar Siva Subramaniam / A8, had obtained huge loans via G.Balasubramanian (A1), Chief Manager, Indian Overseas Bank, Regional Office, Erode.

4. The learned counsel for the petitioners submitted that all the loan amounts obtained by the petitioners have been repaid and therefore, the prosecution against the petitioners is an abuse of process of law.

5. Very recently, the Honourable Supreme Court in **C.B.I. vs. Maninder Singh**, reported in **2015 (9) Scale 365**, has held that repayment of the loan amounts cannot absolve the accused from the criminal liability.

6. On a reading of the charge sheet and 161 Cr.P.C., statement of the witnesses, it is seen that there are sufficient materials against the petitioners for the prosecution to proceed against them.

7. The learned counsel for the petitioners fairly submitted that charges have been framed and ten witnesses have been examined so far out of 100 cited witnesses.

8. In such view of the matter, this Court is of the view that this is not a fit case where the criminal proceedings initiated against the petitioners can be quashed and the criminal original

petition is, therefore, dismissed.

9. At this juncture, the learned counsel for the petitioners submitted that the first petitioner is aged about 64 years and he is also a cancer patient and he has to be looked after by his wife / second petitioner. Therefore, the personal appearance of the petitioners / A7 and A8 may be dispensed with before the Court below.

10. Accepting the submissions of the learned counsel for the petitioners and also taking into consideration the fact that the first petitioner is a cancer patient, this Court directs the petitioners / A7 and A8 to appear before the Trial Court for collecting the final report and other papers under Section 207 Cr.P.C., at the time of framing charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the petitioners / A7 and A8 file an application under Section 317 Cr.P.C., undertaking that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses in their absence on the day they are examined in chief without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If the petitioners / A7 and A8 adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence. If the petitioners / A7 and A8 adopt dilatory tactics, they can be remanded to custody under Section 309 Cr.P.C., as laid down by the Hon'ble Supreme Court in **State of U.P. vs. Shambhu Nath Singh**, reported in **2001 (4) SCC 667**.

11. Further, each of the petitioners / A7 and A8 are directed to furnish a bond (own bond), under Section 88 Cr.P.C., for a sum of Rs.10,000/- (Rupees Ten Thousand only) without sureties to the satisfaction of the learned II Additional Sessions Judge-cum-Special Judge for C.B.I.Cases, Madurai. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To:

1. The II Additional Sessions Judge
-cum-Special Judge for C.B.I.Cases,
Madurai.



2. The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Shastri Bhavan, Chennai-600 006.

3. The Special Public Prosecutor for CBI Cases,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.S.M.S.JOHNNY BASHA, ADVOCATE IN SR No. 43845

KRK

TE/SV-MMS/SAR-3 : 19/02/2018 : 5P/5C

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CrI.M.P.(MD) No.12325 of 2016
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