



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
08.03.2018	20.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**
Cr1.R.C. (MD) No.223 of 2017

WEB COPY

A.Udhayaraja

: Petitioner/Accused No.12

Vs.

The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Shastri Bhavan, Chennai 600 006,
Crime No.RC MA1 2011 A 0031.

: Respondent/complainant

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for records relating to the order dated 13.05.2016, made in Cr1.M.P.No.686 of 2013 in C.C.No.24 of 2012, on the file of the Second Additional District Judge for CBI Cases, Madurai and set aside the same by allowing the above Criminal Revision Case and discharge the petitioner from the above crime.

For Petitioner

: Mr.Ananth C.Rajesh

For Respondent

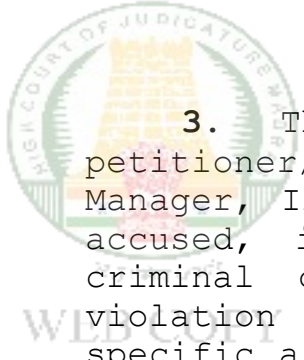
: Mr.N.Nagendran

Special Public Prosecutor

O R D E R

Based on source information, the Central Bureau of Investigation registered a case in Crime No.RC MA1 2011 A 0031, on 29.08.2011, under Sections 120-B, r/w 420, 468, 469 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, against 14 accused and after completing the investigation, have filed a charge sheet and the same was taken on file in C.C.No.24 of 2012 before the learned Second Additional District Judge for CBI Cases, Madurai, against 13 accused, including the petitioner herein, who has been arraigned as Accused No.12 for the offences under Sections 120-B, r/w 420, 468, 469 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioner filed Cr1.M.P.686 of 2013 under Section 239 of the Code of Criminal Procedure for discharging him from the prosecution, which has been dismissed by the Trial Court, on 13.05.2016, aggrieved by which, the petitioner has filed the present Criminal Revision Case.

<https://hcservices.courts.gov.in/hcservices/> 2. Heard by Mr. Ananth C.Rajesh, learned counsel appearing for the petitioner and Mr.N.Nagendran, learned Special Public Prosecutor appearing for the respondent.



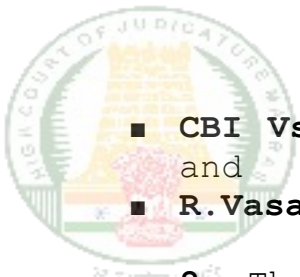
3. The allegation in the charge sheet against the petitioner/accused is that G.Balasubramanian [A-1], the then Chief Manager, Indian Overseas Bank, Regional Office, Erode and the co-accused, including the petitioner herein, had entered into a criminal conspiracy, by which huge loans were sanctioned in violation of Rules and norms, based on fabricated documents. The specific allegation against the petitioner is that M/s.Jeyas Ayush Hospital is a partnership firm with three partners, viz., Dr.K.Ramalakshmi, [A-11] P.Rajasamuel [A-10] and A.Udhaya Raj [A-12] and the partnership was entered into on 19.12.2008; that on 20.12.2008, a loan application was submitted to the Manager, Indian Overseas Bank, Palayamkottai Branch for availing loan of Rupees One Crore for the purchase of medical equipments and a loan of Rs.10,00,000/- towards working capital; that the accused opened current account No.458, on 22.12.2008; that the accused submitted fake purchase bills obtained from Shamugavel [A-13]; that G.Balasubramanian [A-1] had sanctioned loan of Rs.89.85 lakhs on 31.12.2008 to M/s.Jeyas Ayush Hospital and the loan account became an NPA, resulting in initiation of proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, against the partners.

4. The learned counsel appearing for the petitioner submitted that the entire loan amount has been paid on 19.04.2011 itself, on account of which, the bankers - customer relationship got severed and therefore, the petitioner cannot be prosecuted for the alleged offences. The learned counsel also submitted that there is no deception at the inception as required under Section 420 of the Indian Penal Code. The learned counsel further submitted that one K.Saravanan was also arraigned as accused No.5, but, his name was not included in the charge sheet, on the ground that he had cleared off the dues to the bank, after the registration of the First Information Report. The learned counsel further contended that the case of the petitioner is in *pari materia* with that of K.Saravanan and therefore, the petitioner should be discharged from the prosecution. The learned counsel, in support of this contention, placed reliance on the Judgment of the Supreme Court in **Nikhil Merchant Vs. Central Bureau of Investigation**, [AIR 2009 SC 428 : 2008 (9) SCC 677].

5. Per contra, Mr.N.Nagendan, learned Special Public Prosecutor, refuted the above submissions.

6. This Court gave its anxious consideration to the above submissions made by the learned counsel on either side.

7. At the outset, it may be relevant to state that the law laid down in **Nikhil Merchant** [supra] has been diluted by the Supreme Court subsequently in the following cases:-



- **CBI Vs. Maninder Singh [2015 (9) Scale 365 : 2016 1 SCC 389]**
and
- **R.Vasanthi Stanely Vs. State, [2016 (1) SCC 376]**

8. Thus, the repayment of the loan amount cannot absolve the petitioner from any criminal liability, [vide **Maninder Singh** and **R.Vasanthi Stanely**, [supra].

9. The allegation against the petitioner is that he was a partner in M/s.Jeyas Ayush Hospital and had submitted loan application with fabricated purchase bills. It is seen that the partnership deed was entered into on 19.12.2008; that the loan application was submitted on 20.12.2008; that the current account No.458 was opened on 22.12.2008 and that G.Balasubramanian [A-1] sanctioned the loan on 31.12.2008. All these had happened in a breakneck speed. The investigation conducted by the CBI shows that Shamugavel [A-13] had supplied bogus quotations and bills and had facilitated the grant of loan in league with G.Balasubramanian [A-1]. The repayment of the loan amount cannot absolve the petitioner from any criminal liability.

10. In the teeth of such overwhelming evidences against the petitioner/accused, it cannot be stated that there are no *prima facie* materials against the petitioner/accused for framing charges.

11. In **State of T.N. Vs. N.Suresh Rajan, [2014 ([1) SCC 709]**, the Supreme Court, after discussing the entire law governing discharge under Sections 227 and 239 Cr.P.C., has held as follows:-

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the Court is not expected to go



deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the Court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the Court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

12. The facts of the case do not pass muster the law laid down by the Supreme Court in **State of Haryana v. Bhajan Lal & Others** [AIR 1992 SC 604 : 1992 Supp (1) SCC 335] and **Suresh Rajan** [supra] for quashing the prosecution.

13. In the result, this Criminal Original Petition is devoid of merits and it is dismissed accordingly.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Second Additional District Judge for CBI Cases, Madurai.
2. The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Shastri Bhavan, Chennai 600 006.
3. The Special Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.Ananth C.Rajesh, Advocate Sr.No.56300

NB

VB/KKR/SAR1/03.04.2018/4P/5C

ORDER MADE IN
Cr1.R.C. (MD) No.223 of 2017
20.03.2018