BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD) Nos.500, 501, 502, 514, 515, 516 & 517 of 2016

P.Venkateswarlu ... Petitioner / A1 in all Cases

vs.

The Inspector of Police
Central Bureau of Investigation
Anti Corruption Bureau
Chennai ... Respondent / Complainant in all Cases

COMMON PRAYER : Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to call for the records pertaining to the order passed in Crl.M.P.Nos.1364, 1366, 1368, 1359, 1360, 1361, 1363 of 2014 in C.C.Nos.18, 19, 22, 13,15, 16 and 17 of 2012 respectively on the file of the learned Special Court for C.B.I.Cases, Madurai-cum-II Additional District and Sessions Judge, Madurai, dated 31.05.2016 and to set aside the same.

For Petitioner : Mr.C.Jegannathan
(in all cases)

For Respondent : Mr.N.Ashok Kumar Gowtham
(in all cases) Senior Public Prosecutor for C.B.I.Cases

C O M M O N   O R D E R

The Central Bureau of Investigation registered a case in RC MA1 2011 A 007, on 08.02.2011, against the petitioner herein for the offences under Sections 120-B r/w 420, 467, 468 r/w 471 I.P.C., and Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and after completion of the investigation has filed totally eleven charge sheets in C.C.Nos.12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of 2012, before the Special Court for C.B.I.Cases, Madurai. At this stage, it may be relevant to state that in all these cases, the petitioner herein has been shown as A1 and the beneficiaries have been shown as the co-accused. The petitioner filed applications, under Sections 239 Cr.P.C., in C.C.Nos.13, 15, 16, 17, 18, 19 and 22 of 2012 seeking to discharge him from the above prosecution. The

Trial Court, by individual orders dated 31.05.2016 has dismissed all the discharge applications on the ground that there are *prima facie* materials for the Trial Court to frame charges against the petitioner. Challenging the same, the petitioner has filed the present criminal revision petitions.

2. It is pertinent to note that the petitioner has also filed criminal original petitions in Crl.O.P.(MD) Nos.8514, 8515, 8516 & 8517 of 2016, under Sections 482 Cr.P.C., seeking to quash the charge sheets in C.C.Nos.21, 12, 20 & 14 of 2012 respectively on the file of the Special Court for C.B.I.Cases, Madurai. All these criminal original petitions were heard by this Court and dismissed today (i.e.06.02.2018) holding that there are *prima facie* materials for the prosecution to proceed against the petitioner. The crux of the allegations in all the charge sheets is as follows:

> *"During the period between June 2009 to October 2010 at Ramanathapuram area Shri P.Venkateswarlu abused his official position, conspired with Shri V.Muniasamy (A-7) and Smt.D.Packialakshmi (A-3) and in pursuance of the conspiracy Smt.D.Packialakshmi submitted loan application on 24.04.10 to Shri P.Venkateswaralu (A-1) under PMEGP scheme enclosing a forged lease agreement purported to be valuable security, forged with the help of Shri P.Venkateswaralu (A-1) & Shri V.Muniasamy (A-7), falsely representing that a brick manufacturing unit at 20A, 6B, Arasardivandal, Paramakudi, Ramanathapuram has to be commenced. In copy of the stamp paper bearing Sl.No.36A 610283 for the lease agreement, serial number was forged as 610287. PMEGP scheme is meant for unemployment person which is given in subsidised rate. Shri Muniasamy forged the signature of unknown persons as witnesses in the lease agreement of Smt Packialakshmi and he also assisted the Branch manager for preparation of forged lease agreement of Shri Sethupathy Rajan, Shri M.Jeyakumar, Smt.Dhanalakshmi and Smt.Mariammal using the submitted lease agreement of Smt.Packialakshmi. Shri P.Venkateswaralu accepted the forged documents purported to be valuable security, knowing fully well that the documents are forged one. In investigation it is revealed that the said survey number was not available as per VAO record and there was no brick manufacturing unit in the said adress. Shri P.Venkateswaralu without conducing proper inspection and relying on the forged documents sanctioned PMEGP loan of Rs.5,00,000/- violating the laid down procedure to Smt.Packialakshmi on*

28.04.2010. Smt.Packialakshmi (A-3) submitted the false photograph of the brick manufacturing unit as per instructions of Shri P.Venkateswaralu (A-1) Branch Manager. Shri P.Venkateswaralu (A-1) had forged signature of Shri Selvakumar Asst.Manager in the financial report pertaining to loan account of Smt.Packialakshmi (A-3). The loan amount was released in two installments first on 28.04.2010 and second on 06.05.2010. To claim further installments, no supporting bills were submitted by Smt. Packialakshmi (A-3). Post sanction inspection was also not conducted. Having received the loan amount under PMEGP Scheme, Smt.Packialakshmi (A-3) in conspiracy with other accused persons and in pursuance to the said conspiracy, diverted the loan amount for purpose other than for which it was sanctioned and thereby Shri P.Venkateswaralu (A-1), Shri V.Muniasamy (A-7) and Smt.Packialakshmi (A-3) cheated Central Bank of India causing wrongful loss to the bank and obtained pecuniary advantage to themselves. As on 19.12.2011 an amount of Rs.4,76,168/- is outstanding in the loan account of Smt.Packialakshmi."

3. The learned counsel for the petitioner / A1 submitted that there is no *prima facie* material for the Court to frame charges against the petitioner / A1 since the loan applications were processed by the District Level Task Force consisting of the District Collector and other officials as required under the Prime Minister's Employment Generation Programme.

4. Per contra, the learned Senior Public Prosecutor for C.B.I.Cases refuted the contentions of the learned counsel for the petitioner / A1.

5. This Court gave its anxious consideration to the rival submissions.

6. One S.Selvakumar (L.W.3), Assistant Manager, Central Bank of India, Villupuram Branch, in his statement, has stated that his signature in the Bank records have been forged and he was working under the petitioner / A1 herein. In this regard, the Police have also recorded 164 Cr.P.C., statements of the witnesses, namely, P.Subramanian and D.Muthuveerakrishnan, who were the alleged beneficiaries in the Scheme. The very allegation made against the petitioner / A1 is that he had in collusion with the beneficiaries created false records for sanctioning loans under the said Scheme and the Revenue Officials have given statements to the effect that the beneficiaries did not even have any industrial unit as required under the Scheme for bringing them within the Scheme of Prime Minister's Employment Generation Programme. In other words, the petitioner / A1 had not even inspected the premises of the

beneficiaries and in collusion with the beneficiaries, he has created records as if they are eligible for financial assistance.

7. In *State of T.N. v. N.Suresh Rajan*, reported in *(2014) 11 SCC 709*, the Honourable Supreme Court has discussed the contours of the power under Sections 227 and 239 Cr.P.C., and in Paragraph No.29 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."*

8. In view of the above authoritative pronouncement of the Honourable Supreme Court, this Court cannot conduct a mini trial with regard to the culpability of the petitioner / A1 in the alleged offences. In such view of the matter, this Court is of the view that the impugned orders passed by the Court below do not suffer from any infirmity warranting interference from this Court.

9. In the result,

(i) All the criminal revision petitions are dismissed.

(ii) It is needless to state that whatever observed above is only for deciding the discharge applications and the defences are left open for the petitioner to agitate the same during the trial.

(iii) If the petitioner is not released on bail, he is directed to surrender before the Trial Court, within a period of two weeks from the date of receipt of a copy of this order and on such surrender, the Trial Court shall obtain a bond under Section 88 Cr.P.C., for Rs.10,000/- (Rupees ten thousand only) with two sureties in each of the cases. However, the petitioner is permitted to produce common sureties.

(iv) The petitioner is directed 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 petitioner files an application under Section 317 Cr.P.C., undertaking that he will not dispute his identity and that his counsel will cross-examine the prosecution witnesses on the day they are examined in chief, as held by the Hon'ble Supreme Court in *Vinod Kumar vs. State of Punjab* reported in *2015 (1) Scale 542,* in his absence without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same .

(v) In the event of the accused adopting dilatory tactics, they can be remanded to custody, under Section 309 Cr.P.C., as laid down by the Honourable Supreme Court in *State of U.P. vs. Shambu Nath Singh*, reported in *2001 (4) SCC 667*.

(vi) If any of the accused absconds, a fresh F.I.R., can be registered against them under Section 229-A I.P.C., and they can be remanded to custody.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To:

1.The Special Judge for C.B.I.Cases,
II Additional District and Sessions Court,
Madurai.

2.The Inspector of Police,
Central Bureau of Investigation,
Anti Corruption Bureau, Chennai.

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

Copy to:-

The Record Keeper, Criminal Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai
(To send back the records to the Trial Court Immediately)

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RL/6C/6P/SV/MMS/SAR1/22/2/2018

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06.02.2018
(2/2)