HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

<u>Criminal Revision Case No.468 of 2018</u>

<u>ORDER</u>:

This Criminal Revision Case is directed at the instance of petitioner/A7 against the order dated 22.01.2018 in Crl.M.P.No.1560 of 2016 in C.C.No.16 of 2010 on the file of II Additional Special Judge for CBI cases, Visakhapatnam, whereunder learned Judge dismissed the application filed by the petitioner under Section 239 Cr.P.C to discharge him from main case.

2) The factual matrix of the case is thus:

a) A1 and A2 are the Chairman and Director, A3 to A5 are the employees and A7 is the Managing Director of M/s. Sri Kalyani Agro Products and Industries Limited (M/s.SKAPIL). A6 is the Regional Manager of the IDBI Bank. The allegation is that in the year 2010, A1 and A2 borrowed loan to a tune of Rs.4,80,000/- and Rs.4,50,00,000/- from IDBI Bank Limited by impersonation and playing fraud. Therefore, the General Manager, Regional Office, IDBI Bank filed complaint regarding fraud against the accused. The police after investigation filed charge sheet under Sections 120B, 420, 419, 467, 468 and 471 IPC and Section 13 (2) r/w 13(1) (c) (d) of Prevention of Corruption Act, 1988.

b) While so, petitioner/A7 filed petition under Section 239 Cr.P.C. to discharge him from the main case. The respondent/complainant opposed the petition. The trial Court dismissed the said application with the observation that the statement of account relied upon by the petitioner from his side, for the present, before trial cannot be read as a holy book covering all aspects involved in the case.

Hence, the Criminal Revision Case.

4) Heard Sri M.P.Kashyap, learned Counsel for petitioner and learned Special Public Prosecutor for CBI.

5) Fulminating the order of the trial Court, the argument in vehemence of the petitioner/A7 is that petitioner is Managing Director of M/s.SKAPIL which is doing agricultural related business i.e. rice mill and he has absolutely nothing to with the loans borrowed by A1 and A2 for setting up pisciculture. A1 and A2 are Chairman and Director respectively of M/s. SKAPIL for which the petitioner is the Managing Director except that the petitioner has nothing to do with the loans borrowed by them for setting up pisciculture and therefore, it is highly objectionable and preposterous to contend that the loan amount of Rs.4 crores and odd granted to A1 and A2 was diverted to the account of A1 and therefore he is part of conspiracy. Learned counsel further argued that petitioner in the capacity of Managing Director through his staff deposited Rs.4 crores to the account of M/s.SKAPIL i.e. an amount of Rs.2,60,90,623/- and Rs.70 lakhs in the current account 94655100000806 of Power Division on 27.03.2010 and on the same day an amount of Rs.60,09,372/- was deposited in the current account bearing 94655100000815 of Steel Division as on the said date M/s.SKAPIL was having Rs.44,90,94,536/-. Further, the loans sanctioned to A1 and A2 of Rs.4,80,00,000/- and s.4,50,00,000/- were repaid by those two persons by way

of instalments between 13.07.2010 and 05.05.2012. Therefore, there is no material to frame charge against the petitioner/A7 and the trial Court erroneously dismissed his application.

6) Per contra, the submission of learned Special P.P. for CBI is that allegations against the petitioner/A7 is part of conspiracy along with other accused in securing the loan for A1 and A2 and he is also beneficiary of loan amount of Rs.4 crores which was transferred to M/s.SKAPIL. He argued that A3 to A5 are none other than the employees of M/s.SKAPIL and at the instance of A7 they went to Sunrise hotel in the Bolero vehicle of M/s.SKAPIL for signing the bank documents by impersonating themselves as Eluri brothers. Therefore, it is too naïve for A7 to contend he is nothing to do with the loan transaction. In fact he was the facilitator for utilising his employees to impersonate themselves as Eluri Musalaiah, Eluri Subba Rao and Eluri Dharmanna who offered their property as collateral security which was of low valued property but manipulated as high valued property.

a) Nextly, he argued that the documentary and oral evidence i.e. documents 34, 84 to 88, 223, 224, 297, 298, 299 and 301 and the oral evidence of witnesses 2, 3, 8, 10, 11 and 12 would substantiate that the loan account of Rs.4 crores was transferred to M/s.SKAPIL to show that A7 is a beneficiary. He thus prayed to dismiss the revision.

7) In view of rival arguments, the point for determination is:

"Whether the impugned order of the trial Court is factually and legally *sustainable?"*

8) **POINT**: I have gone through the record. As rightly observed by the trial Court, whether the amount of Rs.4 crores and odd deposited in the account of SKAPIL is transferred from the loan account of A1 and A2 or the said amount purely belongs to M/s.SKAPIL is a question of fact to be determined only after full-fledged trial but without taking the relevant evidence of the concerned bank officials the documents projected by either side cannot be accepted on their face value at the time of deciding the discharge application. Apart from this the other allegation against the petitioner/A7 is that at his instance A3 to A5 who are his employees went to River View Hotel in the Bolero vehicle of M/s.SKAPIL and signed on various documents impersonating themselves as Eluri Musalaiah, Eluri Subba Rao and Eluri Dharmanna who offered their property as collateral security for granting loan to A1 and A2.

9) Even if the allegation about the transfer of Rs.4 crores from the loan account of M/s.SKAPIL is kept aside for the time being, the other allegation against A7 is looming large to show the conspiracy. This aspect also needs thorough examination during trial. Therefore, in my considered view, trial Court rightly dismissed the discharge application.

10) I find no merits in the revision case and it is accordingly dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 24.07.2018

Murthy