

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.2302 OF 2013

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioners-A.1 and A.2 to set aside the order of dismissal dated 23.07.2013 passed in CrI.M.P. No.223 of 2012 in C.C. No.18 of 2010 on the file of the Principal Special Judge for C.B.I. Cases, Visakhapatnam (for short, 'the trial Court') filed under Section 239 Cr.P.C. seeking their discharge in C.C. No.18 of 2010 for the offences punishable under Sections 120B, 420, 468, 471 and 477A I.P.C. and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act').

2. Heard the learned counsel for the petitioners-A.1 and A.2 and the learned Special Public Prosecutor for C.B.I., apart from perusing the material on record.

3. Learned counsel for the petitioners-A.1 and A.2 would submit that the impugned order passed by the trial Court is illegal and contrary to law; the trial Court erroneously dismissed the discharge application filed by the petitioners-A.1 and A.2 misinterpreting the proposition of law laid down by the Apex Court in **Sudhir Shantilal Mehta vs. C.B.I.**¹; the allegations made in the report and charge sheet do not constitute the offences under Sections 120B, 420, 468, 471 and 477A I.P.C. and Section 13(2) read with 13(1)(d) of the PC Act; for the procedural irregularities, the petitioners-A.1 and A.2 cannot be prosecuted for the offences alleged; as per the circular issued by the Reserve Bank of India, the cases involving Rs.1 crore and above are required to be entrusted to the C.B.I.; in the instant case, the allegation is that the

¹ (2009) 8 SCC 1

amount of Rs.43,21,740/- was misappropriated; there are no grounds to proceed against the petitioners-A.1 and A.2 for the offences alleged; and ultimately, prayed to set aside the impugned order and discharge the petitioners-A.1 and A.2 in C.C. No.18 of 2010 for the aforesaid offences alleged. In support of his contentions, he has also relied on a decision of the Hon'ble Supreme Court in **Naresh Kavarchand Khatri vs. State of Gujarat and another**².

4. On the other hand, learned Special Public Prosecutor for C.B.I. would contend that there are specific and grave allegations against the petitioners-A.1 and A.2; the trial Court rightly dismissed the discharge application filed by the petitioners-A.1 and A.2; there are no circumstances to interfere with the impugned order passed by the trial Court; and ultimately, prayed to dismiss the criminal revision case. In support of his contentions, he has relied on a decision of the Hon'ble Supreme Court in **Rajat Prasad vs. Central Bureau of Investigation**³ and contended that the criminal conspiracy is required to be examined after the evidence is adduced.

5. In view of the submissions made on behalf of both sides, the point that arises for determination is, whether the impugned order is liable to be set aside and the petitioners-A.1 and A.2 can be discharged in C.C. No.18 of 2010 for the offences punishable under Sections 120B, 420, 468, 471 and 477A I.P.C. and Section 13(2) read with 13(1)(d) of the PC Act?

6. **POINT:** The petitioners-A.1 and A.2 are the bank employees and they are instrumental in sanctioning the loan to the borrowers. The specific allegation against the petitioners-A.1 and A.2 is that the borrowers have filed inflated valuation certificates. The petitioners-A.1 and A.2 in

² (2008) 8 SCC 300

³ (2014) 6 SCC 495

furtherance of the criminal conspiracy intentionally did not verify the genuineness of the said inflated valuation certificates and made false entries in the credit appraisal in respect of the documents submitted by the borrowers and cheated the bank to the tune of Rs.43,21,740/-. There are also other allegations constituting the offences alleged.

7. In **Rajat Prasad's** case (3 supra) relied on by the Additional Public Prosecutor, it is held as follows:

"The doctrine of *mens rea*, though a salient feature of the Indian criminal justice system, finds expression in different statutory provisions requiring proof of either intention or knowledge on the part of the accused. Such proof is to be gathered from the surrounding facts established by the evidence and materials before the Court and not by a process of probe of the mental state of the accused which the law does not contemplate. The offence of abetment defined by Section 107 of the Indian Penal Code or the offence of criminal conspiracy Under Section 120A of Indian Penal Code would, thus, require criminal intent on the part of the offender like any other offence. Both the offences would require existence of a culpable mental state which is a matter of proof from the surrounding facts established by the materials on record. Therefore, whether the commission of offence Under Section 12 of the PC Act read with Section 120B Indian Penal Code had been occasioned by the acts attributed to the accused Appellants or not, ideally, is a matter that can be determined only after the evidence in the case is recorded."

8. In **Naresh Kavarchand Khatri's** case (2 supra) relied on by the learned counsel for the petitioners, it is held that the trial Court while dealing with an application filed under Section 239 Cr.P.C., has to examine the material placed before it and has to find out that there are sufficient grounds to proceed with or to drop the proceedings against the

accused and in the event of no case is made out against the accused, the trial Court has to discharge the accused under Section 239 Cr.P.C. In the instant case, there are specific and grave allegations against the petitioners-A.1 and A.2 with regard to the genuineness of number of documents filed before the bank. Further, the banker has to find out the correctness/genuineness of the documents filed before it with the officers concerned. Whether there was a conspiracy/*mens rea* in commission of the offence or not is required to be determined after recording the evidence in the impugned calendar case. There are also allegations of cheating the bank to the tune of Rs.43,21,740/- and caused corresponding wrongful loss to the bank. So, it cannot be said that there are no sufficient grounds to proceed against the petitioners-A.1 and A.2 for the offences alleged. The trial Court while dealing with the subject crime had recorded a finding to that effect basing on the material available on record and ultimately dismissed the discharge application filed by the petitioners-A.1 and A.2. The subject circular does **not** supersede the enactment. Further, the decision rendered in **Sudhir Shantilal Mehta's** case (1 supra) has no application. The trial Court did not commit any irregularity or improbability. There is no error manifest to interfere with the impugned order passed by the trial Court in exercise of power conferred under Sections 397 and 401 Cr.P.C. All the contentions raised on behalf of the petitioners-A.1 and A.2 do not merit consideration. There are no merits in the criminal revision case and it is liable to be dismissed.

9. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 25-10-2018

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