THE HON'BLE DR JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No. 1860 of 2011

ORDER:

1. This Criminal Petition is filed under Section 482 Cr.P.C. to quash all further proceedings in C.C. No.28 of 2005 on the file of the Special Judge for CBI Cases, Visakhapatnam.

2. Heard the learned senior counsel Sri C.Nageswara Rao, appearing for the petitioners/A.1 to A.3 and Sri K.Surender, learned Special Public Prosecutor for CBI Cases appearing for respondent/State. Perused the record.

3. The petitioners herein are A.1 to A.3 before the Special Court. The CBI filed charge sheet against them for the offences punishable under Sections 120B read with 420 IPC, 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988. The allegations against them, in brief, are as follows.

(a) Petitioners/A.1 to A.3, K.Ramakrishna Rao (A.4) and A.L.Prasad (A.5) were parties to a criminal conspiracy to cheat the State Bank of Hyderabad, Visakhapatnam in the years 1998-1999, in the matter of arbitrary, unjustified and dishonest enhancement of rents at exorbitant rates for IFD, SIB, Region-I, Zonal Office, Service and Regional-III Branches, and in pursuance thereof, A.1 to A.3 and A.5 abused their official position and caused wrongful gain of Rs.52,54,944.30 ps to A.4 and corresponding wrongful loss to the Bank.

(b) In the premises selection committee meeting dated 02.11.1999, A.1 to A.4 unjustifiably and dishonestly decided to pay Rs.18/- per square feet for Industrial Finance Branch of SBH, Siripuram, Visakhapatnam knowing fully well that A.4 vide letter dated 17.8.1998 addressed to the Bank agreed for Rs.8/- per square feet and the other local commercial organization of the area were paying lesser rates. It was against the reasonableness of rent of Rs.12.50 per square feet arrived at by the CPW Department. In fact, in the meeting dated 29.10.1998, A.3 and A.4 decided for Rs.8/- per square feet and the same was approved by the Head of the Bank on the proposal dated 07.12.1998 of A.3. Further, A.1 to A.4, in the meeting held on 02.11.1999 decided to pay for an excess area of 255 square feet as against the actual occupied area of the premises of 4200 square feet. The then Desk Officer of office of A.1 mentioned that there were no deviations from RBI guidelines as per circular No.762, dated 12.10.1999, and A.5 falsely recommended the same and forwarded the proposal to A.1, who approved the same on 22.11.1999 though he was not competent authority to do so. Thereafter, the Bank entered into an agreement of lease dated 13.03.2001 with A.4 which resulted in payment of Rs.13,86,000/- at enhanced rate and also payment of Rs.2,75,400/- for excess area of 255 square feet.

(c) It is further alleged that A.1 to A.4, in the premises selection committee meeting dated 02.11.1999, unjustifiably and dishonestly decided to pay Rs.18/- per square feet for Small Industries Branch (SIB) Branch of SBH, Visakhapatnam knowing fully well that A.4 vide letter dated 24.05.1999 addressed to the Bank agreed for Rs.10/- per square feet and the other local commercial organization of the area were paying lesser rates. The committee also decided to pay for an excess area of 115.37 square feet. It was against the reasonable rent of Rs.6.65 per square feet arrived at by the CPW Department. In fact, in the meeting dated 06.08.1999, A.2 to A.4 decided the rate of Rs.9/- per square feet as agreed upon by A.4 and the same was forwarded by A.3 to A.1 through A.2 vide proposal dated 26.08.1999. When the proposal reached office of A.1, one Vinti Uday Bhaskar and A.5 held it back and returned on 20.11.1999 after recommending enhanced rates on 19.11.1999. They falsely recommended on the fresh proposal that there were no deviations from RBI guidelines and A.1 was competent to approve. A.1 approved the enhanced rent on 22.11.1999 without powers to do so. Then, the Bank entered into an agreement vide lease deed dated 17.3.2001 with the landlord. This resulted in payment of an excess rent of Rs.10,13,676/- at enhanced rate and Rs.1,14,216.30 for an excess area of 115.37 square feet against the actual area of 1589.63 square feet occupied by the bank.

(d) It is further alleged that A.1 to A.4, in the premises selection committee meeting dated 02.11.1999, unjustifiably and dishonestly decided to pay Rs.15/- per square feet for Regional Office-I, SBH, Visakhapatnam knowing fully well that A.4 vide letter dated 24.05.1999 addressed to the Bank agreed for Rs.10/- per square feet and the local commercial organizations of the area were paying lesser rates. The committee also decided to pay for an excess area of 272.67 square feet. It was against the reasonable rent of Rs.6.65 per square feet arrived at by the CPW Department. In fact, in the meeting dated 06.08.1999, A.2 to A.4 decided the rate of Rs.9/- per square feet as agreed upon by the landlord and the same was forwarded by A.2 and A.3 to A.1 vide proposal dated 25.08.1999. When the proposal reached office of A.1, one Vinti Uday Bhaskar and A.5 held it back and returned on 20.11.1999 after A.1 approved the enhanced rent on 16.11.1999. They falsely recommended on the fresh proposal that there were no deviations from RBI guidelines and A.1 was competent to approve. A.1 approved the enhanced rent on 22.11.1999 without powers to do so. Then, the Bank entered into an agreement vide lease deed dated 15.3.2001 with the landlord. This resulted in payment of an excess rent of Rs.7,46,313/- at enhanced rate and Rs.1,67,435/- for an excess area of 277.67 square feet against the actual area of 4467.33 square feet occupied by the branch.

(e) It is further alleged that A.1 to A.4, in the premises selection committee meeting dated 02.11.1999, unjustifiably and dishonestly decided to pay Rs.10/- per square feet for Zonal Office, SBH, Visakhapatnam knowing fully well that local commercial organizations of the area were paying lesser rates. The committee also decided to pay for an excess area of 272.67 square feet. It was against the reasonable rent of Rs.6.25 per square feet arrived at by the CPW Department. In fact, in the meeting dated 06.08.1999, A.2 to A.4 decided the rate of Rs.6/- per square feet and the same was forwarded by A.3 to A.1 through A.2 vide proposal dated nil. When the proposal reached office of A.1, one Vinti Uday Bhaskar and A.5 held it back and returned on 20.11.1999 after recommending enhanced rates on 19.11.1999. They falsely recommended on the fresh proposal that there were no deviations from RBI guidelines and A.1 was competent to approve. A.1

approved the enhanced rent on 22.11.1999 without powers to do so. Then, the Bank entered into an agreement vide lease deed dated 15.3.2001 with the landlord. This resulted in payment of an excess rent of Rs.11,90,925/- at enhanced rate and Rs.90,778/- for an excess area of 135.49 square feet against the actual area of 4604.51 square feet occupied by the branch.

(f) It is also alleged that A.1 and A.3, unjustifiably and dishonestly fixed rent @ Rs.5.75 per square feet for an area of 1115 square feet for service branch of SBH, Visakhapatnam as against reasonable rent of Rs.4.50 per square feet arrived at, by CPW Department, which resulted in excess payment of Rs.76,656/-. It is also alleged that A.1 and A.2, unjustifiably and dishonestly fixed rent @ Rs.5.75 per square feet for an area of 2346 square feet for Regional office-III of SBH, Visakhapatnam as against reasonable rent of Rs.4.50 per square feet arrived at, by CPW Department, which resulted in excess payment of Rs.1,93,545 /-. Thus, A.1 to A.3 abused their official positions and caused wrongful gain of Rs.52,54,944.30 ps to A.4 and corresponding wrongful loss to SBH, Visakhapatnam.

(g) It is further alleged that A.4 initially agreed in the premises selection committee meeting held on 29.10.1998 for rent of Rs.8/- per square feet for IFB, and in the premises selection committee meetings held on 06.08.1999 for rent of Rs.9/- per square feet and Rs.6/- per square feet for SIB, Regional Office-I & Zonal Office of the Bank respectively, and in a short span of two months and twenty days, vide his letter dated 20.10.1999, requested the Bank for re-negotiations for fixing the rent with no fresh grounds. The same was agreed by A.1 to A.3 without any valid reasons and no fresh grounds in their meeting dated 02.11.1999 and unsuitably and dishonestly enhanced the rents exorbitantly. Hence, the charges.

4. Learned senior counsel Sri C.Nageswara Rao appearing for the petitioners/A.1 to A.3 would contend that A.1 to A.4 are only charge-sheeted in the present case; that A.5 turned as approver and A.4/landlord passed away; that the charge sheet filed against the petitioners/A.1 to A.3 is barred by limitation; that there is no sanction to prosecute the petitioners/A.1 to A.3; that clubbing of all the premises in one charge sheet is bad in law; that the investigation conducted by the CBI is capricious, perfunctory and caused prejudice and unfairness to the petitioners/A.1 to A.3; that there is no *prima facie* case to proceed against the petitioners/A.1 to A.3, and hence, continuation of the impugned proceedings against them is abuse of process of law and only with an intention to harass them.

He further contended that under Pension Regulations, 1995, there is a bar for stoppage of pension after 4 years of its sanction; that the prosecution has been launched after more than 7 years of sanction of pension after retirement of the petitioners/A.1 to A.3, and therefore, launching of prosecution is barred by limitation.

He further contended that though there are number of other accused in the charge sheet, who are bank officials indulged in process of entering into the lease with the landlord (A.4), they are not being prosecuted for the reasons known to CBI; that certain facts were brought to the notice of the investigating officers with regard to fixation of rent, they were not considered which caused prejudice to the petitioners/A.1 to A.3; that there is no document to show any violation in fixation of rent of subject premises; that the rent fixed was in accordance with the rules and the procedure governing the same.

It is his further contention that it is an extraordinary case where the State Bank of Hyderabad initiated civil action in O.S. No.87 of 2003 on the file of the Principal District Judge, Visakhapatnam against the petitioners/A.1 to A.3 for recovery of about Rs.1.00 crore alleging that it was loss caused to the bank by fraud and the same is pending; in the evidence recorded in the said suit, so many material facts have come to light with regard to false implication of the petitioners/A.1 to A.3 in the subject crime.

It is further contended that the alleged cause of action arose on 20.11.1998 in respect of IFB, on 02.11.1999 in respect of IFB, SIB, R.O.-I and Zonal Office, and in relation to Region-III and Service branch, the cause of action arose somewhere in January/February & June, 1999, and the relative proposals were approved and confirmed in respect of IFD, SIB, Regional-I and Zonal Office during November, 1999, and as on the dates of approval/confirmation, A.1 was General Manager (Operations) at Head Office of the Bank, A.2 was Deputy General Manager at Zonal Office, Visakhapatnam and A.3 was Assistant General Manager of Region-I, Visakhapatnam Zone, and that they were bestowed with discretionary powers, both financial and administrative, at their levels of functioning and controlled by the various circulars/guidelines/directions issued by the Bank from time to time, and mainly based on the instructions of the Reserve Bank of India.

It is his further contention that the subject premises were initially taken on lease during the years 1993-1994 for a period of 5 years ending in 1998-1999; that there is no mention with regard to the procedure adopted in taking the premises on lease during the years 1993-1994, but the procedure adopted enhancing the rents during 1999 is faulted by the investigating agency and made allegations of wrongful gain in favour of A.4 and consequent wrongful loss to the Bank.

It is also seriously disputed that the petitioner/A.1 assumed as General Managers (Operations) at Head Office of the Bank, Hyderabad on 01.01.1999 and retired on 30.06.2000, and before that, he was working at SBT, Trivandrum as General Manager (Insp. & Fin.); that he had not directly involved in fixation of the rents of the subject premises, etc. It is further contended that after renewal of the lease by the petitioners/A.1 to A.3, they became *functus officio* and thereafter payment of the rents was made by the officers concerned of the branch concerned to A.4-landlord, and the petitioners/A.1 to A.3 were nothing to do in paying the rents and therefore it cannot be held that there are any *mala fides* or criminal intent on their part in fixing the rents arbitrarily, as alleged by the prosecution.

It is further contended that discharge petition in Crl.M.P.No.441 of 2006 filed by the petitioners/A.1 to A.3 was dismissed by the trial Court; that the findings of the Special Court in the said order are unsustainable in law, and ultimately, prayed to quash the impugned proceedings against the petitioners.

5. On the other hand, K.Surender, learned Special Public Prosecutor for CBI Cases appearing for respondent-State would contend that the petitioners entertained criminal conspiracy and cheated the Bank in discharge of their official functions by causing wrongful loss to the Bank and gaining wrongfully for themselves; that the material collected by the prosecuting agency make out a *prima facie*

case for the offences alleged against the petitioners; that there are no grounds to quash the impugned proceedings against them.

He relied on the following decisions.

(a) in *Rajat Prasad v. Central Bureau of Investigation*[1], wherein it is held thus:

> "The answer to the above, in our considered view would depend, as in any criminal case, on the facts and circumstances thereof. A crime does not stand obliterated or extinguished merely because its commission is claimed to be in public interest. Any such principle would be abhorrent to our criminal jurisprudence. At the same time the criminal intent behind the commission of the act which is alleged to have occasioned the crime will have to be established before the liability of the person charged with the commission of crime can be adjudged. 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 IPC or the offence of criminal conspiracy under Section 120A of IPC 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 IPC 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."

(b) in *Amit Kapoor v. Ramesh Chander & another*[2], wherein it is held thus:

> "1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be

[1] (2014) 6 Supreme Court Cases 495
[2] (2012) 9 Supreme Court Cases 460

exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if

so, is it an abuse of the process of court leading to injustice.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

20. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence."

6. In view of the submissions made by both the sides, the point that arises for determination is whether the proceedings against the petitioners/A.1 to A.3 in C.C. No.28 of 2005 on the file of the Special Judge for CBI Cases, Visakhapatnam are liable to be quashed ?

7. There cannot be any dispute that inherent powers under Section 482 Cr.P.C. can be exercised when there is an abuse of process of Court or to secure ends of justice or to give effect to any order under the Code. Inherent powers of High Court under Section 482 Cr.P.C. should be used warily and perspicaciously. When exercising jurisdiction, the High Court would not ordinarily enter upon an enquiry whether evidence in question is worthy of confidence. When the uncontroverted allegations in the

charge sheet do not make a *prima facie* case for the offences alleged, then only the question of quashing the same would arise. Abusing the process of Court is a term generally applied to a proceeding, which is wanting in *bona fides* and is flighty, unfounded or oppressive.

8. The specific allegation against the petitioners/A.1 to A.3 is that while working as Bank officials in different capacities, they indulged in fixation of high rate of rent in respect of different branch offices of the Bank and responsible for payment of the same to the lessor-who is A.4 in this case and passed away some time back. The petitioners/Bank officials retired more than 10 years back and are being paid pensions. Admittedly, there is no sanction to prosecute these officials. There is a Regulation under the Pension Regulations, after 4 years, pensioners cannot be proceeded against them in respect of malfunctioning allegations. The subject case is registered basing on the CPW department rates. There is no regulation or instructions from the Managing Director of the State Bank of Hyderabad to abide by the conditions laid in the Circular order issued by the CPW Department. It is also pertinent to state that the investigating officer had not collected the existing rents relating to the dates of fixation of the questioned rents in the vicinity. Further, generally, Banks are established in commercial areas. The rental value prevalent in respect of the premises situated inside the colonies and situated in commercial areas and the rental value of the premises situated on main roads are distinct. The alleged irregularities in fixation of rents said to have taken place during the years 1988 and 1989. It is evident from the record that a suit in O.S. No.87 of 2003 on the file of the Principal District Judge, Visakhapatnam was

filed against the petitioners/A.1 to A.3 for recovery of Rs.1.00 crores alleging that excess rents were paid. If any violation or irregularities were committed, those can be addressed in the said suit.

9. More over, no complaint was originated from the Bank authorities with regard to the alleged fixation of rent. CBI was pleased to register the case *suo motu* basing on reliable information. It is alleged that there is criminal conspiracy in between A.1 to A.3 in fixing the unjustified rents. To substantiate these aspects, there is no material placed on record. Further, as seen from the records, no wrongful gain was made by the petitioners/A.1 to A.3. Further, the rents were directly paid by the other officials of the Bank to the lessor (A.4). It is also relevant to state that in the process of fixation of rents, number of other bank officials also have role. They are not made accused in the subject crime. It causes prejudice to the petitioners/A.1 to A.3. Further, the bank officials continued to pay the questioned rent to the landlord/A.4 even after registration of the subject crime. There is record to establish that initially owner of the premises made proposals to fix a lesser rent. But, the bankers did not agree to that proposal and informed owner of the premises that they would vacate the premises. Bankers did not vacate the premises. Thereafter, fresh negotiations had taken place in between the parties and the questioned rents were fixed when owner declined to accept his own proposals. Under these circumstances, no *mala fide* or conspiracy can be attributed to the petitioners/A.1 to A.3. The rent fixed by the CPW Department had no relevance. The bankers have to fix up rent independently depending on the prevailing rents in the locality where they intend to establish the

Bank or continue their business. Further, the accused are not directly responsible for the process of negotiations and payment of rent, etc.

10. Doctrine of *mens rea,* though is a salient feature in the Indian Criminal Justice System, it is required to be gathered from the circumstances of the case. No such circumstances are established by the prosecuting agency to gather *mens rea* on the part of the petitioners/A.1 to A.3 in this case, so also the culpable mental state of the petitioner/A.1 to A.3. Criminal trial could be a futile exercise. It causes unnecessary hardship and personal problems to the petitioners who are retired employees and old aged persons. The material on record predominantly gives rise to no element of criminality and does not satisfy the basic ingredients of the criminal offences alleged. Even if the allegations made against the petitioners/A.1 to A.3 are uncontroverted, no offences are made out against them for the offences punishable under Sections 120B read with 420 IPC, 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988. As already indicated above, if the Bank is aggrieved by the action or inaction of the petitioners, the same can be addressed in the civil suit pending in O.S. No.87 of 2003 on the file of the Principal District Judge, Visakhapatnam. Therefore, proceeding with the trial of the case would result in undue hardship to petitioners/A.1 to A.3. Continuation of the impugned proceeding against the petitioners/A.1 to A.3 is an abuse of process of Court and hence, the same are liable to be quashed in exercise of inherent powers of this Court under Section 482 Cr.P.C.

11. In the result, Criminal Petition is allowed. The proceedings in C.C. No.28 of 2005 on the file of the Special Judge for CBI Cases, Visakhapatnam are quashed against the petitioners/A.1 to A.3.

Miscellaneous petitions pending, if any, in the Criminal Petition shall stand closed.

Dr.SA, J.

31.12.2018
DRK

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

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