THE HON'BLE DR JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No. 2311 of 2011

ORDER:

1. The revision is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, challenging the order dated 04.03.2011 in Crl.M.P.No. 863 of 2010 in C.C. No.8 of 2006 on the file of the Special Judge for C.B.I. Cases, Visakhapatnam, whereunder the petition filed by the petitioner/A.1 under Section 239 Cr.P.C. for discharge, was dismissed.

2. Heard the learned counsel for the petitioner/A.1 and the learned Special Public Prosecutor for CBI Cases appearing for respondent/State. Perused the record.

3. The petitioner herein is A.1 in C.C. No.8 of 2006 before the Special Court. The Special Court had taken cognizance of the said case against petitioner/A.1 and others for the offences punishable under Sections 120B, 420, 468 and 471 read with 465 IPC and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988.

4. Learned counsel for the petitioner/A.1 would contend that the order passed by the learned Special Judge is illegal, improper and incorrect; that the learned Special Judge erred in dismissing the application filed for discharge; that the petitioner/A.1 is being prosecuted without there being any sanction; that there is no material to frame charges against him and proceed with the trial; that at the most, the allegations leveled would constitute violation of guidelines prescribed by the Bank, and for that,

he was removed from service, and ultimately, prayed to set aside the impugned order and discharge him.

5. On the other hand, K.Surender, learned Special Public Prosecutor for CBI Cases appearing for respondent-State contended that since the petitioner/A.1 was removed from service, no sanction is necessary to prosecute him; that as the application before the Special Court was filed after framing of charges, it is not maintainable; that there is sufficient material to frame charges against the petitioner/A.1, and the Special Court rightly framed charges against him, and ultimately, prayed to dismiss the revision.

6. In view of the submissions made by both the sides, the point that arises for consideration is whether the impugned order is liable to be set aside and the petitioner is entitled for discharge in the subject Calendar Case ?

7. There cannot be any dispute that revisional jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is a truncated one. Unless the findings are illegal or improper or incorrect, normally, this Court will not interfere with the same in exercise of its revisional jurisdiction. It is apt to refer to a decision in *Amit Kapoor v. Ramesh Chander & another*[1], wherein it is held thus: (paras 27.3, 27.6, 27.9, 27.12 and 27.16)

> "Having discussed the scope and jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now, it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not

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[1] (2012) 9 Supreme Court Cases 460

only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be :

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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.

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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.

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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.

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12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take

> into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.
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> 16. 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."

8. There cannot be any dispute that if the acts alleged do not make out *prima facie* case for the offences, the question of framing any charge against the accused does not arise, as continuation of proceedings is nothing but abuse of process of Court. *Prima facie* evidence means on the face of it, there is a ground for proceeding; it is not the same thing as 'proof', which comes later when the Court has to find whether the accused is guilty. *Prima facie* evidence is evidence, which if accepted appears to be sufficient to establish the fact unless rebutted by acceptable evidence to the contrary.

9. To prove the charge of criminal conspiracy punishable under Section 120B IPC, the prosecution has to establish that two or more persons agreed to do or cause to be done

an act, which is illegal or which is not illegal but by illegal means. Criminal conspiracy will be held in secrecy. Therefore, normally the prosecution could not bring direct evidence. Conspiracy can also be inferred from the circumstances of the case.

10. To constitute an offence of cheating defined under Section 415 IPC, which is punishable under Section 420 IPC, there must a fraudulent or dishonest inducement of a person deceiving another, and that the person so deceived should be induced to deliver any property to any person or to consent that a person shall retain any property; or that the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived. It is settled law that the intention to deceive must be existing from the time of inception. No doubt, intention can be gathered from the acts of the person committing the crime.

11. A person can be said to have committed the offence only if he does so with the intention of causing wrongful gain to one person or wrongful loss to another person – wrongful loss means land or property to which a person is entitled, while wrongful gain to a person means a gain to him by any wrongful means of property to which the person gaining is not legally entitled. The intention of the accused can be gathered from the circumstances.

12. It is also well established that intention is an essential ingredient to the commission of crime; where there is no *mens rea*, there can be no offence. the intention must not only have preceded the act in point of time. Intention is an operation of the will directing an

overt-act; motive is the feeling, which prompts the operation of the will, the ulterior object of the person willing.

13. As per the material placed on record, the petitioner functioned as Branch Manager (Scale-III), Andhra Bank, Specialized Small Scale Industrial Branch, Gajuwaka, Visakhapatnam during January, 2000 to May, 2001. The allegation is that he abused his official position, violated regulations of the Bank, caused pecuniary advantage to private persons in the matter of sanction of loan and disbursing the same. It is further allegation that he made huge loss to the bank and corresponding gain to the other accused.

14. As seen from the impugned order, the subject application for discharge was filed by the petitioner/A.1 after framing of the charges and during pendency of trial. After examining the petitioner/A.1 under Section 239 Cr.P.C., the Special Court framed the charges under Sections 120B, 420, 465 and 471 IPC and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 against him. When the charges were read over and explained to him, he denied the same, pleaded not guilty and claimed to be tried. Once charges are framed, the proceedings are required to be terminated on completion of trial. A detailed examination of the record is not necessary to state whether the accusation is made out against the petitioner/A.1 for the offences punishable under Sections 120B, 420, 465 and 471 IPC and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988. The allegation is that the subject loans were sanctioned violating the regulations causing huge loss to the bank and corresponding gain to the accused. Whether the

petitioner/A.1 entertained *mens rea* or whether there was criminal conspiracy, is required to be established after examination of the witnesses is over. In the circumstances of the case, there is sufficient material against the petitioner/A.1 to frame the aforesaid charges and the trial Court rightly framed the charges against him.

15. Further, the petitioner/A.1 is removed from service and he ceases to be a public servant as on the date of taking cognizance of the offences. In such an event, there is no need to obtain sanction for the prosecution of the petitioner/A.1 for the offences alleged against him in the capacity of a public servant, as held in *Prakash Singh Badal* v. *State of Punjab & others*[2]. Therefore, there is no manifest error in the order passed by the Special Court. The revision is devoid of merits and is liable to be dismissed.

16. In the result, the Criminal Revision Case is dismissed.

Miscellaneous Petitions pending, if any, in the revision shall stand closed.

Dr.SA, J.

14.11.2018
DRK

[2] (2007) 1 SCC 1

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