HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 201 of 2017

Order Reserved on : 02/07/2019

Order Delivered on : 26/09/2019

- Pawan Kumar Agrawal, S/o Ram Kumar Agrawal, Aged About 45 Years, R/o Pyarelal Agrawal Marg, Ramsagar Para, Raipur, Chhattisgarh.

---- Petitioner

Versus

- Central Bureau of Investigation Through Police Superintendent, Bhilai, District-Durg, Chhattisgarh.

---- Respondent

&

CRMP No. 587 of 2013

- Pawan Kumar Agrawal, S/o Ram Kumar Agrawal, Aged About 42 Years, R/o Pyarelal Agrawal Marg, Ramsagar Para, Raipur, Chhattisgarh

---- Petitioner

Versus

1. Central Bureau of Investigation, S/o Through - Superintendent Of Police (CBI) C.G. Bungalow No 4, Road No. 15 Sector 2, Bhilai ,Distt. Durg C.G. , Chhattisgarh

2. State of Chhattisgarh Through - Principal Secretary, Home Department(Mantralaya), Naya Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. N.K. Shukla, Sr. Advcoate with Mr. A.S. Kachhuwaha & Mr. Saurabh Dangi, Advocates.
For respondent-CBI	:	Mr. B. Gopa Kumar & Mr. Krishana Kumar Yadav, Asst. Solicitor General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

26/09/2019

Heard.

1. This petition under Article 226 of Constitution of India has been brought praying for quashment of criminal proceedings instituted against the petitioner in Crime No.RC/1242010A0009 of 2012 by CBI for trial of the petitioner for the offences under Sections 120B, 419, 466, 477-A of IPC.

2. Cr.M.P. No.587 of 2013 has been filed by the same petitioner challenging the framing of charge under Sections 120B, 419, 466 & 477A of IPC.

3. The case of prosecution against the petitioner is this, that he is brother of accused B.L. Agrawal in the case concerned. It is alleged that this name was fraudulently inserted in the bank records showing him as the tenant of the locker in place of said B.L. Agrawal with the help of Mr. Antomy Samy to exonerate accused B.L. Agrawal from the liability of Rs.15 lakhs, which was found inside the bank locker. One of the joint holders of the said locker namely Shri R.D. Goyal has expired but the fact of his death was not informed to the bank.

4. The charge-sheet has been filed before the Court of Special Magistrate(C.B.I.), Raipur, which has been registered as Criminal Case No.1125/2011 in which trial Court has framed charges against the petitioner on 5.12.2012 for trial in offences 120B, 419, 466 & 477A of IPC. This order was challenged in Revisional Court before the Court of Special Judge(C.B.I.), Raipur in Criminal Revision No.6/2013 and that was decided on 11.6.2013 by which the revision filed was dismissed. There had been no substance for framing charge under Section against the petitioner under Section 120B, 419, 466 &

477A of IPC.

5. It is submitted by the counsel for petitioner that the rent receipts were received in the name of Shri R.D. Goyal. Co-accused B.L. Agrawal never used his original signature while operating the said locker. It is evident from the CCTV footage of the bank concerned that the petitioner never visited the bank for operating bank locker. There is no evidence to show that name of the petitioner was added and the name of said B.L. Agrawal was deleted as per banking regulation. It is submitted by the counsel for petitioner that the bank locker was held jointly by Mr. R.D. Goyal and accused B.L. Agrawal with 'either or survivor' clause. Mr. R.D. Goyal expired on 7.12.2005. Application was filed by co-accused B.L. Agrawal on 3.7.2009 making statement that he does not want to continue with the bank locker any more, therefore, his name be deleted and in his place name of petitioner be added. The daily attendance register of renters, copy of which is filed at Page No.214, shows that petitioner had operated the locker on 10.2.2010 and thereafter in the raid conducted by the respondent on 10.2.2010 itself, an amount of Rs.15 lakhs was found inside the locker. As it is clear that the locker was earlier operated by Mr. R.D. Goyal and accused B.L. Agrawal, therefore, it ought to have been investigated as to who had stocked the said amount inside this locker, but that has not been investigated. Furthermore, though the joint holder Mr. R.D. Goyal had expired on 7.2.2005 but the receipt dated 2.7.2009 shows that it is Mr. R.D. Goyal who has deposited rent for the locker. Therefore, it is a case of fraudulent transfer of locker which has no connection with the petitioner.

6. The CBI has lodged FIR in this case on the basis of information given by Income Tax authorities, however, the initiation of this proceeding is not in accordance with law and regarding which reliance has been placed on the judgment of Supreme Court in the matter of State of U.P. vs Suresh Chand reported in (1984) 3 SCC 90 and also on the judgment dated 21.2.2018 passed by Gujarat High Court in the matter of Soni Dinesh Kumar Dahiya vs State of Gujrat.

7. The investigation that has been made in this case has revealed that the bank records

were manipulated to shift the onus from co-accused B.L. Agrawal on this petitioner. During investigation, nothing incriminating were found by the income tax officials in the premises of this petitioner and in the proceedings drawn by the income tax authority against co-accused B.L. Agrawal, he has been exonerated by the appellate authority. Therefore, the registration of case against the petitioner is the abuse of process of court and abuse of process of law. Infact it is a case of evasion of income tax, therefore, the petitioner has no criminal liability for manipulating locker records entry. The petitioner has mentioned that the amount found in the locker belonged to his sister-in-law Mrs. Mamta Agrawal i.e. wife of his elder brother Ashok Kumar Agrawal. Said Mamta Agrawal has also admitted in her statement that the cash Rs.15 lakhs found in the locker belonged to her and the said amount was withdrawn from her account maintained in Union Bank of India on 24.8.2009 through cheques. Therefore, there is no evidence to connect the petitioner with the crime alleged. There is no evidence regarding conspiracy that the amount found in locker was connected with co-accused B.L. Agrawal. Reliance has been placed on the judgment of Supreme Court in Satish Mehra vs State of NCIT reported in (2012) 13 SCC 614. It is submitted that the High Court has inherent powers to give relief in such cases and that the order of framing of charge affects the person's liberty substantially. There is no evidence to show as to who has defrauded and that the petitioner has committed fraud with any person. There is no evidence regarding cheating by impersonating. The confessional statement of Antony Samy very clearly exonerates the petitioner. Reliance has been placed on the judgment of Supreme Court in Radheshyam vs State of West Bengal reported in (2011) 3 SCC 581 and submitted that in that case the appellant was prosecuted after having been exonerated from the prosecution under the provisions of the Foreign Exchange Regulation Act, therefore, it was held that after exoneration, the prosecution on the same facts and circumstances cannot be allowed.

Relying on the judgment in the matter of ***K.C. Builders & another vs Assistant Commissioner of Income Tax,*** reported in ***(2004) 2 SCC 731***, it has been argued that where the Income Tax Tribunal has exonerated the person concerned in such a case, said person cannot be made to suffer reversal of criminal trial and the same is not sustainable in law. There is clarity with respect to the the person who has affixed signature in the register for operating the locker. There is also no evidence that the application for operating the locker in the name of the applicant as tenant was anti dated. Therefore, there is no manipulation of bank records. It is also argued that there is no ground to prosecute the petitioner for offence under Section 477A of IPC. It is further argued that according to the provisions of Banking Act also no offence against the petitioner is made out. Similarly there is no evidence to substantiate the crime under Section 120B of IPC.

8. It is a case in which nobody has received any amount by inducement according to definition of cheating under Section 415 of IPC there is no ingredient available. The provision under Section 419 of IPC is not attracted in this case on the basis of the evidence available in this case. Despite the admission statement of witness Heera Lal Verma that he had written in Hindi 'Pawan Kumar Agrawal' for the entry in Page No.118 of locker register on asking by Antony Samy, he has not been made an accused in this case. Similarly the report of handwriting expert also confirmed that the petitioner was not the person who signed the disputed documents. Therefore, on these grounds it is prayed that the criminal proceedings against the petitioner be quashed.

9. Learned counsel for CBI submits that according to prosecution case the bank locker No.240A of Raipur Main Branch of Bank of Baroda originally stood in the name of co-accused Mr. B.L. Agrawal. By manipulating the bank documents, petitioner was shown to be tenant of the said account and therefore, the same account was being operated by the petitioner in connivance with co-accused B.L. Agrawal. The confessional statement given by Antony Samy very clearly involves the petitioner in the offence of conspiracy for commission of offences of cheating, forgery and impersonation. The change made in the bank documents in favor of the petitioner is illegal. The CBI has jurisdiction to investigate as well as prosecute the case. The case has been fully investigated and on the basis of the incriminating evidence that has been found in this case in the investigation, charge-sheet has been filed against the petitioner. Hence, no

exceptional case is made out in favor of the petitioner for exercise of extraordinary jurisdiction by this Court.

10. In reply, it is submitted by the counsel for petitioner that there is no evidence present in the charge-sheet to make out any offence against the petitioner for which he may be tried. It is further argued that under the provision of Sections 5 & 6 of the Delhi Special Police Establishment Act, 1946 the CBI have no jurisdiction to investigate this case.

11. I have heard learned counsel for both the parties and perused the documents on record.

12. Case of the petitioners is of simple denial. Manifold arguments have been advanced by learned counsel for the petitioner. Firstly, the addition of name of the petitioner as tenant of the bank locker is in dispute, as the same was not in accordance with the banking regulation; secondly, the petitioner had never operated the said bank locker and thirdly, no proper investigation has been made in respect of cash amount found inside the locker. Nothing incriminating was found in possession of the petitioner in the investigation of this case by the police or income tax authorities. Further, the petitioner has also given explanation that the cash amount found in the locker belonged to his sister-in-law namely Mrs. Mamta Agrawal. There is no evidence showing commmission of any fraud or impersonation. The evidence regarding of anti-dated application for adding the name of the petitioner is also denied.

13. On perusal of the documents available in the charge-sheet filed against the petitioner, it is found that there is evidence that a raid was conducted by Income Tax Department in the residential and official premises of Mr. B.L. Agrawal and during search, a bunch of keys was found and one of the keys of that bunch was of the locker of Bank of Baroda, Main Branch, Raipur bearing No.240A. Upon enquriy, it was found that the said locker was initially held in the name of Mr. R.D. Goyal & Mr. B.L. Agrawal jointly and after the death of Mr. R.D. Goyal, Mr. B.L. Agrawal with the help of a bank officer namely Mr. Antony Samy, on the basis of anti dated application dated filed 3.7.2009 on 6.2.2010, got his name deleted and added name of the petitioner and said Mr. Samy

had also obtained signatures of the petitioner in this regard. In the inquiry conducted by the Income Tax Department, bank Officer Mr. Antony Samy has made a clear admission that the application for deletion of name of Mr. B.L. Agrawal and addition of the name of this petitioner was received by him on 6.2.2010 and it was anti dated as 3.7.2009. He has mentioned other circumstances, instructions and directions of the superior Bank Officers for which reason the said Mr. B.L. Agrawal and this petitioner were obliged. Thereafter , there is evidence of recovery of Rs.15 lakhs cash from the same bank locker which was in the name of this petitioner.

14. The offences for which petitioner has been charge-sheeted are quoted herein below:-

120B- Punishment of criminal conspiracy.—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [2][imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall,where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

419- Punishment for cheating by personation.—Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

466-Forgery of record of Court or of public register, etc.—[3][Whoever forges a document or an electronic record], purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[1][Explanation.—For the purposes of this section, “register” includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section(1) of section 2 of the Information Technology Act, 2000.]

477A- [**Falsification of accounts**.—Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any 2[book, electronic record, paper, writing], valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such 2[book, electronic record, paper, writing], valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.]

15. It is not a case of prosecution that the petitioner has impersonated any of the persons holding the locker. On the contrary, the allegation is that this applicant became the holder of locker by deletion of name of Mr. B.L. Agrawal and he was operating the same. Therefore, it cannot be said that it is a case of impersonation as defined under Section 419 of IPC.

16. According to the evidence present in the charge-sheet, there is no such evidence and no such admission that any document was forged to incorporate the petitioner as the holder of the locker. On the contrary, there is evidence that anti dated application was filed in the bank and bank Officer obliged the client by making entries as desired by the parties. Further, the charge under Section 466 of IPC can be made only against the public servant or any person acting on his behalf. The petitioner is not the bank Officer. The evidence that the petitioner gave his signature for the operation of bank locker is not an act of forgery. Therefore, there is no evidence to substantiate the charge under Section 466 of IPC.

17. Similarly the person who can be prosecuted for commission of offence under Section 477A of IPC must be a clerk, officer or servant or employed or acting in that capacity and any private person cannot be prosecuted for the same. The prosecution case is this, that the bank documents have been manipulated and on the basis of admission made by the Bank Officer Mr. Antony Samy, it is clear that he received the application for deletion and addition of names and acted accordingly, as was prayed in the application. Therefore, there is no substance for prosecution of the petitioner under Section 477A of IPC.

18. Therefore, material in the prosecution case left only to this extent that unaccounted money in cash form was found in the locker held by this applicant in locker No.240A of bank of Baroda, Raipur. The prosecution has traced its connection to Mr. B.L. Agrawal but as per the submission made by the counsel for petitioner, Mr. B.L. Agrawal has been exonerated by the Income Department. CBI has investigated this case

subsequent to the raid conducted by the Income Department and have drawn conclusion for prosecuting this petitioner for the offences as aforementioned. This Court after considering on the evidence present in the charge-sheet against this petitioner, has drawn its conclusion that there is no substance for prosecution of the petitioner for the offences for which he has been charge-sheeted.

19. Hon'ble Supreme Court has in Radhshyam Kejriwal Vs. State of West Bengal reported in (2011) 3 SCC 581 held in Para-31, 37, 38, 39 which is reproduced below:-

> "31. It is trite that standard of proof required in criminal proceedings is higher than that required before adjudicating authority and in case accused is exonerated before the adjudicating authority whether his prosecution on same set of facts can be allowed or not is the precise question which falls for determination in this case.
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> 37. We find substance in the submission of Mr. Sharan. There may appear to be some conflict between the views in the case of Standard Charted Bank (supra) and L.R. Melwani (supra) holding that adjudication proceeding and criminal proceeding are two independent proceedings and both can go on simultaneously and finding in the adjudication proceeding is not binding on the criminal proceeding and the judgments of this Court in the case of Uttam Chand (supra), G.L. Didwania (supra) and K.C. Builders (supra) wherein this Court had taken a view that when there is categorical finding in the adjudication proceeding exonerating the person which is binding and conclusive, the prosecution cannot be allowed to stand. Judgments of this Court are not to be read as statute and when viewed from that angle there does not seem any conflict between the two sets of decisions. It will not make any difference on principle that latter judgments pertain to cases under the Income Tax Act.
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> 38. The ratio which can be culled out from these decisions can broadly be stated as follows :-
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> (i) Adjudication proceeding and criminal prosecution can be launched simultaneously;
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> (ii)Decision in adjudication proceeding is not necessary before initiating criminal prosecution;
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> (iii)Adjudication proceeding and criminal proceeding are independent in nature to each other;

(iv)The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20 (2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi)The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court. "

Therefore in view of the principal laid down in Radheshyam(supra) and the conclusion drawn on the basis of the discussions made hereinafter, I am of this opinion that this petition deserves to be allowed.

20. WPCR No.201 of 2017 is allowed and the entire proceedings including the charge-sheet filed by the CBI, Bhilai in Crime No.RC/1242010A0009 of 2010 before the Special Court(C.B.I.) so far it relates to the petitioner is quashed. In view of the order passed in WPCR as aforementioned, the CRMP No.587 of 2013 is also disposed off.

Sd/-
(**Rajendra Chandra Singh Samant**)
JUDGE

Nisha