IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.246 of 2019
Crl.MP.No.2599 of 2019

R.Marimuthu

Petitioner /A8

Vs

Union of India by Inspector of Police
CBI/ACB/Chennai

Respondent

Prayer:- This Criminal Revision Petition is filed to set aside the order, dated, 22.11.218, made in Crl.MP.No.2157 of 2018 in CC.No.8 of 2002, by the XI Additional Special Court for CBI Cases, Chennai.

For Petitioner : Mr.Kalyanam for Mr.P.Chandrasekar
For Respondent : Mr.K.Srinivasan, SPP-CBI
Mr.Dinakaran, Sr.PP-CBI

ORDER

This Criminal Revision Petition is filed to set aside the order dated, 22.11.218, made in Crl.MP.No.2157 of 2018 in CC.No.8 of 2002, by the XI Additional Special Court for CBI Cases, Chennai.

2. The facts, in a nutshell, which are necessary for disposal of this Criminal Revision Case, are that the Petitioner/A8 along with the other accused, viz. A1 to A7 and A9 to A17, were charge sheeted for the offence under Sections 120B read with 420 and 420, 467, 468, 467 read with 471, 468 read with 471, 477A of IPC and Sections 7, 12 and 13(2) read with 13 (1)(d) of the Prevention of Corruption Act, 1988, in CC.No.8 of 2002 on the file of the XI Additional Special Court for CBI Cases at Chennai, alleging that during the year 1992, A1, A3, A4 and the Petitioner/A8 entered into a criminal conspiracy at Mumbai, Delhi, Madras and other places to do an illegal act and in pursuance of the criminal conspiracy, A1, A3 and A4, by misusing or abusing their official positions or by illegal means, without proper verification, granted refinance facilities to M/s.India Housing Finance Development Limited (in short

IHFD), in which the Petitioner/A8 is the Managing Director and in pursuance of the criminal conspiracy, the Petitioner/A8 as Managing Director of IHFD fraudulently and dishonestly obtained refinance facility to the tune of Rs.3234.47 lakhs from the National Housing Bank (in short NHB) in 22 instalments against 19 claims between the period from June 1990 to August 1992 and in pursuance of the conspiracy, the Petitioner/A8 submitted false and inflated claims in the name of IHFD as if they had given financial assistance as housing loans to various individuals during the said period and in pursuance of the conspiracy, A1, A3 and A4 knowing fully well that refinance claim of IHFD is a false one, processed the applications and recommended for sanction and disbursed the refinance without conducting pre-release verification about the loan claims of IHFD and they ignored the defects and adverse remarks pointed out by the Inspecting Officers of NHB pertaining to the irregularities and lapses committed by IHFD in the disposal of the house loans and that the Inspecting Officials in their report categorically stated that the loan agreement, deed of guarantee were not available in the loan files of IHFD and the addresses of the loanees were incomplete which indicate that the claims are fictitious in nature and that the Petitioner/A8 in pursuance of the criminal conspiracy obtained refinance from NHB and misutilised the amount of NHB by diverting to his other business activities and the Petitioner/A8 did not repay the loan amount as per terms and conditions and in view of that, the Petitioner/A8 has to repay about Rs.32.00 crores with interest to NHB and thereby caused wrongful loss to NHB and corresponding wrongful gain to themselves. Before the Trial Court, the Petitioner/A8 had filed the petition under Section 232 of Cr.PC in Crl.MP.No.2157 of 2018, seeking to record an order of acquittal on the ground stating that there were no evidence that the accused committed the offence. In the said petition, the Respondent had filed a counter, contending that there were sufficient materials against the Petitioner/A8 and thereby the petition was not maintainable and further having found that there were materials, the trial Court had also questioned the accused under Section 313 Cr.P.C., and the matter was at the stage of final arguments. The Trial Court, after hearing the parties, and considering that there was evidence had dismissed the petition, on the ground that the claim of the Petitioner/A8 can be decided only by the final judgement and that there were ample evidence to connect the Petitioner/A8 with the charges levelled against him. As against the same, this Criminal Revision Case has been filed, seeking the relief, as stated above.

3. The learned counsel for the Petitioner/A8 would contend that the Petitioner was the Managing Director of IHFD, which was started in the year 1986 and it had been classified as Housing Finance Company in the year 1989 and approved by the

Government of India and that the Respondent had examined 65 witnesses so far and marked several documents and that since there was absolutely no material, both oral and documentary, against the Petitioner/A8, he had filed the petition for discharge and recording acquittal under Section 232 of Cr.PC and that despite there being no evidence against him, the Trial Court is not justified and correct in dismissing the petition for discharge. In support of his contention that if there is no evidence that the accused committed the offence, the Trial Court shall record an order of acquittal, he would rely on the judgement of the Honourable Supreme Court, in (Hargovandas Devrajbhai Patel and others Vs. State of Gujarat) reported in (1998) 9 SCC 17, wherein the Hon'ble Apex Court had upheld the order of the trial Court which acquitted the accused under Section 232 Cr.P.C., finding that there was no evidence against him.

4. Per contra, the learned Special Public Prosecutor for the Respondent would contend that the petition under Section 232 of Cr.PC is not maintainable in the present case where the trial of the case was conducted in accordance with Section 5(2) of the Prevention of Corruption Act, 1988 and in accordance with the procedures contemplated under Chapter XIX of Cr.P.C., and as such, the procedure followed is trial of warrant cases, whereas Section 232 Cr.P.C., can be invoked only in Sessions Trial conducted in accordance with Chapter XVIII of Cr.PC. He would further submit that apart from the above said legal grounds, even on facts, the decision relied on by the learned counsel for the Petitioner is in respect of a Sessions case which had been conducted in accordance with Chapter XVIII of Cr.P.C., and cannot be relied in respect of the present case which is conducted in accordance with Chapter XIX of Cr.P.C. In this case on hand several witnesses had let in evidence about the involvement of the Petitioner/A8 in committing the offence and corresponding documents have been marked to prove the offence committed by the Petitioner/A8 and that it is a case where the Petitioner/A8 , in collusion with the other accused had forged and fabricated the documents to show that the housing finance was given to third parties and that based on the forged and fabricated documents, refinance was obtained from the Government. He would submit that PW.2 has spoken in details about the Petitioner/A8 applying for refinance based on fabricated documents and marked several documents to prove the complicity of the Petitioner/A8 and that PW.61 has spoken about several loan files pertaining to individual customers, whereas the individual customers have stated that no such loan applications were made by them to the Petitioner's Company and that based on the fabricated documents, he had obtained refinance from the Government. He would further submit that the case is now at the stage of examining the defence witnesses and the Trial Court, by a well considered order, after perusing the

entire materials both oral and documentary and after hearing both sides and considering there is evidence that the accused has committed the offence, has dismissed the petition and further based on the materials available, the Petitioner/A8 has also been questioned under Section 313 of Cr.PC and thereby the order of the Trial Court dismissing the petition filed under Section 232 of Cr.PC, warrants no interference by this Court.

5. This court heard the submissions of the learned counsel on either side, considered their rival submissions and perused the impugned order, including the relevant authorities.

6. The sum and substance of the allegations made against the Petitioner/A8 is that in pursuance of the criminal conspiracy, by producing forged and fabricated documents as if the Petitioner/A8 and his company has granted housing loans to individuals and the Petitioner/A8 obtained refinance from NHB and misutilised the amount of NHB by diverting to his other business activities and the Petitioner/A8 did not repay the loan amount as per terms and conditions and in view of that, the Petitioner/A8 has to repay about Rs.32.00 crores with interest to NHB and thereby caused wrongful loss to NHB and corresponding wrongful gain to themselves.

7. At this juncture, it is relevant to refer to the relevant provisions of Law, namely, Section 5(1) of the Prevention of Corruption Act, 1988, as under:-

> ""5.Procedure and powers of Special Judge:- (1) A Special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates."

8. Section 232 of Cr.PC reads as follows:-

> "232. Acquittal:- If, after taking the evidence for the Prosecution, examining the accused and hearing the Prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.'

9. As contended by the learned Special Public Prosecutor for the Respondent, the petition for recording acquittal can be filed under Section 232 of Cr.P.C., if it is a Sessions Trial conducted in accordance with Chapter XVIII of Cr.P.C, but Trial in this case is in accordance with Chapter XIX of Cr.PC. The case on hand is a trial of warrant case. Hence, the application made under Section 232 of Cr.PC is not maintainable.

10. Further, before the Trial Court, as many as 69 witnesses have been examined. PW.2 has spoken in details about the Petitioner/A8 applying for refinance based on fabricated documents and marked several documents to prove the complicity of the Petitioner/A8 and PW.61 has spoken about several loan files pertaining to individual customers, whereas the individual customers have stated that no such loan applications were made by them to the Petitioner's Company. The trial is now at the stage of examining the defence witnesses on the side of the defence. The case is of the year 2002 and now stands posted for examination of defence witness by yet another accused and moreover one witness is yet to be examined.

11. The Trial Court during the enquiry, has found that the documents produced by the Petitioner/A8 for availing re-finance from NHB were forged, namely, Salary Certificates pertaining to some witnesses. There is also a specific allegation that the loanee's who were stated to have availed loan, have stated that they have neither applied nor signed such loan applications for availing such loans and without their knowledge using there details/documents had been created as if loans were sanctioned to them and based on that refinance had been obtained from NHB based on production of fabricated documents. PW.59 have spoken about the involvement of the Petitioner/A8 in the alleged offence. P.W.61 has also identified the signatures of the Petitioner/A8. When such being so, the claim of the Petitioner/A8 that there is absolutely no material available to connect him with the crime cannot be countenanced.

12.Having gone through the records, this Court desists from observing more to avoid prejudice to the parties before the trial Court.

13. For the reasons stated above, this Criminal Revision Case is dismissed. No costs. Consequently, the connected MP is closed. However, it is made clear that the observations made in this order are only for the purpose of deciding this Criminal Revision Case and that the Trial Court shall proceed with the trial, in accordance with law, uninfluenced by any of the observations made in this order.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

Jer/Srcm
To:

1.The Inspector of Police, CBI/ACB/Chennai
2.The Public Prosecutor, High Court, Madras
3.The XI Additional Special Court for CBI Cases, Chennai.

+1 CC to Mr.P.Chandrasekar, Advocate sr 18529.

Crl.RC.No.246 of 2019

BS(CO)
SP(13/05/2019)