

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.03.2019

PRONOUNCED ON: 23.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.OP.Nos.5107 and 5084 of 2019

L.Thiruvengada Murthy Petitioner/ A3-Crl.OP.No.5107/2019
and A4-Crl.OP.No.5084/2019

Vs

CBI, Special Crimes Branch
III Floor, A-Wing, Rajaji Bhavan
Chennai-90 Respondent in both Crl.OPs

Prayer:- These Criminal Original Petition are filed under Section 482 of Cr.PC, to call for the records and quash the entire proceedings in CC.Nos.4 and 5 of 2011, dated 13.1.2011, for the alleged offences under Sections 120B, 420, 467, 468, 471 and 476 of IPC read with Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988, on the file of the Principal Special Court for CBI Cases, Chennai, respectively.

For Petitioner : Mr.G.Sukumaran

For Respondent : Mr.K.Srinivasan, Special PP
(CBI)

COMMON ORDER

- 1.These Criminal Original Petition have been filed, under Section 482 of Cr.PC, to quash the proceedings in CC.Nos.4 and 5 of 2011, dated 13.01.2011, filed against the Petitioner, arraying him as A3 and A4, respectively, for the offences under Sections 120B, 420, 467, 468, 471 and 476 of IPC read with Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, on the file of the Principal Special Court for CBI Cases, Chennai, respectively.
- 2.The Petitioner in Crl.OP.No.5107 of 2019, who is arrayed as A3 in CC.No.4 of 2019 and the Petitioner in Crl.OP.No.5084 of 2019, who is arrayed as A4 in CC.No.5 of 2019, are one and the same person.
- 3.The facts of the case, in a nutshell, are that based on the written complaint, dated 27.11.2009, received from the Assistant General Manager, by name, B.Rathana Kumar, Dena Bank, Regional Office, No.32, Venaktesan Street,

T.Nagar, Chennai-17, the Petitioner and other accused persons were charge sheeted in CC.Nos.4 and 5 of 2011, dated 13.01.2011, for the offences under Sections 120B of IPC read with 420, 467, 468, 471 and 476 of IPC read with Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

4. The allegations against the Petitioner and his colleagues and other accused persons are that they entered into a criminal conspiracy at Chennai and other places and that in pursuance of such criminal conspiracy, they, to cheat the Dena Bank, George Town branch and Aminjikarai Branch, Chennai, (1) availed a housing loan of Rs.23.93 lakhs, during 2004 for purported purchase of a house at Velachery, Chennai, by furnishing forged and fabricated documents from George Town Branch of Dena Bank, (2) got sanctioned a working loan to the tune of Rs.20 lakhs by way of cash credit and LC for Rs.5 lakhs in the name of M/s.Royal Imports (Proprietor Goutham Jain) during 2004, by making to appear that his uncle Mutha Bhawarlal (who had died on 12.8.1999) as one of the Applicant and guarantor, (3) availed a mortgage loan for Rs.9 lakhs in the name of Bhawari Devi and Goutham Jain during 2005, by submitting forged and fabricated documents from Aminjikarai Branch of Dena Bank, (4) got one more mortgage loan for Rs.7 lakhs, during 2005 in the name of Mutha Bhawarlal (who had expired on 12.8.1999) and Goutham Jain, by submitting forged and fabricated documents from Aminjikarai Branch of Dena Bank and (5) got one more housing loan in the name of Goutham Jain, Seema Jain, Shantilal Jain and Bhawari Devi, by submitting forged fabricated documents from Aminjikarai Branch of Dena Bank during 2005 and got the loan amount credited into the accounts opened in the name of Goutham Jain, by impersonating as purported vendors of properties. The aforesaid facts disclose that the Petitioner and the other accused persons have committed the offences of criminal conspiracy, cheating and dishonestly inducing delivery of property, forgery of valuable security, forgery for the purpose of cheating, using as genuine forged document, counterfeiting device or mark used for authenticating documents and abuse of official position by Public Servants.
5. As stated above, the Petitioner and other accused persons, pursuant to the criminal conspiracy, to cheat the Dena Bank, George Town Branch and Aminjikarai Branch, Chennai, had availed five loans. Since the first two loans were availed from the George Town Branch during 2004, whereas the remaining three loans were availed from Aminjikarai Branch, during 2005 and as the both the Branches are different and five loans were availed during the period of more than 12 months of time, two separate charge sheets have been filed against the Petitioner,

arraying him as A3 in CC.No.4 of 2011 and arraying him as A4 in CC.No.5 of 2011, for the offences under Sections 120B of IPC read with 420, 467, 468, 471 and 476 of IPC read with Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. It is against these charge sheets that these Criminal Original Petition have been filed, seeking to quash the same.

- 6.This court heard the submissions of the learned counsel on either side.
- 7.The learned counsel for the Petitioner/ accused would contend that the entire allegations made in the charge sheets, even if they are taken at their face value and accepted in their entirety, do not, prima facie, constitute any offence or make out a case against the Petitioner and that the complaint, dated 30.9.2009 was lodged without any documents and that the Trial Court is barred from taking cognizance of the alleged offence under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and that under Section 19(2) of the Prevention of Corruption Act, 1988, the Respondent has no power to register the case or to conduct investigation and to file a charge sheet, without obtaining prior sanction against the Petitioner, who is a "Public Servant".
- 8.The learned counsel for the Petitioner/ accused would further contend that as per Section 19(2) of the Prevention of Corruption Act, 1988, no Court shall take cognizance of any offence under the Prevention of Corruption Act, 1988, without obtaining prior sanction from the authority for prosecuting any person, who falls under the provisions of Section 19(1)(A to C) of the Prevention of Corruption Act, 1988 and that in the case on hand, such a prior sanction was not obtained on the ground that the Petitioner was dismissed from service with effect from 16.2.2008, whereas the alleged offences against the Petitioner were said to have been committed during the period from 2004-2009, in which period, the Petitioner was working as a Public Servant (Scale-I Officer), from February 2005 to May 2005 and as Manager from May 2005 to January 2007 and that in the absence such a sanction, the impugned proceedings are vitiated and not sustainable.
- 9.The learned counsel for the Petitioner would contend that the Investigating Officer is not the competent authority to decide as to whether sanction is required or not, to prosecute the Petitioner under the Prevention of Corruption Act, 1988 and that further continuation of proceedings against the Petitioner without valid sanction, is an abuse of process of law and in such circumstances, the entire proceedings are not sustainable and consequently, are liable to be quashed.
- 10.In support of his contentions, the learned counsel for

the Petitioner/ accused would rely on various decisions reported in 2015 14 SCC 186 (Nanjappa Vs. State of Karnataka), 2016 14 SCC 143 (N.K.Ganguly Vs. CBI, New Delhi), 1996 SCC 1 478 (R.Balakrishna Pillai Vs. State of Kerala), 2008 11 SCC 289 (Raghunath Anant Govilkar Vs. State of Maharashtra), 2008 5 SCC 248 (Anjani Kumar Vs. State of Bihar), 2008 13 SCC 229 (P.K.Choudhury Vs. Commander), 1997 7 SCC 622 (Mansukhlal Vithaldas Vs. State of Gujarat), 2016 CrI.LJ 1576 (CBI, Bank Securities and Fraud Cell Vs. Ramesh Gelli and others), 2016 6 SCC 734 (Amal Kumar Jha Vs. State of Chhattisgarh) and 2016 13 SCC 44 (Punjab State Warehousing Corporation Vs. Bhushan Chander and another) .

11. On the other hand, the learned Special Public Prosecutor for the Respondent would contend that the contentions advanced by the learned counsel for the Petitioner/ accused are wholly untenable in law for the reason that the very acts of the Petitioner/ accused would constitute an offence under IPC as well as under the Prevention of Corruption Act, 1988 and thereby both the cases are being tried before the Special Court for CBI cases, Chennai. He would further submit that the trial in both the cases have reached the fag end and the present petition has been filed at the fag end of trial with the motive of delaying the progress of trial. He would further submit that the Petitioner though a Bank Employee falling under the category of persons, requiring sanction Section 19 of the Prevention of Corruption Act, 1988, he having been dismissed from service prior to the filing of the final report, there is no necessity for obtaining previous sanction for Prosecution. He would rely on the decisions of the Honourable Supreme Court reported in 2007 1 SCC 1 (Parkash Singh Badal Vs. State of Punjab) and 2016 9 SCC 598 (L.Narayana Swamy Vs. State of Karnataka)
12. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record, including the relevant provisions of Law and authorities of various courts.
13. The Petitioner, who was a Bank Employee of a nationalised Bank/Public Sector Undertaking/Public Servant, was charge sheeted for the offences under Sections 120B of IPC read with 420, 467, 468, 471 and 476 of IPC read with Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, alleging that during the period 2004-2009, the Petitioner, by abusing his official position as a Public Servant, entered into a criminal conspiracy with his colleagues and other accused persons and pursuant to such criminal conspiracy, by dishonestly inducing delivery of property, forgery of valuable security, forgery for the purpose of cheating, counterfeiting device or mark used for authenticating

documents, by abusing official position as Public Servants, availed five loans and cheated the Dena Bank, George Town Branch and Aminjikarai Branch, to the tune of Rs.1.11 crores. Pursuant to a Departmental Enquiry, the Petitioner had been dismissed from service on 16.02.2008. Thereafter, on the complaint given by B.Rathanakumar, the Assistant General Manager, Dena Bank, the case was registered on 03.12.2009 in RC.12(S)/2009/CBI/SCB/Chennai. The final report had been filed on 13.01.2011 and the Court has taken cognizance on 13.01.2011.

14. It is relevant to state that the Petitioner/ accused is a dismissed employee of the Dena Bank, a Public Sector Undertaking. He has been charged for the offences under Sections 120B, 420, 467, 468, 471 and 476 of IPC read with Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

15. Though a detailed argument has been made by the learned counsel for the Petitioner/ accused that the offences alleged against the Petitioner/ accused were said to have been committed by him, while acting or purporting to act in the discharge of his official duty, taking into consideration the facts and circumstances of the case, this Court deems it sufficient to consider and decide the following issues:-

(1) Whether the Petitioner/ accused being an Employee of a Public Sector Undertaking, will fall within the category of "Public Servant", requiring sanction for prosecution, as defined under Section 19 of the Prevention of Corruption Act, 1988 or under Section 197 of Cr.PC.

(2) After deciding the 1st issue, then to consider and decide whether requirement of previous sanction is necessary for prosecution of a dismissed employee of a Public Sector Undertaking?

16. Though several decisions have been relied on by the learned counsel for the Petitioner/ accused, this Court does not want to burden this judgement, referring to all the decisions and would restrict itself to the relevant decisions, regarding the issues that needs to be decided. Now, as referred to in the earlier part of the judgement, what needs to be decided is whether the Petitioner/ accused being an employee of a nationalised Bank/a Public Sector Undertaking, is a person, falling under the category, requiring sanction under Section 19 of the Prevention of Corruption Act, 1988 or under Section 197 of Cr.PC and if so, whether sanction is required to a person, who has been dismissed from service.

17. Admittedly, the Petitioner/ accused was working as FINMART Manager in the Dena Bank, a Public Sector Bank.

The allegation against the Petitioner/ accused is that the Petitioner/ accused, by abusing his official position as a Public Servant, in collusion with the other accused, had committed the offence of criminal conspiracy, cheating and dishonestly inducing delivery of property, forgery of valuable security, forgery for the purpose of cheating, using as genuine forged documents, counterfeiting device or mark used for authenticating documents and cheated the Bank to the tune of Rs.1.11 crores and thereby, the Petitioner along with the other accused were charge sheeted for the offences under Sections 120B of IPC read with 420, 467, 468, 471 and 476 of IPC read with Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

18.As per the charge sheet, the Respondent had stated that since the Petitioner/ accused was dismissed from service on 16.2.2008, sanction for Prosecution was not required. The stage of the case is that all the witnesses have been examined and at this juncture, the Petitioner has approached this Court under Section 482 of Cr.PC, seeking to quash the proceedings on the ground that the cognizance taken by the Court without there being a valid sanction is illegal.

19.As stated above, the Petitioner/ accused is the Employee of the Bank, which is a Public Sector Undertaking and he was, prior to the filing of the final report, dismissed from service, pursuant to a departmental enquiry. The Honourable Supreme Court, in its decision, reported in 2016 13 SCC 44 (Punjab State Warehousing Corporation Vs. Bhushan Chander and another) referred to by the Petitioner himself, has held that protection by way of sanction under Section 197 of Cr.PC is not applicable to the Officers of the Government Companies or Public Sector Undertakings, even when such Public Sector Undertakings are "State" within the meaning of Article 12 of the Constitution of India on account of deep and pervasive control of the Government. The Honourable Supreme Court, in 2016 13 SCC 44 referred to above, has relied on the decision reported in 1998 5 SCC 91 (Mohd. Hadi Raja Vs. State of Bihar), and has held in paragraphs 23 and 24, as follows:-

"23. In Mohd. Hadi Raja v. State of Bihar [Mohd. Hadi Raja v. State of Bihar, (1998) 5 SCC 91 : 1998 SCC (Cri) 1265 : AIR 1998 SC 1945] the question arose whether Section 197 CrPC was applicable for prosecuting officers of the public sector undertakings or the government companies which can be treated as State within the meaning of Article 12 of the Constitution of India. The Court referred to Section 197 CrPC, noted the submissions and eventually held that the protection by way of

sanction under Section 197 CrPC is not applicable to the officers of government companies or the public undertakings even when such public undertakings are "State" within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the Government.

24. The High Court has not accepted the submission of the Corporation in this regard. We are constrained to note that the decision in Mohd. Hadi Raja [Mohd. Hadi Raja v. State of Bihar, (1998) 5 SCC 91 : 1998 SCC (Cri) 1265 : AIR 1998 SC 1945] has been referred to in the grounds in this appeal. There is nothing on record to suggest that the said decision was cited before the High Court. It has come to our notice on many an occasion that the relevant precedents are not cited by the Corporations and the government undertakings before the High Court. We should, as advised at present, only say that a concerted effort should be made in that regard so that a stitch in time can save nine."

20. In view of the same, in this case, it is clear that the Petitioner, who was an Employee of a Nationalised Bank/Public Sector Undertaking, is covered under Section 19 of the Prevention of Corruption Act, 1988, in respect of grant of sanction.
21. Now, the next question to be decided is as to whether previous sanction is required for Prosecution of the Petitioner/ accused, in view of the dismissal of the Petitioner/ accused from service.
22. The Honourable Supreme Court, in plethora of judgements, right from 2007 1 SCC 1 (Parkash Singh Badal Vs. State of Punjab), till 2016 9 SCC 598 (L.Narayana Swamy Vs. State of Karnataka), has held that the date of taking cognizance of the offence and office which the accused held, are relevant for determining necessity of sanction. It was further held that if on that date of taking cognizance, the accused ceased to hold the Office, which he had held as Public Servant at the time of commission of offence, sanction is not required to be obtained for his prosecution even if he thereafter continued to be a Public Servant in a different capacity/ office.
23. In this case, admittedly, the Petitioner/ accused was dismissed from service on 16.2.2008 and cognizance of this case was taken on 13.1.2011. At this juncture, it is pertinent to refer to the decision of the Honourable Supreme Court reported in 2007 6 SCC 397 (B.S.Goraya Vs. U.T. Of Chandigarh), wherein it has been held as under:-

"Prevention of Corruption Act, 1988 - Section 19 - Sanction for prosecution - Necessity of, where the accused on the date of filing of charge sheet did not remain a Public Servant due to his dismissal from service, though later he was reinstated on challenge to his dismissal order - Contention of the accused that since the order of dismissal was set aside, he should be deemed to be in service during the relevant period and should be granted protection available under Section 19 of the Prevention of Corruption Act, 1988, held, was rightly rejected by the Court below."

24. In view of the above, this Court is of the opinion that the decisions referred to by the learned counsel for the Petitioner/ accused will not be applicable to the case on hand, since the Petitioner/ accused was a Public Servant working in a Public Sector Undertaking, charged for the offences under Sections 120B, 420, 467, 468, 471 and 476 of IPC, read with Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 thereby falling within the category of persons, requiring sanction under Section 19 of the Prevention of Corruption Act, 1988 and not under Section 197 of Cr.PC. Further, the Petitioner was dismissed from service and as on the date of taking cognizance of the offence, he was no longer a Public Servant, entitled to requirement of previous sanction necessary for prosecution under Section 19 of the Prevention of Corruption Act, 1988 and thereby, the grounds raised by the learned counsel for the Petitioner, for quashing the impugned proceedings, cannot be sustained. Since it has been stated that the trial is at the stage of fag end, the Trial Court is directed to accord priority to the case. It is needless to say that since this petition has been disposed of only with regard to the question of requirement and necessity of sanction, it is open to the Petitioner to challenge the Prosecution on other defences available during the trial.

25. In the result, these Criminal Original Petitions are dismissed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1. The Public Prosecutor, High Court, Madras

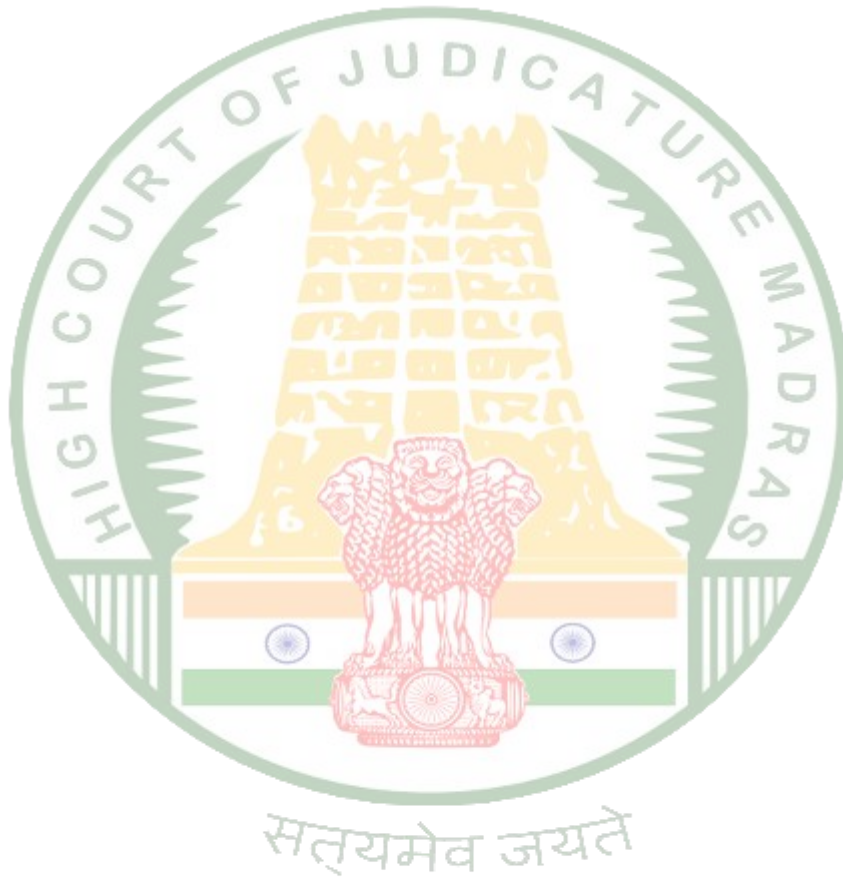
<https://hcservices.ecourts.gov.in/hcservices/>

- 2.CBI, Special Crimes Branch, III Floor, A-Wing, Rajaji Bhavan, Chennai-90
- 3.The Principal Special Court for CBI Cases, Chennai, respectively.

+1cc to Mr. V.R.Karthikeyan, Advocate SR.No. 39045

Cr1.OP.Nos.5107 and 5084 of 2019

A.SK(03/05/2019)



WEB COPY