IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.03.2019

CORAM:
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Revision Case No.292 of 2019

N.Meiyappan .. Petitioner

.. Vs ..

State Rep by
The Additional Superintendent of Police
SPE/CBI/ACB/Chennai. .. Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., against the order dated 30.01.2019 passed in Crl.M.P.No.3298 of 2016 in C.C.No.47 of 2013 by the learned XI Additional Sessions Judge, Special Court for CBI Cases, Chennai.

For Petitioner : Mr.D.Nagesh Babu

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor (CBI)

ORDER

The Criminal Revision Case has been filed against the order passed by the learned XI Additional Sessions Judge, Special Court for CBI Cases, Chennai, in Crl.M.P.No.3298 of 2016 in C.C.No.47 of 2013 dated 30.01.2019, dismissing the petition filed by the petitioner under Section 239 Cr.P.C.,.

2.The case of the prosecution is that when the petitioner was Branch Manager, Syndicate Bank, Ambur Branch, Vellore District, had forwarded the proposal of one Sivakumar (A3) for Secured Over Draft for Rs.40 lakhs and Letter of Credit (LC) limit of Rs. 1 crore towards working capital requirements against the primary security of stock worth Rs.1 crore and property in the names of third parties namely one Sankar and Ashokan, who were offered as collateral securities. Further it was found that the Accused A3 and A5 submitted fabricated financial statement for the years 2008, 2009 and 2010 and projected inflated values in the fixed assets apart from other allegations and thereby the accused in order to cheat and cause loss to the bank had entered into conspiracy and cheated the bank. Thereby the final report was filed against them for offences under Sections 120(b) r/w 420, 468 and 471 IPC and Sections 13(2) r/w 13(1)(c)&13(1)(d) of the Prevention of Corruption Act, 1988.

3.The specific charges against the petitioner are as follows:-

(i)The financial statements submitted by the accused Sivakumar (A3) and Gandhi (A5) were fabricated by Pandian (A6), a middle man in the colour of Tax Consultant and Manoharan (A4), a Chartered Accountant forged the financial statement by suppressing the liability of the said sister concern to SBI, Vellore and thereby enabled the accused Sivakumar (A3) and Gandhi (A5) to mislead the bank to sanction the loan proposal.

(ii)Petitioner/Accused (A1) had accepted the false contract orders/purchase orders in the names of M/s UB International Ltd., Bangalore and M/s Tara International, Chennai, submitted by Sivakumar (A3) and Gandhi (A5) and sanctioned credit facility for and amount of Rs.40 lakhs without verifying the genuineness of the purchase orders. One Raja and Sudhir Samuel of the said companies stated that the purported orders in the names of their establishments were not issued by them and it has been confirmed from the opinion of the handwriting expert dated 06.09.2013 that the contract dated 16.03.2009 of Tara International, 114, Poonamallee High Road, 3/E Gee Gee Cresent, 3rd Floor, Chennai - 84, was not signed by the said Raja.

(iii)One, Pandian (A6) a private person had filed up most of the columns of the process note dated 14.05.2009, which is a banker’s internal document for sanctioning SOD of Rs.40 lakhs along with the petitioner/Accused(A1). Further, the petitioner had dishonestly allowed opening of the current account of Hi Grade Shoes without following the KYC norms but on his own introduction, did not verify the credit worthiness of the proposal by conducting pre-sanction inspection of the stock, machinery which were offered as primary security, did not check the CIBIL, report which is a regulatory requirement and had also sanctioned the SOD of Rs.40 lakhs under his power even though the original proposal was pending in RO by abusing his official powers. Further, the petitioner without replying to the queries raised by RO and in blatant violation of the bank guidelines did not verify the genuineness of the purchase orders submitted by the accused Sivakumar (A3) and Gandhi (A5) where false and fabricated, did not get opinion from SBI, Vellore on the liability of the accused Sivakumar (A3) and Gandhi (A5) had sanctioned the credit facility to the accused Sivakumar (A3) and Gandhi (A5). Further, one Raghavan, Chief Manager, RO, Chennai, vide his letter dated 11.06.2010 had sought the petitioner to submit the process note for sanction of SOD limit of Rs.40 lakhs and also to explain the reasons for non-submission of the same in time, but the petitioner had belatedly submitted the same after a period of one year i.e., on 17.06.2010.

(iv)That the funds of the bank so disbursed in the form of SOD were not utilized for the purpose of which it was sanctioned but were diverted to the Term Deposit (TD) and current account of Sivakumar (A3) with the same branch. Further, the petitioner dishonestly and abusing his official powers allowed Sivakumar (A3) to draw Rs.43 lakhs on 30.06.2009 from the current account and adjusted to account Nos.220/116068 and 401/2634 by way of cheque. Investigation revealed that 23 lakhs was credited in the SB account of Sivakumar (A3) and Rs.20 lakhs was deposited in the deposit account. Further investigation reveals that a loan of Rs.19 lakhs was arranged on 03.07.2009 against the term deposit made on 30.06.2009. Subsequently, Rs.22,98,000/- and Rs.19,00,000/- were credited in the current account of M/s Hi Grade account on 03.07.2009 which is a gross violation of banking rules.

4.The learned counsel for the petitioner would submit that the petitioner is arrayed as A1 and the allegations against the petitioner is that he accepted fabricated documents and sanctioned credit facilities without verifying the genuineness of the purchase orders. He would submit that at the most, the petitioner can be hauled up for dereliction of duty for having not properly verifying the documents submitted by the borrowers and thereby no criminal liability can be fastened upon the petitioner, since no materials/evidences have been let in by the prosecution with regard to conspiracy and fabrication of documents. He would further submit that in respect of the very same allegations departmental enquiry was conducted and the petitioner was punished and he was demoted and thereafter was allowed to retire from service. When there are no materials against the petitioner for framing charges, the trial Judge ought to have discharged the petitioner, since the prosecution would amount to double jeopardy.

5.The learned Additional Public Prosecutor would submit that the petitioner is arrayed as A1 and that he is the person responsible for verifying about the veracity of the documents submitted by other accused, who have availed the loan and that the offence had been committed during the period when the petitioner was the Branch Manager of the said Bank. The specific allegation is that the petitioner and one Seevarathinam/A2, who were the then Senior Manager, Syndicate Bank, Ambur Branch, Vellore District, had mis-represented the facts and also sent proposals to the Regional Office by non-complying terms and conditions including the instructions from the Regional Office. He would submit that the petitioner had released SOD limit to Rs.40 lakhs and that before doing so it was his duty to check the conditions for sanctioning of SOD. Further, the petitioner has suppressed the fact about the borrowers having liability on State Bank of India. He would further submit that there are ample materials/evidences against the petitioner and it could be proved by the evidences of L.W.1, L.W.2, L.W.6, L.W.26, L.W.32 and to support it, the respondent also filed documents in D.142, D.143, D.144, D.145, D.146, D.148 and D.154 and he would submit that when there are prima facie materials available to frame charges against the accused and that the petitioner is not entitled to discharge. He would further submit that departmental proceedings and criminal prosecution are two separate proceedings. Moreover, the petitioner has been punished in the departmental proceedings and that in respect of the criminal liability, the petitioner has to face trial.

6.I have gone through the materials available on record and heard the submissions made by the learned counsel on either side.

7.The trial Judge has found that there are prima facie materials against the petitioner by way of statements of L.W.1, L.W.2, L.W.6, L.W.26, L.W.32 and further the case of the prosecution is supported by documents in D.142, D.143, D.144, D.145, D.146, D.148 and D.154. The trial Judge has carefully analysed the documents and come to a conclusion that there are enough materials to frame charges and thereby dismissed the petition for discharge. In (2018) 3 SCC 358 Mauvin Godinho Vs. State of Goa and connected appeals, the Hon'ble Apex Court has held that :

> "12. At the outset it would be pertinent to note the law concerning the framing of charges and the standard which courts must apply while framing charges. It is well settled that a court while framing charges under Section 227 of the Code of Criminal Procedure should apply the prima facie standard. Although the application of this standard depends on facts and circumstance in each case, a prima facie case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. [Refer Sajjan Kumar v. CBP, State v. A.Arun Kumar and State v. S.Selvi]."

8.On perusal of materials, I found no infirmity in the order passed by the learned trial Judge. In view of the above, the Criminal Revision Case stands dismissed. Any observations made by this Court is for the purpose of disposal of this Criminal Revision Case and shall have no bearing in the trial.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The XI Additional Sessions Judge,
Special Court for CBI Cases, Chennai.

2.The Special Public Prosecutor for CBI Cases
High Court of Madras.

3.The Additional Superintendent of Police
SPE/CBI/ACB/Chennai.

Copy To:

The Section Officer,
Criminal Section,
High Court, Madras-104 (2 copies)

+2ccs to Mr.D.Nagesh Babu, Advocate, S.R.No.20600

Criminal Revision Case No.292 of 2019

SJ(CO)

RRS(09/04/2019)