IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Revision Case No.377 of 2019
& Crl.MP.No.5570 of 2019

Vijayraj Surana .. Petitioner/Accused No.4

.. Vs ..

1.Surana Corporation Limited
Represented by Majority
Share holder and Promoter
Mr.Dinesh Chand Surana
..1st Respondent/Accused No.3

2.Inspector of Police
CBI, ACB, Chennai. ..2nd Respondent/Complainant

3.S.Gurusamy

4.Gurumurthy

5.Sandeep Surana

6.P.S.Sekar

7.M.S.S.Raghavan

8.S.S.Raj ..3to 8th Respondents/Accused A1,A2&A5 to A8

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., to set aside the Dismissal Order passed under Section 305(5) Cr.P.C., against the petitioner/A4 in Crl.MP.No.4118 of 2018 in C.C.No.36 of 2013 dated 06.12.2018 by the IX Additional Special Judge for CBI Case at Chennai and allow the accused-4/petitioner release from the above case.

For Petitioner : Mr.S.Sundaresan

For Respondents : Mr.K.Srinivasan
Special Public Prosecutor for R2

ORDER

The Criminal Revision Case has been filed to set aside the order passed by the learned IX Additional Special Judge for CBI Cases, Chennai, in Crl.MP.No.4118 of 2018 in C.C.No.36 of 2013, dated 06.12.2018 filed by the petitioner, dismissing the petition filed under Section 305(5) Cr.P.C., to relieve the petitioner as representing the M/s Surana Corporation Limited (3rd accused) and issue notice to the 3rd accused.

2.Crux of the prosecution case is as follows:-

The petitioner is arrayed as 4th accused in the C.C.No.36 of 2013, pending on the file of the learned IX Additional Special Judge for CBI Cases, Chennai, for the offences under Sections 120(b) r/w 420 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. The CBI had registered the case in the FIR No.0024 of 2012, based on source information. The offences were stated to be committed during the period from 2007 to 2009 at Chennai and other places. Shri.S.Gurusamy (1st accused), former Chief General Manager, South Zone, MMTC Limited (Minerals & Metals Trading Corporation of India), Chennai Regional Office, Chennai, Shri V.Gurumurthy (2nd accused), former General Manager (Finance & Accounts), MMTC Limited, Chennai Regional Office, Chennai, and other unknown officials of MMTC Limited entered into a criminal conspiracy with M/s Surana Corporation Limited (3rd accused), represented by its Managing Director, Shri Vijay Raj Surana, 4th accused (petitioner herein), to cheat MMTC Limited in the matter of bullion trading and in pursuance of the above said conspiracy, the 1st , 2nd and other unknown officials of MMTC Limited, by abusing their official position, extended undue favous to M/s Surana Corporation Limited (3rd accused) to the tune of Rs.18 Crores, by intentionally omitting to debit and recover the difference exchange rate from 3rd accused and thereby caused wrongful loss to MMTC to the tune of Rs.18 Crores and corresponding wrongful gain to M/s Surana Corporation Limited (3rd accused) and other accused. The accused, pursuant to the conspiracy manipulated the system and intentionally failed to re-concile the difference in the exchange rate and to recover the premium and other accompanying cost. They also did not make subsequent re-conciliation and the difference in the exchange rate was not debited to M/s Surana Corporation Limited (3rd accused). The accused officials also covered up the wrongful loss to the MMTC Limited by falsely showing the debit balance of Rs.18 Crores in favour of the Foreign Vendors account in their book of accounts and thereby the 1st, 2nd and other unknown officials of MMTC Limited in connivance with M/s Surana Corporation Limited (3rd accused) represented by the petitioner/4th accused caused wrongful loss to the cost of Rs.18 Crores to MMTC Limited and corresponding wrongful gain to the accused themselves. After investigation, the final report was filed wherein the 2nd respondent claimed wrongful loss to the MMTC Limted to the tune of Rs.13,86,33,277.01/-. The case was taken up in C.C.No.36 of 2013.

3.The petitioner had filed a petition under Section 305(5) Cr.P.C., seeking to relieve him from representing the 3rd accused company on the ground that he was holding the post of Managing Director of the M/s Surana Corporation Limited (3rd accused) from 04.03.2004 to 04.11.2015 and that he resigned from the 1st respondent/3rd accused company on 04.11.2015 and also resigned from the Board and same was duly intimated to the statutory and regulatory bodies. The petitioner had further claimed that the Form No.DIR-111 was duly submitted to the Registrar of Companies by the petitioner and that his date of appointment is 04.03.2004 and date of resignation is 04.11.2015. Since he is no longer associated with the 3rd accused company and that the 1st respondent/3rd accused company is under the management of one Dinesh Chand Surana, as a major share holder and promoter, the petitioner had filed the petition seeking to relieve him as he is not representing the 1st respondent/3rd accused and issue notice to the present management of the 3rd accused company.

4.The 1st respondent/3rd accused company had filed a counter before the trial Court stating that the petition is not maintainable and the petitioner is not entitled to file a petition to relieve himself. The 1st respondent/3rd accused had stated that the resignation of the petitioner is neither accepted by the Board nor was approved by the Banks, who have extended credit to the 1st respondent/3rd accused company and thereby the 1st respondent/3rd accused company contended that it was a wrong statement made before Court to be relieved of the affairs of the 3rd accused company and that they also produced the minutes of the meeting and the letters from the Bank which were filed as Annexure I and II to the counter. As per the Annual Report for 2015-2016 and 2016-2017, the petitioner was referred as Managing Director and the person called upon to represent the company and that Shri Dinesh Chand Surana was nowhere in the picture of the company during the relevant period and the Annual Report for 2015-2016 and 2016-2017 was also filed as Annexure-III to the counter. It had been further stated that the complaint had been filed against 3rd accused as a company, which was represented by 4th accused/petitioner and also against the 4th accused in his individual capacity, as he was in charge and responsible for all the affairs of the company during the relevant period when the offence was committed and thereby the petitioner could not get himself relieved from the 1st respondent/3rd accused company.

5.The complainant/2nd respondent had filed a counter against the 4th accused/petitioner and had further stated that the petitioner in his individual capacity cannot file an application under Section 305 Cr.P.C., and therefore, the present petition filed by the 4th accused/petitioner is not maintainable. Further in the counter, it had been stated that the allegation in the complaint was that during the period between 2007-2008, the petitioner entered into criminal conspiracy with Shri.Gurusamy (1st accused) and Shri.Gurumurthy (2nd accused) to cheat MMTC Limited in the matter of bullion trade between MMTC Limited and M/s Surana Corporation Limited (3rd accused). During the period 2007 and 2011, in the course of bullion trade between MMTC Limited and M/s Surana Corporation Limited, Shri.Vijayaraj Surana, the petitioner herein (4th accused), Shri.Sandeep Surana (5th accused) and Shri.P.S.Sekar (6th accused) conspired with Shri.Gurunath (2nd accused), Shri.S.S.Raghavan (7th accused) and Shri.S.S.Raj (8th accused) with dishonest and fraudulent intention to cheat MMTC Limited in the matter of bullion trade. In pursuance of the above said criminal conspiracy, the 4th, 5th and 6th accused had made various false claims to MMTC so as to induce MMTC to deliver the bullion metal without disposing the matching funds and subsequently claimed excess refunds from MMTC and thereby caused wrongful pecuniary loss to MMTC and corresponding wrongful gain to themselves. The petitioner/4th accused along with public servants of MMTC Limited, 1st ,2nd and 8th accused had abused their official position as public servants by corrupt or illegal means and extended undue favours to 1st respondent/3rd accused by effecting delivery of bullion metal without obtaining matching funds from the 1st respondent/3rd accused charged less trade margin, falsified the books of accounts of MMTC Limited and intentionally failed to reconcile the books of accounts in order to make excess refunds M/s Surana Corporation Limited and corresponding wrongful gain to M/s Surana Corporation Limited (3rd accused).

6.In the counter filed by the complainant/2nd respondent, it had been specifically stated that the petitioner/4th accused in his individual capacity and also in his capacity as Managing Director of M/s Surana Corporation Limited (3rd accused) is liable for having conspired with 1st, 2nd ,5th, 6th, 7th and 8th to cheat MMTC and having made false claims of refunds to MMTC Limited knowing them to be false and thereby induced MMTC to part with their funds to the tune of Rs.13,86,33,277.01/- and thus committed the offences under Section 120B r/w 420 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and substantive offences thereof. Further, it had been stated in the counter that the offences committed by the petitioner/4th accused are purely criminal in nature and the petitioner was the then Managing Director of M/s Surana Corporation Limited/3rd accused from 04.03.2004 to 04.11.2015 and during his tenure, the offence under Section 120B r/w 420 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act had been committed and thereafter the petitioner/4th accused had resigned his post of Managing Director, whereas the Corporation did not accept his resignation. So the claim of the petitioner/4th accused to relieve him from the M/s Surana Corporation Limited/3rd accused, is not reasonable and there is no need for issue of notice to the 1st accused in this case. The petitioner/4th accused had filed this petition after a gap of five years. Further, it had been stated that there is prima facie against the petitioner/4th accused to frame charges and thereby the 2nd respondent had sought for dismissal of the petition.

7.Heard both sides and perused the materials available on record.

8.The only ground urged by the petitioner/4th accused, seeking to relieve him under Section 305 (6) Cr.P.C., is that the petitioner has resigned from the M/s Surana Corporation Limited/3rd accused on 04.11.2015 and thereby he could be relieved from the case. On perusal of the records, the petitioner has been arrayed as 4th accused in C.C.No.36 of 2013 in his individual capacity and he has also been arrayed as an accused as Managing Director of the M/s Surana Corporation Limited/3rd accused, which has been charged under Section 120(b) r/w 420 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. As per the final report it is revealed that during the period between 2007 and 2009, at Chennai, the petitioner/4th accused entered into a criminal conspiracy with 1st and 2nd accused to cheat MMTC Limited and M/s Surana Corporation Limited/3rd accused along with other accused with a dishonest and fraudulent intention to cheat MMTC Limited in the matter of bullion trade. With regard to the conspiracy made by the petitioner/4th accused as a Managing Director of M/s Surana Corporation Limited/3rd accused as per the final report of the complainant police is that, though MMTC does not have any type of account with Bank of India, Corporate Branch, Chennai, 2nd and 4th accused entered into a criminal conspiracy to operate the bullion transactions in a bank, where MMTC RO does not have account. Shri.Gurumurthy (2nd accused) colluded with Shri.Vijayaraj Surana (4th accused) and operated the transactions in Bank of India, which was not reflected in the books of accounts of MMTC. The 6th accused-Shri.P.S.Sekar of M/s Surana Corporation Limited/3rd accused vide his letter dated 15.04.2008 requested DGM, MMTC to open SBLC in Bank of India to open SBLC for this transaction, although he was aware that MMTC does not have any account with the said branch of Bank of India. Further since MMTC does not have any account with Bank of India, the 2nd accused-Shri.Gurumurthi had raised bank receipts on 02.04.2008 itself under the PNB account for the FDR created in BOI on 15.04.2008. Further the 2nd accused had extended undue favours to M/s Surana Corporation Limited/3rd accused in collusion with the petitioner/4th accused and 6th accused-Shri.P.S.Sekar with intent to cheat MMTC Limited.

9.In a nutshell, the charge against the petitioner/4th accused is that he had in his individual capacity and as Managing Director of M/s Surana Corporation Limited/3rd accused, can be held liable for having conspired with 1st , 2nd, 5th ,6th ,7th and 8th to cheat MMTC and made false claims of refunds to MMTC Limited knowing them to be false and thereby induced MMTC to part with their funds to the tune of Rs.13,86,33,277.01/- and thus committed the offences under Section 120B r/w 420 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and substantive offences thereof.

10.The learned counsel for the petitioner/4th accused would contend that the Section 168 of the Companies Act 2013, the Director is permitted to resign from his office by giving notice in writing to the Company and the Board shall on receipt of such notice, take note of the same and the company shall intimate the Registrar of Companies within such a time and in such a form as may be prescribed and place the fact of resignation in the General Body Meeting of the Company. Further, the Director himself is entitled to forward a copy of the resignation along with detailed reasons for the resignation to the Registrar of Companies within 30 days from the date of resignation. The resignation of the Director from the date of notice will take place from the date of receipt of notice by the Company or the date of letter specified by the Director, wherein in this case, the petitioner/4th accused has tendered the resignation from M/s Surana Corporation Limited/3rd accused both as Director and Managing Director on 04.11.2015 and Form No.DIR 11 was also submitted on 04.11.2015. However, it has been stated by the M/s Surana Corporation Limited/3rd accused that the resignation has not been so far accepted by the Company. In this case, admittedly, the offences are stated to have been committed during the period between 2007 and 2008, when the petitioner was a Managing Director of M/s Surana Corporation Limited/3rd accused and the offence alleged to have been committed by the petitioner/4th accused, in his individual capacity as a Managing Director of the Company are serious in nature. Wherein, the petitioner/4th accused has colluded with the officials of State owned MMTC and cheated to the tune of Rs.13,86,33,277.01/-.

11.Now, it is opposite to refer to the Section 305 Cr.P.C:-

> "305.Procedure when corporation or registered society is an accused,-
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> (1)In this section, "corporation" menas an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860.
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> (2)Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.
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> (3)Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that the thing shall be done in the presence of the representative and any requirement that the accused shall be examined, shall be construed as a requirement that the representative shall be examined.
>
> (4)Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.
>
> (5)Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section,

is filed, the court shall, unless the contrary is proved, presume that such person has been so appointed.

(6) If a question arises as to whether any person, appearing as the representative of a corporation in any inquiry or trial before a court is or is not such representative, the question shall be determined by the court."

12.The M/s Surana Corporation Limited/3rd accused had filed the counter stating that the petition filed by the petitioner is not maintainable and they have also denied the fact that the petitioner/4th accused had resigned his post with effect from 04.11.2015 and he is no longer responsible for the company. Since his resignation was neither accepted by the Board nor was approved by the Banks, who have extended credit to the 1st respondent/3rd accused company. Apart from that they have also annexed the minutes of the meeting and the letter from the Bank as enclosure 1 and 2 to the counter. Further, the annual report for the years 2015-2016 and 2016-2017 , the petitioner/4th accused has been referred as the Managing Director of the company and the person now who had been called to represent the company by the petitioner/4th accused is nowhere in the picture during the relevant period, when the offence was committed. Further in the annual report for the year 2015-2016 and 2016-2017, the petitioner/4th accused has been shown as Managing Director of the 3rd accused company and thereby the petitioner who claims to have resigned from the company from 04.11.2015 cannot claim himself to be relieved pursuant to the Section 305(5) Cr.P.C.,. As per Section 305(5) Cr.P.C., statement in writing purporting to be signed by the Managing Director of the Corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the Corporation to the effect that the person named in the statement has been appointed as the representative of the Corporation for the purposes of this Section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed. In this case, admittedly, during the relevant period, when the offences were alleged to have been committed, the petitioner(4th accused) was the Managing Director of the company and as per his own statement the petitioner has tendered his resignation from the 3rd accused company both as Director and Managing Director only on 04.11.2015 and Form No.DIR 11 had also been submitted on 04.11.2015, whereas the 3rd accused company had denied stating that they have not given any statement under Section 305(5) Cr.P.C., to relieve the petitioner.

Further the present Managing Director and the Board of the 3rd accused company have specifically stated that the present Board and the Directors were nowhere in the picture when the offence was stated to have been committed by the petitioner and they have fixed the entire responsibility on the petitioner herein. When such being so, the petitioner (4th accused) cannot get away from the prosecution. The trial Court had thereby rightly held that the petitioner cannot claim to be relieved from the prosecution in pursuance of Section 305 (5) Cr.P.C.,.

13.I do not find any infirmity in the order passed by the learned IX Additional Special Judge for CBI Cases, Chennai, in Crl.MP.No.4118 of 2018 in C.C.No.36 of 2013, dated 06.12.2018 and thereby the Criminal Revision Case stands dismissed.

14.At this juncture, the learned Special Public Prosecutor for CBI Cases, that the case earlier stood posted before the trial Court on 16.04.2019 for framing of charges and on that day, the petitioner/4th accused did not appear and now the case stands posted on 02.05.2019 for framing of charges and would pray that the trial Court may be directed to dispose of the trial as expeditiously as possible. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//
Sub Assistant Registrar

Jer
To
1.The IX Additional Special Judge for CBI Case at Chennai.

2.The Special Public Prosecutor,Cbi Cases, High Court of Madras.

3.The Inspector of Police
CBI, ACB, Chennai.

Criminal Revision Case No.377 of 2019
& Crl.MP.No.5570 of 2019

rji (CO)
A.SK(27/06/2019)