IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.8411 of 2019
and
Crl.M.P.No.4459 of 2019

Sulo C.Daniel ... Petitioner/Accused 2

/Vs/

State represented by Inspector of Police
Central Bureau of Investigation
Anti Corruption Branch, Shastri Bhavan
Chennai 600 006. ... Respondent/ Complainant

PRAYER: Criminal Original Petition filed under sections 482 of the Criminal Procedure Code, to call for the records in C.C.No.2 of 2008 and quash the charges framed on 02.11.2010 under Sections 120B r/w 406 of the IPC and under Section 23(1) & 25 r/w Sections 4, 6 and 13 of the FCRA on the file of the learned Chief Judicial Magistrate, Coimbatore.

For Petitioner : Mr.R.Shanmugasundaram, SC
for M/S.V.Revathy

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

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O R D E R

This Original Petition has been filed seeking to quash the criminal proceedings, dated 02.11.2010 in C.C.No.2 of 2008, pending on the file of the learned Chief Judicial Magistrate, Coimbatore, against the petitioner for the offences under Sections 120B, 406 & under Sections 23(1) & 25 r/w Sections 4, 6 and 13 of the Foreign Contribution Regulation Act, 1976.

2. The allegations as set out in the Final Report against the petitioner/A-2 are that M/s.Reach In the Nilgiris is a Society, registered under the Tamil Nadu Societies Registration Act, 1975 and it had been registered under the Foreign Contribution Regulation Act, 1976, during the year 1992 to receive and utilize foreign contribution for specific purposes, for which it was formed. The petitioner/A-2 had been functioning as a Treasurer of the said Society from the Nilgiris from 08.12.2002 to 25.08.2003 and as Secretary/Treasurer from 25.08.2003. During the period from December 2002 to 2005, the petitioner entered into a criminal conspiracy with the Chief Functionary of the Society one Dr.Paulson Yesudian/A-1 to commit breach of trust in respect

of the said Society in violation of the provisions of the Foreign Contribution Regulation Act, 1976, by suppressing the facts and misleading the Government and also diverting the funds of the Society that was not put forth for the purpose of the Society. The further allegation is that the petitioner/A-2 and Dr.Paulson Yesudian/A-1, without getting prior permission from the Ministry of of Home Affairs, have given false declaration and false undertaking to the Government of India, regarding the receipt and utilization of foreign funds. Further, they have withdrawn contributions from the Bank Account, violating the provisions of the Section 6 of the Foreign Contribution Regulation Act, 1976. Further, the petitioner/A-2 and Dr.Paulson Yesudian/A-1 transferred funds from the designated Bank Accounts to the personal Savings Bank Account of the petitioner/A-2 and being entrusted with the property of the Society, dishonestly converted the said property for their own use and dishonestly diverted the property not for the purpose of the Society and suppressed 26 withdrawals and violated Sections 4 and 13 of the Foreign Contribution Regulation Act, 1976. The further averment is that the petitioner and the other accused did not maintain the accounts and records in the prescribed manner and during the year 2002 to 2003, in the FC-III returns submitted to the MHA, Dr.Paulson Yesudian had shown an FC receipt of Rs.1,03,10,850/-, whereas, the actual foreign contribution received by the Society through the designated Bank Account No.3712 was only Rs.59,52,000/- and thereby, they fudged the accounts. The above acts or the petitioner/A-2 and Dr.Paulson Yesudian/A-1 would disclose commission of offences punishable under Sections 120B r/w 406 IPC and Section 23(1) and 25 r/w Sections 4, 6 and 13 of the Foreign Contribution Regulation Act, 1976.

3. This petition to quash had been filed on the ground that this petitioner was functioning as a Treasurer of the said Society and that the receipt of the money by the Bank from the foreign contributors was beyond the control of the petitioner and that she had no intentions to do any criminal act and there is no mens rea on the part of the petitioner. Further ground raised is that the acts of the petitioner were not done with any criminal intention as envisaged under the Sections 4 and 6 of the Foreign Contribution Regulation Act, 1976 and had been subsequently ratified by appropriate orders. The amounts have been transferred only to the members of the Society for the benefit of the Society and not to third parties. Further ground is that the reason for the excess amount in the Account was clearly explained and that the petitioner had not mishandled or misappropriated any money and thereby, the continuation of the prosecution despite proper explanation is illegal and that the trial cannot be proceeded against the accused. Yet another ground raised is that the petitioner cannot be tried alone for the charge of conspiracy in the absence of the other accused.

4. This Court heard the learned counsel on either side and also perused the materials placed on record.

5. Mr. R.Shanmugasundaram, learned Senior counsel appearing for Ms.V.Revathy, learned counsel for the petitioner would submit that the petitioner has been prosecuted under the penal provisions of the Foreign Contribution Regulation Act, 1976. He would further submit that the Foreign Contribution Regulation Act, 1976 stood repealed and was replaced by the Foreign Contribution Regulation Act, 2010, wherein by Section 41(1), the offences are now compoundable. He would further submit that the Foreign Contribution Regulation Act, 2010 came into force w.e.f. 01.05.2011 and this Act, undoubtedly, expands the categories of transactions exempted from the Act and also makes all offences compoundable and that viewed in the present facts of the case, the present Act is more a lenient legislation than the earlier Act of the year 1976. He would further submit that the evidence so far recorded did not reveal any acceptable evidence against the petitioner/A-2 and none of the witnesses have deposed anything to incriminate the petitioner. He would further submit that it is a settled law that where after commission of offence, there has been an amendment in the law, which modifies the severity of the law or reduces the rigors of the law, then the accused is entitled to the benefit of such subsequent beneficial amendment in the law. He would rely on the unreported judgement of the Hon'ble High Court of Delhi in Crl.M.C.No.2784 of 2011 & Crl.M.A.Nos.10129 of 2011 and 6144 of 2012 dated 31.11.2015.

6. Per contra, the learned Special Public prosecutor appearing for CBI would submit that the case has been taken on file during the year 2008 and that there are materials against the petitioner. He would further submit that earlier, this petitioner filed a petition for discharge in CMP.No.184 of 2009 and the Trial Court dismissed the said discharge petition, on 11.10.2009 and as against the said order of dismissal of discharge petition, the petitioner has filed in Crl.R.C.Nos.1179 and 1326 of 2010 before this Court and this Court, by an order dated 06.02.2017, finding that there are materials available against the accused, dismissed the said revisions and directed the trial Court to dispose of the main case, preferably within a period of four months from the date of receipt of a copy of the order. Thereafter, the petitioner had filed a transfer application in Crl.O.P.No.16028 of 2016 seeking to withdraw C.C.No.2 of 2008 on the file of the learned Judicial Magistrate, Coimbatore to any Court in and around Chennai and that transfer petition was also dismissed by this Court by order dated 08.03.2017. He would further submit that pursuant to the said orders passed, the respondent had examined 14 witnesses on the side of the prosecution, including the Investigating Officer. The prosecution witnesses have deposed about the involvement of the petitioner. However, the petitioner has not taken any effort to cross examine the

witnesses so far. He would also submit that PW.1 was examined in chief on 26.07.2017 and the petitioner had filed a petition to defer the cross examination in CMP No.7835 of 2016, whereas, the Trial Court, observing that the High Court has directed time bound trial had dismissed the same. He would further submit that the petitioner having not taken any efforts to cross examine the witnesses has come out with the present petition which is not maintainable. He would further submit that the grounds raised by the petitioner are matters for evidence which can be agitated before the Trial Court, at the appropriate stage of cross examining the witnesses. He would further submit that though there is an observation in paragraph No.66 of the order passed by the High Court of Delhi that the accused is entitled to the benefit of subsequent beneficial amendment in the law regarding the compounding, since, the facts in this case are different, the said observation or the High Court of Delhi cannot be made applicable to the case on hand. Moreover, compounding as per the New Act has to be done before initiation of the prosecution and in such circumstances, the petition for quash at this stage is not maintainable.

7. At this Juncture, the learned Senior Counsel appearing for the petitioner would submit that since the case stands posted on 04.04.2019, the petitioner may be permitted to raise all these grounds raised in this petition before the trial Court and seek for compounding for the offences based on the judgement of the High Court of Delhi referred to above. In the alternate, he would submit that since the petitioner had not been properly advised, she has not cross examined the witnesses and that if a chance is not given to recall and cross examine the witnesses, it would amount to a case of no defence, causing prejudice to the petitioner and would pray that the trial Court may be directed to permit the petitioner to recall and cross examine the witnesses. He would further submit that the petitioner undertakes to pay the necessary Batta/charges for recalling and appearance of the witnesses before the Trial Court and also undertakes to co-operate for time bound disposal of the trial by cross examining the witnesses on their day of appearance before the Trial Court, without taking any further adjournment. He would further submit that this Court earlier taking into consideration the age and health condition of the petitioner by order dated 19.08.2016 in C.M.P.No.7835 of 2016 had dispensed with the personal appearance of the petitioner before the trial Court unless her presence is necessarily required and would pray that the personal appearance of the petitioner may be dispensed with.

8. Taking into consideration the facts of the case, the undertaking given on behalf of the petitioner and the submissions made by the learned counsel on either side, this Criminal Original Petition is disposed of with the following directions:-

(i) the petitioner shall on the next hearing date (04.04.2019) file a petition under Section 311 Crl.P.C for recalling the witnesses and on such application being filed, the trial Court, in consultation with the prosecutor, shall fix dates for appearance of the witnesses.

(ii) the petitioner shall pay Batta/charges fixed by the learned Trial Judge for the appearance of the witnesses.

(iii) the petitioner shall file an affidavit of undertaking before the Trial Court that she will be duly represented by a counsel, on all hearing dates and that the counsel representing her will cross examine the prosecution witnesses on the day of their appearance for cross examination without taking any further adjournment. The petitioner shall not dispute the identity of the witnesses.

(iv) the personal appearance of the petitioner before the Trial Court is dispensed with for the present. However, the petitioner shall appear before the Trial Court at the time of questioning under Section 313 Cr.P.C and on the date fixed for judgement.

(v) if the petitioner adopts any dilatory tactics, it is open to the Trial Court to insist for her appearance. The learned Trial Judge shall take every endeavour to complete the trial within a period of four months from 04.04.2019.

- Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
1. The Chief Judicial Magistrate, Coimbatore.

2. The Inspector of Police
Central Bureau of Investigation
Anti Corruption Branch, Shastri Bhavan
Chennai 600 006.

3. The Special Public Prosecutor for CBI,
High Court of Madras.

+2ccs to M/S.V.Revathy , Advocate SR.No. 31823(03/04/2019)

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A.SK(02/04/2019)