IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM

THE HONOURABLE MR.JUSTICE M. NIRMAL KUMAR

CRL.R.C.NO.712 OF 2019

R. Rajan .. Petitioner

Vs

Central Bureau of Investigation,
Bank Securities and Frauds Cell,
36, Bellary Road, Ganga Nagar,
Bangalore 560 032
(Crime No.Rc 1(E)/2013/cBI/BS&FC/BLR)
.. Respondent

Prayer: Criminal Revision petition filed under Section 397 read with 401 of Cr.P.C., 1973 against the order of dismissal dated 28.06.2019 made in C.M.P.No.5342 of 2015 in C.C.No.18 of 2014 on the file of the XI Additional Sessions & Special Judge for CBI Cases at Chennai.

For Petitioner : Mr. M. Guruprasad
For Respondent : Mr.K.Srinivasan
Special Public Prosecutor
CBI Cases.

ORDER

The petitioner who is A3 in C.C.No.18 of 2014 questioning the dismissal of the discharge petition, which came to be dismissed by the trial judge, by his order dated 28.6.2019 in Crl.M.P.No.5342 of 2015, have filed the above Criminal Revision.

2. The contention of the petitioner is that the petitioner is only a guarantor and not a director of M/s.Indhumathi Refineries Private Limited and for any defalcation in payment , action to be taken only against the property and not against the guarantor in his individual capacity. Further it is submitted that in the charge

sheet, the petitioner had been wrongly shown as though he is the Managing Director of M/s.Indhumathi Refineries Private Limited and its erstwhile partner. In the same charge sheet, he was also been described as a guarantor. Hence, the Bank as well as the investigation agency are not sure about what role the petitioner had played in the commission of offence and whether he had been arrayed as accused in the individual capacity or on being the Director of Indumathi Refineries Private Limited.

3. Further, on going through the entire charge sheet, there is nothing to implicate that this petitioner had misappropriated or diversified funds and obtained a loan from State Bank of India. He further submits that the entire business transaction had taken place in Chennai and the petitioner is staying at Virudhunagar and is having independent business and he is nothing to do with Indumathi Refineries Private Limited. He had also filed Form 32 which was not considered by the trial Court and it dismissed the petition filed by the petitioner.

4. The learned Special Public Prosecutor, CBI Cases submits that the initially M/s Indumathi Refineries Private Limited had taken loan from UTI Bank, formerly known as Axis Bank, Sivakasi Branch and they availed cash credit limit of 1.50 crores and LC limit of 4 crores from UTI Bank. Thereafter, the State Bank of India, Chennai, had taken over the loans and it extended financial facilities to M/s Indumathi Refineries Private Limited. These loans were not utilised for the purpose for which, the loans were granted. In fact, the loans were misutilised by the petitioner in settling down his dues and his liabilities, of his Firms M/s.Seethalakshmi Trading Company, Virudhunagar and M/s. Ravi Trading Company, in which he is a partner and thereby he had diversified the loan amounts, and the same had not been utilised for which purpose it was given.

5. Further there are other materials including documents and witnesses which speaks about the role played by the petitioner in commission of offence. The allegations and documents and witnesses supporting the allegations against the accused are tabulated below;

Shri R.Rajan (A-3)	Legal Heir and natural guardian of minor partner (Master R.Balaji) of M/s.Indhumathi Refineries and Guarantor for M/s.IRPL	Allegations	Documents to prove (D Nos.)	Witnesses to prove (PW Nos.)
		He has executed all the loan security documents and has given his personal guarantee to the bank.	22-27, 94-99, 106, 110, 112, 116, 120	1-5
		He has cheated the bank by misutilizing the funds parted off by SBI, Overseas Branch towards takeover of CC Account of M/s.Indhumathi Refineries held with Axis Bank, Sivakasi Branch, Chennai. The liabilities in the account of his other proprietorship firm, held with Axis Bank, Sivakasi Branch, was liquidated out of the funds released by SBI, Overseas Branch towards the said take-over. He closed the said CC account with Axis Bank after one year using sales proceeds (which should have been routed intheir accounts maintained at SBI)	50-54, 56, 60, 61,66,67, 67, 68, 70, 74,75, 78-91	3, 5, 10-15

	He is also accountable for wrong stock statements and false balance sheets submitted by his firm and also for non-routing of sales proceeds and diversion of funds. Some of the Diverted funds were received ina ccounts of other entity in which he is director.	160-177 491	1-7, 59

6. He would further submit A3 had acted as the legal heir and natural guardian of Master R.Balaji, Partner in M/s.Indhumathi Refineries and is liable for the cheating and fraud inflicted by his firm/company on SBI, Overseas Branch, Chennai. He has executed all the loan security documents and has given his personal guarantee to the bank.

7. It is his further submission that the points raised by the petitioner are to be raised only during trial and not to be looked into at this stage. The probability value of the documents not to be looked at this stage.

8. Considering the rival submissions made on either side and the materials available on record, this Court feels that there are sufficient materials for the prosecution to proceed against the petitioner. Further the Lower Court giving reasons have rightly dismissed the discharge petition, which need not be interfered with.

9. In view of the same, this Criminal Revision is dismissed. The petitioner is at liberty to raise the points before this court in the trial.

10. It is made clear that the observation made in this order are for the purpose of disposal of the above petition and the trial court to proceed with the trial and decide the case on merits uninfluenced by this order.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

msr

To

1. The XI Additional Sessions & Special Judge for CBI Cases at Chennai.
2. The Special Public Prosecutor, CBI Cases.
3. The Central Bureau of Investigation,
   Bank Securities and Frauds Cell,
   36, Bellary Road, Ganga Nagar,
   Bangalore 560 032

+1cc to Mr.M.Guruprasad , Advocate SR.No. 79229

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A.SK(30/10/2019)