IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2019

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.805 of 2019

M.Sekar ... Petitioner/Accused - 10

Vs.

State Rep. by,
Inspector of Police,
CBI/BS & FC Bangalore,
RC.1(E)/2013. ... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the original records from the lower Court and to discharge the petitioner/accused-10 by setting aside the order passed by the learned Special Judge for CBI Cases for bank fraud cum XI Additional CBI Judge, Chennai in Crl.M.P.No.4567 of 2016.

For Petitioner : Mr.K.Shanker

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor

ORDER

The petitioner, who is A10 in C.C.No.18 of 2014 filed a discharge petition in Crl.M.P.No.4567 of 2016, which came to be dismissed by the learned Special Judge for CBI Cases for Bank fraud cum XI Additional CBI Judge, Chennai on 28.06.2019. Against which the present revision.

2.The case of the prosecution is that M/s.Indhumathi Refineries Private Limited involved in the business of trading, sale, import or otherwise of all kinds of edible oils was originally constituted on 28.04.2004 as a partnership Firm under the name of "Indhumathi Refineries" and later converted into a private limited company on 12.12.2008 under the Companies Act, 1956. The company has been availing various credit facilities from State Bank of India, Overseas Branch, Chennai since January 2008, Cash Credit (CC) limit of Rs.15 Crores, Letter of Credit (LC) limit of Rs.70 Crores with excess drawing of Rs.12 Crores and two Terms Loans (TL) of Rs.3 Crores for construction of storage tanks and TL-II of Rs.8.20 Crores for setting up a Sunflower Refinery Project at Unit-II located at Ennore Highway, Thiruvotriyur. The said limits were not utilized for which the loans were sanctioned from the Bank. The company did not route their entire sales proceeds through their CC account maintained with State Bank of India, Overseas Branch, Chennai and on the other hand dishonestly and fraudulently diverted and siphoned off the sales proceeds to their account held with Axis Bank, George Town Branch, Chennai without the knowledge of the complainant Bank.

3.Further, the Director of the Company submitted false report to the bank that stock of crude sunflower oil worth of Rs.33.66 Crores was available in the factory premises and that when the units were inspected on 07.12.2011. The samples taken from the oil tank contained only water with sediments. Further the company did not complete the refinery project at Thiruvotriyur as such the directors of the company did not utilize the loan amount for the purpose it was sanctioned and disbursed, they dishonestly and fraudulently diverted the said loan amount. After completion of the detailed investigation, the respondent filed charge sheet in C.C.No.18 of 2014 on 30.09.2014 against the accused for the offence punishable under Sections 120B r/w 420, 467, 468, 471 of IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

4.As regards this petitioner, the investigation has revealed that the petitioner was working as Assistant Vice President & Branch Head at Axis Bank Limited, Sivakasi Branch was provided with a sanction copy of State Bank of India, Overseas Branch during the period from January 2004 from May 2008. Further, sufficient evidence both oral and documentary to establish the petitioner in commission of cheating by accepting demand draft for Rs.1.5 Crores sent by State Bank of India towards takeover of CC limits of M/s.Indhumathi Refineries held with Axis bank, Sivakasi Branch and did not close the said account from the proceeds of the said DD and deliberately misutilized the DD proceeds towards liquidation of the liabilities of three other sister concerns of the accused company. The petitioner just pruned down the said CC limit of M/s.Indhumathi Refineries released the title deeds of collateral properties to State Bank of India executed documents replacing the released collateral with collaterals released by way of closure of sister concerns and allowed operations in the account, which was supposed to be closed from the proceeds of the said DD. Against the same, primary security amounting to double financing without due approval from his superiors. Thereby, kept SBI in dark about the aforesaid developments. Apart from the above, the petitioner had actively connived with the other accused of their common design. The act of the petitioner amounted to double financing.

5.The learned counsel for the petitioner would submit that the final report is in self contradiction by saying on one hand that the petitioner had conspired with the State Bank of India, Overseas Branch. On the other hand the petitioner did not follow the instructions of SBI officials for non closure of IRPL account at Axis bank immediately. The Axis Bank is a private bank and the petitioner acted as a private person and he had released all the four collateral securities which were demanded by the State Bank of India, Overseas Branch and he had also got the approval from superiors to retain IRPL account. Further, the trial Court failed to look into the fact that the petitioner was transferred during May 2008 and thereafter the account of the company was allowed to continue till 31.03.2009 by LW12.

6.He would further submit that after 13.05.2008 the four collateral securities were handed over to Assistant Manager, SBI/LW10, the connection between Axis Bank, Sivakasi Branch and SBI overseas bank, Chennai has been severed. Further, the petitioner conspired with SBI overseas branch, Chennai is farfetched. The lower Court further failed to look into the statement of LW11 to LW15, who are statement are in favour of the petitioner.

7.The learned Special Public Prosecutor appearing for the respondent would submit that it is a case of conspiracy. The petitioner with the other accused in pursuant to the conspiracy had misappropriated and cheated funds running to several crores. The prosecution on completion of investigation listing LW1 to LW86 and collected 811 documents after thorough investigation had filed the final report. The allegations leveled against the petitioner based on the sufficient materials are as follows:-

> "That Shri M.Sekar, the then Branch Manager, Axis Bank, Sivakasi Branch, in criminal connivance with accused borrower, accepted the DD for Rs.1.50 crores sent by SBI towards take over the CC limit of M/s.Indhumathi Refineries held with Axis Bank, Sivakasi branch, but did not closed the said account from the proceeds of the said DD and deliberately allowed for misutilization of the DD proce3eds by the borrower for liquidating the liabilities of three other sister concerns namely (i)M/s.Ravi Trading Co., (ii) M/s.Seethalakshmi Trading Company and (iii) M/s.Yes Pee Kay Agencies of the accused company (the then firm) in which one or more of Shri R.Shenbagan, Smt.S.Raji, Shri R.Rajan and Smt. R.Thirumagal were partners Shri M.Sekar pruned down the said CC limit

of M/s.Indhumathi Refineries, Released the title deed of earlier collateral properties to SBI and then executed fresh loan documents replacing the released collateral with collaterals released by way of closure of aforesaid accounts of sister concerns. Shri M.Sekar allowed operations in the account against same primary security already hypothecated to SBI, amounting to double financing, without due approval and against the instructions of his seniors. That Axis bank, SZO, Chennai had not accorded sanction to the aforesaid proposal of Shri M.Sekar for pruning down of credit facilities availed by M/s.Indhumathi Refineries and had instructed the branch to fully adjust the said CC limit. That Shri M.Sekar and the accused borrowers with criminal intentions to cheat SBI, kept SBI, overseas Branch in dark about the aforesaid developments and that the said CC account of M/s.Indumathi Refineries was ultimately closed after one yar and that too by using funds which should have been routed to SBI, Overseas Branch, Chennai. Shri John Patrick, did not obtain No dues confirmation from Axis Bank, Sivakasi Branch and did not ensure that the CC Account of the borrowing firm, which was taken over by SBI, was got closed out of the DD funds released by SBI."

8.The points raised by the petitioner are to be decided during the trial and the lower Court on thorough analysis of the materials had rightly dismissed the discharge petition of the petitioner, which needs no interference.

9.On perusal of the lower Court order, it is seen that the accused have cheated the funds of State Bank of India, Overseas Branch to the tune of Rs.126,28,00,000/- with principal and interest and this petitioner has also partook. Further, the documents LW30 to LW37, LW56 to LW61 and LW91 and statements of LW11 to LW15 specifically speak about the overtact of the petitioner. Further to it, it is a case of conspiracy, which could be proved during trial. The contention of the learned counsel for the petitioner is that the petitioner is a private person and no sanction is necessary has to be decided on examination of the sanction order and sanction witness.

10.This Court on perusal of the materials produced finds that, there is no illegality or infirmity in the order passed by the Court below. As per the guidelines issued in the case of "Sajjan Kumar Versus CBI reported in (2010) 9 SCC 368", it is held that at the time of framing of the charges, the probative value of the material on record cannot be gone into, which proceeded with materials produced by the prosecution is true and this Court is not to dwell deep into the matter at this stage.

11.Further, the Hon'ble Apex Court in the case of "Srilekha Sentilkumar Versus Deputy Superintendent of Police reported in (2019) 7 SCC 82" has held as follows:-

> "In other words, we are of the view that the issues urged by the appellant and the same having been refuted by the respondent are such that they can be decided more appropriately and properly during trial after evidence is adduced by the parties rather than at the time of deciding the application made under Section 239 Cr.P.C."

12.In view of the above, this Criminal Revision is dismissed.

Sd/-
Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge for CBI Cases for bank fraud
cum XI Additional CBI Judge,
Chennai.

2.The Inspector of Police,
CBI/BS & FC Bangalore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Shanker, Advocate, S.R.No. 79938

Crl.R.C.No.805 of 2019

PVS(CO)
GN(12/11/2019)