IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.12.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL. R.C. NO. 1339 OF 2019

S. Arokiamary .. Petitioner

Vs.

The Union of India
Rep. by the Central Bureau of Investigation,
Anti-Corruption Branch, Chennai. ... Respondent

Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C to set aside the order passed in Crl.M.P.No.2056/2018 in C.C.No.4/2017 on the file of XI Additional Special Sessions Court, Chennai dated 05.07.2019.

For Petitioner : Mr.C.K.M. Appaji

For Respondent : Mr. K.Srinivasan,
Spl. P.P. (CBI Cases)

ORDER

This present revision petition is preferred against the order dismissing the discharge petition filed by the petitioner u/s 239 Cr.P.C. Crl. M.P. No.2056/2018 in C.C. No.4/2017 by the XI Additional Special Sessions Court, Chennai, dated 05.07.2019

2. The case of the prosecution is that the petitioner in connivance with A-1, who is the Senior Manager of Oriental Bank of Commerce had offered credit facilities to many persons to the tune of Rs.61,22,698/- and those persons, instead of using the loan for the purpose for which it was given, had used the same for other purposes. It is the further case of the prosecution that the petitioner colluded with all the accused in obtaining the loan fraudulently with a view to defraud the bank. Since all the accused had colluded and defrauded the bank and had thus caused monetary loss to the bank, a case u/s 120 (B) r/w 420, 409, 468 r/w 471 & 411 IPC and Section 13(2) r/w Section 13(1)(1) (d) of the Prevention of Corruption Act 1988 against all the accused, of which the present petitioner is one of them. Since, the petition filed by the petitioner before the trial court for her discharge proved unsuccessful, the present petition has been filed assailing the said order.

3. The learned counsel for the petitioner submits that the petitioner is arrayed as A-8 accused and that she did not

involve herself in the commission of the crime. It is the further submission of the learned counsel for the petitioner that the petitioner is in no way connected with the misappropriation of funds. It is the contention of the learned counsel for the petitioner that in the FIR, the name of the petitioner does not find a mention, but for some sinister purpose, the name of the petitioner has been subsequently added. It is the further submission of the learned counsel for the petitioner that the charge sheet filed in the said crime does not disclose any cognizable offence against A-8. It is submitted that the investigation has not been conducted in a fair and proper manner, but merely using a pick and choose method, the investigating agency has added the name of the petitioner in the charge sheet. There being no materials against the petitioner either in the FIR or in the charge sheet, which discloses cognizable nature of offence, the petitioner ought to have been discharged from the case. However, the trial court, without adverting to the materials available on record, has misdirected itself and, thereby, dismissed the petition for discharge, which requires interference at the hands of this Court.

4. Per contra, learned Special Public Prosecutor appearing for the respondent submits that the credit facilities have been extended without following the procedure and banking regulations, but with collusion and with an intention to defraud the bank and, thereby, cause monetary loss. It is the further contention of the respondent that the petitioner was also instrumental and active in the said collusion and the respondent after fair and proper investigation have laid the charge sheet against all the accused including the petitioner. Therefore, discharging the petitioner alone at this stage would be very much detrimental to the prosecution.

5. Heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record to which this Court's attention was drawn.

6. Time and again, it has been laid down by the Courts that the trial court, at the initial stage should not make a roving enquiry and the courts ought to discern a strong suspicion over the existence of facts constituting the offence as against the accused and that at that stage, evidentiary value need not be gone into at all by the court. Therefore, where there exists some material, which gives rise to a likelihood of involvement of the accused in the fraudulent transaction the courts should be circumspect in allowing the discharge petition.

7. In the case on hand, a perusal of records reveals that the petitioner herein as well as several other accused, who have been charge sheeted, have diverted the funds and used for purposes other than those for which it has been given. Further,

even it is the categorical admission of the petitioner herein that there was monetary transaction between her and A-3 and A-7. From a perusal of the order passed by the learned Magistrate, it is evident that detailed reasons have been spelt out by the learned Magistrate indicating that sufficient materials are available on record to dismiss the discharge petition.

8. Even otherwise, it appears that the trial court has give more than sufficient and adequate reasons for subjecting the petitioner to trial. In any event, it is always open to the petitioner to come out unscathed after facing the trial and it is certainly not open to the petitioner to escape from the clutches of law at the very threshold by seeking his discharge from the charges. The petitioner herein, who having allegedly colluded with the Senior Manager of the Bank, cannot absolve himself of complete responsibility in the fraud detected by the respondent and, therefore, if he has a strong case of his innocence, it is always open to him to prove his innocence in the trial.

9. In a case of revision, this Court has to keep in mind the scope and ambit within which this Court can interfere with the order of the court below. At this stage, this Court has to consider whether any prima facie has been made out to proceed against the accused, from the materials made available before this Court. This Court is of the opinion that prima facie case has been made out against the petitioner and it is up to the petitioner to raise all points that are in his favour before the trial court to prove his innocence. Therefore, this court is of the opinion that the trial court is right in dismissing the discharge petition filed u/s 239 of Cr.P.C. The issue raised by the petitioner cannot be decided in the present revision filed u/s 397 r/w 401 of Cr.P.C.

10. On a careful analysis of the entire factual matrix as also the order passed by the court below, this Court finds that the order passed by the court below is a well considered order founded on material reasons and evidence and the same does not suffer from any infirmity at all. Once the conclusion reached by the Magistrate is on the basis of facts on the materials presented, unless such finding of fact is perverse and wholly unacceptable, the same does not call for any interference from this Court. In this case, it appears that the Magistrate has given cogent, sound and convincing reasons and also adverted to the principles laid down consistently by the Courts for coming to the conclusion, which is perfectly in order and does not call for any interference.

11. Therefore, this Court is of the considered view that no prejudice would be caused to the petitioner if he is subjected to due trial as sufficient opportunity would be given to the petitioner to put forth his defence. The petitioner cannot be let off by discharging him from the charges as that would

completely undermine the alleged fraud of several conspirators, which is the subject matter of criminal trial pending against them.

12. For the reasons aforesaid, this Court finds no ground or scope for interfering with the order passed by the Court below and, hence, this petition, being devoid of merits, is dismissed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

smn/GLN

To

1.The Central Bureau of Investigation,
Anti-Corruption Branch
Chennai.

2.The XI Additional Special Sessions Judge,
XI Additional Special Sessions Court,
Chennai.

3.The Section Officer,
Criminal Records Section,
High Court, Madras.

4.The Special Public Prosecutor,
High Court, Madras (CBI Cases).

+1cc to Mr.C.K.M.Appaji, Advocate, S.R.No. 102157

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BR(CO)
GN(11/02/2020)