IN THE HIGH COURT OF JUDICATURE AT MADRAS

18.07.2019

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Crl.OP No.27475 of 2017 and Crl MP No.9006 of 2019

V.R.Varahagiri ..Petitioner / Accused 5

Vs.

1. State Represented by
Inspector of Police,
City Crime Branch,
Coimbatore.

2.K.R.Myilsamy

3. Tmt. Valliammal
(2nd & 3rd respondents are impleaded as per the order of this Court dated 25.06.2019 made in Crl MP No.8221 of 2019 in Crl Op No.27475 of 2019
..Respondent / Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.PC to call for the records and quash the charge sheet in C.C.No.922 of 2016 pending on the file of Judicial Magistrate Court No.1, Coimbatore.

For Petitioner : Mr.S.Shankar
for Mr.M.N.Balakrishnan

For Respondents : Mr.Mohammed Riyaz,
Additional Public Prosecutor for R1.
Mr.V.Lakshmi Narayanan for
M/s.AR.M.Arunachalam

ORDER

The Criminal Original Petition has been filed seeking to quash the proceedings pending against the petitioner before the Court below in CC No.922 of 2016.

2. The respondent police after investigation have filed a final report as against five named persons for an offence under Section 120 (B), 467, 468, 471, 419 & 420 IPC r/w.34, r/w.109

IPc, 408 & 420 IPC. The present petitioner has been ranked as A5.

3. The case of the prosecution is that A1 and A3 hatched a criminal conspiracy to grab the property belonging to the defacto complainant. In pursuance to the conspiracy, A1 who had only 1/3 rd share in the property and had already executed the sale deed in the year 2006 itself in favor of Mailsamy and Valliammal, suppressed the sale deed and created a fraudulent sale deed in favour of A3 and A2, stood as the power of attorney agent of A1. The fraudulent sale deed was executed on 24.01.2011. Subsequent to the execution of the sale deed, A3 in whose favour the sale deed was executed along with A4 approached Bank of Maharashtra, Coimbatore and had sought for a loan on the ground that A3 and A4 are running a partnership firm. The petitioner who was then the Manager of the Bank of Maharashtra had sanctioned the loan on 01.02.2013 and thereby, a loan of Rs.1 Crore 95 lakhs was given in favour of alleged firm run by A3 and A4. Therefore, the Bank Manager has also been made as an accused in this case on the ground that he also formed part in the chain of conspiracy as between the accused persons and he sanctioned the loan after knowing fully well that there was no such firm in existence and that A3 is not the actual owner of the property. By virtue of this transaction, the property belonging to the defacto complainant was taken as a collateral security for the loan.

3. The learned counsel for the petitioner submitted that there are absolutely no materials against the petitioner to rope him as an accused person. The learned counsel submitted that even if the prosecution case is taken as it is, at the best, the allegations only make out a case of dereliction of duty on the part of the petitioner and the petitioner cannot be roped in as an accused, since no offence has been made out against him. The learned counsel further relied upon the statements of the valuer (LW22), Advocate, who gave opinion (LW23) and the Branch manager (Incharge) (LW24) and submitted that the loan was sanctioned based on the valuation report and the legal opinion given by the Advocate and therefore, the proceedings as against the petitioner is an abuse of process of Court.

4. Per contra, the learned counsel appearing on behalf of the defacto complainant submitted that the case is at the stage of framing of charges. Therefore, it is enough if the materials collected by the respondent police in the course of investigation brings out a strong suspicion against the accused persons. In the facts of the present case, the petitioner has not even verified about the existence of the so called firm and the petitioner also went by the forms submitted by A3 and A4 and knowing fully well that they are fake documents. The learned counsel further submitted that the statement of LW25, who is the

owner of the property, where the firm was alleged to be functioning, has categorically stated that there is no such firm that is being run in his property. By relying upon this statement, the learned counsel submitted that the petitioner has sanctioned loan to A3 and A4 by taking the property belonging to the defacto complainant as a collateral security and thereby, the petitioner has also played a part in the chain of conspiracy. The learned counsel submitted that the exact role played by the petitioner will clearly get revealed in the course of trial.

5. The learned Additional Public prosecutor appearing for the respondent police submitted the Investigating officer has collected sufficient materials against all the accused persons and there is a material to show that the petitioner has also played a role in the entire conspiracy and there are materials to frame charges against the petitioner. The learned counsel submitted that the jurisdiction of this Court under Section 482 of Cr.PC is very limited and this Court cannot go into the minute details of the materials collected by the investigation and it has to be safely left for the Trial Court to decide upon the same.

6. This Court has carefully considered the submissions made on either side and the materials placed on record.

7. A reading of the final report clearly shows that there are two portions in the conspiracy that is sought to be established by the prosecution. The 1^{st} part of the conspiracy happened as between A1 to A3 when the sale deed was executed by A1 through her power of attorney agent A2 in favour of A3 in the year 2011. Subsequently, in the year 2013, A3 along with A4 have approached the Bank of Maharashtra, where the petitioner was working as the manager and had sought for loan by giving the property purchased, through the alleged fraudulent document of the year 2011, as a collateral security.

8. A careful reading of the statements recorded by the investigating officer shows that there was a valuation report that was prepared by LW22. This person had gone to the site and had valued the property and had submitted his report to the bank. Similarly, there was also a legal opinion that was given by LW23. LW23 in her statement clearly states that based on the documents that were placed before her, she has given an opinion to the effect that loan can be sanctioned in favour of A3 and A4. These two documents were taken into consideration by the petitioner at the time of sanctioning the loan.

9. It is also important to look at the statement recorded from LW24, who was the branch Manager (incharge) of the

Bank of Maharashtra. He explained about the entire documents that were relied upon by the Bank for sanctioning loan and he also talks about the valuation report and the legal opinion obtained before the loan was sanctioned. Towards the end of his statement, he has stated that the petitioner must have been more careful while scrutinizing the documents before sanctioning the loan in favour of A3 and A4.

10. A careful look at all these materials only shows that there was some basis on which the loan was sanctioned by the petitioner. There was a valuation report and there was a legal opinion connected with the sanction of loan. It is true that LW25 states that A3 and A4 have not run any partnership firm in the property. However, that by itself cannot be taken to be a material in order to rope in the Branch Manager as an accused in this case.

11. The law is well settled with regard to the framing of charges. It is enough if there is a strong suspicion against the accused person for framing a charge. However, this strong suspicion must be based on some material collected by the prosecution in the course of investigation. In the present case, this Court is not able to find any material against the petitioner to rope him as an accused person on the ground of conspiracy. There is no material which would show that the petitioner had intentionally taken into account the fake documents filed before him by A3 and A4 and had sanctioned loan. The petitioner had relied upon the valuation report and also the legal opinion and had sanctioned the loan. The material as available before this Court, at the best only shows that there was dereliction of duty on the part of the petitioner and that is not enough to make the petitioner as as an accused in this case.

12. In view of the above, this Court is inclined to interfere with the criminal proceedings in sofar as the petitioner is concerned. It is made clear that if in the course of trial, the court is able to collect sufficient evidence to make out a case against the petitioner, it is always open to the Court below to exercise its jurisdiction under Section 319 of Cr.PC and proceed further in accordance with law.

13. It is now a well settled principles of law that even if an accused person is discharged from the criminal proceedings or proceedings are quashed at the stage of final report, if during the course of the trial, the Court is able to find strong materials against the accused persons, it can always add those accused persons in exercise of its powers under Section 319 of Cr.PC

14. In the result, the proceedings in CC No.922 of 2016 on the file of learned Judicial Magistrate No.1, Coimbatore is hereby quashed, insofar as the petitioner is concerned. Accordingly, the Criminal Original petition is allowed with a direction to the Court below to complete the proceedings within a period of six months from the date of receipt of copy of this order.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1, Coimbatore

2. The Inspector of Police,
City Crime Branch,
Coimbatore.

3. The Public Prosecutor,
High Court of Madras

+1cc to M/s.AR.M.Arunachalam, Advocate sr.61525

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nr 01/10/2019