IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No. 15269 of 2010

Udayakumar .. Petitioner

Vs.

State represented by
Inspector of Police,
Chennai Crime Branch,
Team IV, Egmore, Chennai .. Respondent

PRAYER:Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for records pertaining to C.C.No.6876 of 2001 pending on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For Petitioner : Mr.R.Rajarathinam

For Respondent : Mr.C.Iyyapparaj
Addl. Public Prosecutor

O R D E R

This petition has been filed seeking to call for the records pertaining to C.C.No.6876 of 2001 pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

2.The facts of the case is that the petitioner is arrayed as A13. In this case, the accused A1 to A3 were the directors of M/s.ALCAM Engineering Limited Anna Nagar, Chennai, who have applied for a term loan from State Industries Promotion Corporation of Tamilnadu Limited, (in short SIPCOT) under the ''Equipment Refinance Scheme'' for 250 lakhs to expand the capacity of their existing project at Vandalore Chennai. The main criteria for sanctioning the term loan under ''Equipment Refinance Scheme'' is they should obtain good credit report from the Bank for which the accused company produced good credit report from UCO Bank, State Bank of Travancore and IFCI.

3.According to the appraisal, the department forwarded a recommendatory note and consequently SIPCOT sanctioned the loan on 06.03.1997. Though the accused company submitted a claim for availing the full sanctioned amount of Rs.250 lakhs, SIPCOT disbursed only Rs.150 Lakhs on 31.03.1997, since the accused company in which A1 is the Managing Director, did not comply with one of the conditions, viz., execution of collateral Security. Rs.150 lakhs was disbursed towards the reimbursement of cost of the machinery, which was already purchased by the accused company. Further it is alleged that the Manager, UCO Bank one Mr.Krishnamurthy (LW2) visited SIPCOT on an official duty. When the credit letter of UCO Bank issued to the accused company was verified, the same was certified as a forged one. Based on the said report the Managing Director, SIPCOT preferred a complaint dated 16.05.1997 against A1 to A3.

4. After investigation, Charge Sheet was filed on 27.03.2001, before the learned Additional Chief Magistrate, Egmore, Chennai for the offence under Sections 467, 468, 471, 410 r/w 120-B and 109 IPC against nine persons including the petitioner herein and one Balasubramanian Deputy General Manager, Operations, SIPCOT. The said Balasubramanian and the petitioner Udayakumar were arrayed as A8 and A9. Subsequently amended charge sheet was filed on 12.01.2009 before this Court deleting the name of Balasubramaniam from the charge sheet and added Premnath, Assistant General Manager, Legal SIPCOT as accused No.10, 11 and 12 and the petitioner is shown as Accused No.13, the Manager Legal Department, SIPCOT. A discharge petition was also filed by Balasubramaniam and his petition was ordered on 17.06.2009 by this court. In the same line challenging, the said charge sheet in C.C.No.6876 of 2001, the present petition is filed.

5.Mr.Rajarathinam learned counsel for the petitioner would submit that though the petitioner was not involved in the processing of loan, he was implicated as A9 and subsequently, he was shown as A13. He further submitted that the petitioner is working as a Manager in the Legal Department at the relevant point of time and he was not involved in the process of sanctioning the loan. In fact on 29.03.31997 it is opined that the company's main and relevant document was not produced. The promoters/ company have neither produced parent document dated 12.04.1984 registered as document No.838/84 nor legal heir ship certificate in respect of one Desiga Achary, who is said to be the legal heir, in which the petitioner and other accused persons namely Harinath A12, Meenakshi Sundaram A9, have signed the said document. the petitioner has not taken any decision of the documents signed in support of the application forwarded by the main accused person. Hence, implicating the petitioner as an accused is unsustainable. However in the present case, the charge sheet against A9, A11 have already been quashed in Crl.O.P.Nos.28084, 28086 and 2811 of 2009 dated 22.12.2009. Other accused A12 also discharged in Crl.M.P.No.3569 of 2001 in C.C.No.6876 of 2001. Hence, forcing the petitioner to face the trial is unreasonable and accordingly, prays for allowing the petition.

6.Learned Additional Public Prosecutor did not dispute the fact that in respect of co-accused the charge sheet has already been quashed and they have been discharged by this Court as well as by the trial Court. However, the petitioner was implicated based on the deposition of one Shanthi, who is LW8, the Deputy Manager SIPCOT. Hence, this is a triable issue and the petitioner cannot be discharged on technical grounds. There is a Prima facie case, against the petitioner. Hence, he prays this court not to interfere with the proceedings against the petitioner.

7.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

8.It is not in dispute that in respect of co-accused, charge sheet has already been quashed and they have been discharged by the Court below. However, the basis for the petitioner being forced to fact the trial is only on account of one Shanthi, who is said to be the Deputy Manager of SIPCOT and who is shown as LW8.

9.Be that as it may. Even the materials available on record disclose that on the crucial date, the petitioner was functioning in the Legal Department and was in no way connected with the sanctioning of the loan. It is further evident from the record that the petitioner has not taken any decision towards sanction of loan. The sanctioning of loan was not within the domain of the petitioner. That being the case, implicating the petitioner as one of the accused, is not correct, when the company's main document was not produced and the Promoters/Company have neither produced parent document dated 12.04.1984 registered as document No.838/84 nor legal heir ship certificate in respect of one Desiga Achary, who is said to be the legal heir, in which the petitioner and other accused persons namely Harinath A12, Meenakshi Sundaram A9, have signed the said document. But the whole trial as against the petitioner would be a farce, more so, when persons, who were similarly placed like the petitioner have already been discharged on the charge sheet against them being quashed.

10.In such view of the matter, this Court on an overall consideration of the materials available on record is of the considered view that the proceedings insofar as the petitioner in c.C.No.6876 of 2001, pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai, deserves to be quashed.

11.Accordingly, this petition is allowed and the proceedings insofar as the petitioner in C.C.No.6876 of 2001, pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai are quashed.

Sd/-
Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

vsn

To.

1.The Inspector of Police,
Chennai Crime Branch,
Team IV, Egmore, Chennai

2.The Chief Metropolitan Magistrate
Egmore,
Chennai

3.The Public Prosecutor
High Court of Madras.

+1cc to Mr.R.Rajarathinam, Advocate, S.R.No. 102

Crl.O.P.No. 15269 of 2010

PM(CO)
GN(12/03/2020)