IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	17.08.2020
PRONOUNCED ON	28.10.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.3726 of 2020

K.Kuberanathan
S/o.K.K.Mudaliar ... Petitioner

Vs.

The Additional Superintendent of Police,
The Central Bureau of Investigation,
Bank Securities and Fraud Cell,
Banglore.
[Ref Crime No: 8(E) & 9(E)/1996 dated 19.11.1996]
... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the charge sheet in C.C.No.64 of 2001 on the file of the VIII Additional Special Court for CBI Cases at Chennai for offences under Sections 120 (B) r/w. 420 IPC and 13(2) r/w. 13 (1)(d) of Prevention of Corruption Act, 1988.

For Petitioner : Mr.A.Ramesh,
Senior Counsel for Mr.C.Arun Kumar

For Respondent : Mr. K.Srinivasan,
Special Public Prosecutor for CBI

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O R D E R

The petitioner/A3, who is facing trial in C.C.No.64 of 2001 on the file of VIII Additional Special Court for CBI cases, Chennai, for offences under Sections 120 (B) r/w. 420 IPC and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988, had filed this quash petition.

2. The petitioner earlier filed a discharge petition before the trial Court in Crl.M.P.No.2055 of 2008 and the same was dismissed on 07.02.2008 against which the petitioner filed a revision before this Court in Crl.R.C.No.709 of 2013 and the same was dismissed on 07.10.2016, confirming the order of the trial Court. The petitioner approached the Apex Court in SLP

(Crl).No.305 of 2017 and the same was dismissed on 20.01.2017. Thereafter, this quash petition filed, placing reliance on the judgment of the Apex Court in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal V. Mohan Singh reported in [(1975) 3 SCC 706], on the ground that despite rejection of the earlier application of the petitioner, the prosecution had failed to make any progress in the trial and the charges are yet to be framed.

3. The brief facts of the case is that the respondent registered the case against the accused persons in R.C.Nos.8 & 9 (E) / 1996. The petitioner / A3 was the Branch Manager of Indian Bank, Muthialpet Branch, Chennai. A criminal conspiracy was hatched during 1998 and 1995 at Chennai, Singapore and other places. The object of conspiracy was to cheat Indian Bank, Muthialpet Branch, Chennai, a nationalised bank in the matter relating to sanctioning, releasing and availing of various credit facilities such as Packing Credits, Foreign Bill Purchase, Import Letters of Credit, Medium Term Loans, Overdrafts in connection with import/export business in Cashew nuts/kernels in favour of M/s.M.V.R. Exports / M/s.M.V.R. Industries Ltd., and M/s.Maxwell Promotion / Maxwell Exim Private Limited, Chennai by dishonest concealment of facts that M.V.R. Group companies in India and Mountamount group companies in Singapore belonged to the same group, by fraudulently or dishonestly induced the bank to discount foreign bill the same bill of lading which had already been financed, by making imports through group companies to India against LC's while exports to the same group against LC's by non-repatriating export proceeds. Despite the same, having been realised in Singapore by not providing funds to meet import bills on due dates forcing devolvement of LC's on the bank by non repayment of term loan instalments on due dates and non clearance of overdrafts. Furtherance pursuance to the conspiracy had committed criminal misconduct. The accused, a public servant, committed misconduct by corrupt or illegal means or by abuse of his official position as public servant.

4. The specific case against the petitioner is that in pursuance of the aforesaid criminal conspiracy, the petitioner / A3 while working as Branch Manager, Indian Bank, Muthailpet Branch, during the period from December 1988 to July 1991 by corrupt or illegal means or by abusing his position as public servant obtaining for himself or for M/s.M.V.R. Exports Private Limited and M/s. Maxwell Promotion / M/s.Maxwell Exim Private Limited, pecuniary advantage in as much as he went on submitting proposals / notes, recommending sanction renewal of various credit limits for confirmation or ratification of the branch action or permitting the branch to release credit facilities in favour of M/s.M.V.R. Exports Private Limited and M/s.Maxwell Promotion and M/s. Maxwell Exim Private Limited, disregarding baking norms violating RBI guidelines and at

times against the directions of the Board of Directors of the bank beyond delegated powers and without ensuring proper end use of the funds with a view of obtaining undue pecuniary advantage to the concerned bank or others. The petitioner as Branch Manager was entrusted with the responsibility to protect interest of the bank. He as the head of the branch without following the circulars / instructions issued by bank before forwarding the same to the higher authorities for consideration in violation of the extant rules and the interest of the bank, he acted in connivance with the other accused persons which ultimately resulted in wrongful loss to the Bank. Thus, the petitioner is facing charges and trial before the trial Court along with other accused.

5. The contention of the petitioner is that the charge sheet in this case came to be filed in the year 2001 and was taken on file, for the past 19 years even the charges are yet to be framed and no substantial progress is made in the case except that the petitioner's counsel regularly appearing before the trial Court. The petitioner further submits that the Enforcement Directorate initiated penalty proceedings against the offenders including the petitioner. After adjudication the petitioner was exonerated from the proceedings by order SDE/KRUB/05/2014 dated 28.03.2014 and by order SDE/SRO/CEZO/FERA/01/2018 dated 26.02.2018, enforcement in both the cases in para 6.5 order dated 28.03.2018 and in para 5.8 order dated 26.02.2018, after full fledged adjudication as recorded and held as follows:-

> "As regards, the notice no.5, Shri.K..Kuberanathan, Branch Manager, worked in the Muthialpet branch during the period 13.12.1988 to 02.07.1991 and was not in charge of the branch during the period of contraventions i.e., August 1994 to March 1996. I find that the allegation referred in the addenda to memoranda relates to the period August 1994 to March 1996, whereas he worked in the said branch prior to the impugned period. Therefore, I am of the opinion that the charges leveled against Shri.K.Kuberanathan are devoid of any merit. "

6. He further submitted that the petitioner joined the Indian Bank, Muthailpet Branch, as Branch Manager on 13.12.1988 and served there till 2nd July 1991. Thereafter, the petitioner was transferred to Poonamallee Branch. When the petitioner joined the Branch as a Manager, the account of the company was offered credit facilities was pre-existing one and considering the performance, the petitioner had made recommendation during the relevant point of time. On 29th August 1992, the Indian Bank, Head Office had submitted a reply to the Reserve Bank of India. It is seen that the decision of enhancement of the Export house was on the basis

of performance of the company, which was above satisfactory. None of the bills of the Export house was returned unpaid, during the tenure of the petitioner as Bank Manager. In fact on 27.03.1989, the petitioner brought to the notice of the Higher officials namely Regional, Zonal and Head Office, that the ECGC cover was not their for some of the adhoc facilities extended. On the information provided by the petitioner, the Banks Head office, Zonal office, and the Regional Office expedited the adhoc facility to a Regular facility to cover the ECGS policy that the petitioner had taken steps to protect the interest of the bank.

7. He further submitted that the facilities expanded to the Export house was sanctioned even after the transfer of the petitioner by the Higher officials and the Board of Bank till 1995 when the account become NPA in the month of March 1996. Thus, almost 5 years after the petitioner was relieved from the Branch in July 1991, the account become NPA. He further submitted that from the year 1991 to 1996 the Bank did not suffer any loss much less a wrongful loss.

8. From the charge sheet there is nothing to show that the petitioner had conspired with the other accused and thereby made unlawful gain. In fact there are allegations against some other accused for having received kick backs. The petitioner enlisted 64 Foreign Bills purchased by the M/s.M.V.A. Exports from the year 1998 to July 1991, wherein the amounts were realized and no bill was returned unpaid during this period. Further, another 66 Foreign Bills purchased by M/s. Maxwell Promotions. These details are available in the Foreign Bills ledger. Thus, during the tenure of the petitioner as Branch Manager, the entire bills were realized and not returned unpaid. Hence, there is no wrongful loss caused to the bank.

9. The petitioner further submitted that in this case, the respondent admitted that they have approached the foreign countries through letter of rogatory and yet to receive reports from the foreign countries. In view of the same, the charge sheet cannot be said to be complete and further investigation is still kept open.

10. He further placing reliance on the judgment of K.S.Narayanan and Gopinathan reported in 1982 CRL.L.J 1611 and Subramanian Swamy and A.Raja reported in 2012 (9) SCC 257, submitted that mere allegation of conspiracy itself is not sufficient to prove the charge and in this case there is no supporting reasons to believe how conspiracy prima facie existed.

11. Further, for the charge of cheating he submitted that allegations against the petitioner is not coupled with the act

of dishonesty, as all the bills sanctioned or recommended by the petitioner is fully realized by the Bank. In view of the same, the petitioner cannot be proceeded for offence of cheating. Thus, on the materials available on record, it cannot be said that conspiracy, cheating or abusing his official position as public servant for corrupt or illegal means does not arise since during the period from December 1988 to July 1991. All the Foreign Bills purchased during the period are realized and no loss is caused to the Bank. These particulars are available in the Foreign Bills purchase ledgers. Added to it, the Enforcement Directorate had exonerated the petitioner from all the charges. He further referred to the statement of L.W.2 - N.Chandrasekara Rao, L.W.4 - K.Ponnusamy, L.W.15 - R.Radhakrishnan, L.W.22 - K.Sampath Kumar, L.W.23 - T.V.Santhanam, L.W.66 - P.M.Jose, L.W.68 - A.V.Shanmugasundaram, L.W.69 - S.Arunachalam, LW.75 - N.Muralidharan, L.W.77 - R.Jagadeesan, L.W.79 - Udaya Shankaran, L.W. 82 - S.Vijayasubramanian and the Letter from the Indian bank, Muthialpet to the Zonal Office and the letter received from the Head Office from the Reserve Bank of India and the scrutiny report of M/s.M.V.R Exports Private Limited, M/s.Maxwell Exim Private Limited and Mountamount, Singapore Private Limited and the adjudication orders of the enforcement. In support of his contention, he placed reliance on the judgment of Anil khadkiwala Vs. State (Government of NCT of Delhi) and Others reported in AIR 2019 SC 3583, Harish Dahiya and Others Vs. The State of Punjab and Others reported in MANU/SCOR/39733/19, S.M.S.Pharmaceuticals Ltd. Vs. Neeta Bhalla and Others reported in 2007 (4) SCC 70, Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others reported in AIR 1975 SC 1002 and Sethupathi and Others Vs. The Inspector of Police, All Women Police Station and Others reported in 2016 (2) LW (Crl) 378 for the preposition of maintainability of 2nd quash petition. Further placed reliance on S.R.Kangeyan Vs. Indian Potash Ltd reported in MANU/TN/0901/2012 for the preposition that there is no specific overt act attributed against the petitioner in his individual capacity the act of the petitioner as Branch Manager, Muthialpet Branch in the absence of the bank being made as an accused the petitioner cannot be proceeded against. For the charge of conspiracy, he relied on the judgment of K.S.Narayanan and Others Vs. S.Gopinathan reported in 1982 Crl.L.J 1611 and Subramanian Swamy Vs. A.Raja reported in 2012 (9) SCC 257.

12. Further, in support of his contention, the Court has to look into the relevant law and allegations made in the charge sheet. He relied on the judgment of D.J.Sen and others Vs. The State and Other reported in 2002 Crl.L.J 4621. He further placed reliance in the judgment of PMC Mercantile Private Limited Vs. The State reported in MANU/TN/2170/2014, to emphasis that the charge sheet in this case is incomplete

and at the most it can be termed only as an interim report since the letter of rogatory has not been responded till date.

13. Learned Special Public Prosecutor filed a counter and submitted that the respondent had registered the case in R.C.No.8 (E)/1996 on 19.11.1996 against 23 persons including the petitioner who has been listed as A20. The Public servants of Indian Bank, including the petitioner having dominion over the funds and properties of the Indian Bank were parties to a criminal conspiracy during the period from 1988 to 1996, committed dishonest criminal breach of trust of huge funds of Indian Bank by indiscriminate lending in breach of the norms and regulations of the bank and caused huge undue pecuniary loss to Indian Bank with corresponding wrongful gain to the accused. The wrongful loss to the Indian Bank at the time of registration of case was Rs.71,15,64,662/-. Another F.I.R. in R.C.No.9 (E/1996) was registered on 19.11.2019 against various accused in respect of causing wrongful loss of Rs.119.40 Crores to Indian Bank as on 02.08.1996.

14. He further submitted that the petitioner / accused was a Public servant at that point of time. Hence, the evidence gathered during the investigation against him as well as other public servants against whom prima facie cases was made out, were placed before the competent authorities of Indian Bank and for sanction of prosecution of all the public servants including the petitioner was sought. The sanctioning authority, after considering all the facts and documents placed before him, vide order dated 16.08.2001 accorded sanction for prosecution of petitioner for offences punishable under Section 120 - B r/w. 420 IPC, Sections 11, 12, 13 (2) r/w. and 13 (1)(d) of Prevention of Corruption Act, 1988. A combined charge sheet in R.C.8/E/96 and R.C.9/E/96 was filed before the learned Special Judge for CBI Cases, Chennai against the petitioner and the other accused. The petitioner earlier filed a discharge petition before the trial Court in Crl.M.P.No.2055 of 2008, which after consideration was dismissed on merits on 07.02.2008, against which the petitioner approached this Court in Crl.R.C.No.709 of 2013. This Court after detailed arguments had dismissed the same on 07.02.2008 confirming the order of the trial Court. Thereafter, the petitioner approached the Apex Court in SLP (Crl).No.305 of 2017, the Apex Court dismissed the same by order dated 20.01.2017. Further, he submitted that the petitioner having availed and exhausting all the opportunity before the trial Court, this Court and the Apex Court, now again filed this quash petition. The points raised herein are the points which have been already raised and adjudicated by the Courts. Filing of this petition is an attempt to abuse the process of law.

15. Further placing reliance on Amit Kapoor Vs. Ramesh

Chander & Another in SLP(Crl).No.1516 of 2020 dated 13.09.2012, wherein the Apex Court had held that, dwelling deep into field of appreciation and evaluation of evidence which is beyond the jurisdiction, either revision or inherent of the High Court under Sections 397 and 482 of the Code. He further placed reliance in the case of Gian Singh Vs. State of Punjab and another in SLP(Crl).No.8989 of 2010, wherein the Apex Court had held that offences under special statutes under Prevention of Corruption Act, involving public servants cannot be quashed.

16. He further submitted that this Court while dismissing the Crl.R.C.No.709 of 2016 had considered all the points raised by the petitioner and dismissed the revision with liberty to the petitioner to make all his contention before the trial Court during the trial.

17. He further submitted that disposal of the proceedings of adjudication under Prevention of Money Laundering Act does not have any bearing in the present criminal case since the offences are distinct. Offences under IPC and Prevention of Corruption Act were not part of the proceedings adjudicated before the Adjudicating Authority under PMLA. Further, the petitioner was exonerated on the ground that period of contravention mentioned in the notice of Enforcement Directorate is August 1994 to March 1996. The petitioner is facing charge in this case while the petitioner was functioning as Branch Manager of Indian Bank, Muthailpet, Chennai from 13.12.1988 to 02.07.1991, which is prior to the period of notice/contravention. Hence, the order passed by the Adjudication Authority under PMLA, will have no bearing in the present Criminal case. He further submitted that the respondent / CBI had approached the Apex Court in discharging of V.R.Usha [A.14] a private non-borrower. This SLP was dismissed by Hon'ble Supreme Court by order dated 12.07.2019. Likewise in the case of B.Chandramouli [A.16], a private non-borrower, the CBI / respondent had approached the Hon'ble Supreme Court, which by order dated 19.07.2019 had negatived the CBI contention. Further, in the case of P.Vijayaraghavan [A.15] a private person, the CBI had approached the Apex Court in SLP.Dy.No.36206/19 which was also dismissed on 21.05.2020. Thus, three persons against whom the proceedings were quashed are non public servants. In view of the petitioner being a public servant and the categorical finding by the Apex Court in the case of Gian Singh, and this Court in the earlier proceedings directed the petitioner a public servant to approach the trial Court, the last dismissal of the Apex Court was received by the respondents on 01.06.2020. In view of the same some delay occurred, hampering the progress of trial and that alone will not be a ground for the petitioner to file this quash petition.

18. Further, he had listed the hearing dates from 20.01.2017 to 13.08.2020 in support of his contention. In view of the above, the delay cannot be attributed on the prosecution side alone, it is seen that the lower Court had adjourned the case periodically on the ground SLP was pending and for other reasons. In view of the above, the prosecution cannot be faulted and construed as reason for delay.

19. Further, due to COVID-19, the Courts have been dis-functional from April 2019 and now the Courts have started functioning and there would be no further delay.

20. He further submitted that this case was filed in the year 1996 and it is 24 years since, the delay has been caused by one or the other accused in filing one petition or other before the trial Court, this Court and the Apex Court. The accused contributing for the delay cannot now claim and take advantage of the same and contend that due to the delay the petitioner quash petition to be considered and allowed. Further, this Court on earlier occasion had considered all the points raised by the petitioner and negatived the same, which was confirmed by the Apex Court, except the PLMA proceedings, no new ground have been raised. Hence, the other points cannot be now revisited and reviewed, as regards the PLMA case. The period of conspiracy varies and hence, it would not have any bearing in this case.

21. He further submitted that the case is not progressing for the past 24 years. He prayed for dismissal of the above Original petition with a direction directing the trial Court to complete the trial in a time bound manner.

22. Considering the rival submissions and on perusal of the materials, it is seen that it is not in dispute that the petitioner had earlier filed a discharge petition. Petitioner, who is A3, filed the discharge petition before the trial Court in Crl.M.P.No.2055 of 2008 which was dismissed on 07.02.2008, against which Crl.R.C.No.709 of 2013 was filed before this Court and the same was dismissed on 07.10.2016. Thereafter, SLP(Crl)No.305 of 2017 was filed before the Apex Court and the same was dismissed on 20.01.2017. Thus, confirming the trial Court dismissal of discharge petition on 07.02.2008, the petitioner was employed as Branch Manager, Muthailpet Branch, Indian Bank, during the period 13.12.1988 to 02.07.1991. During this period, the petitioner had processed and submitted proposal and notes of M/s.MVR Export Private Limited and M/s.Maxwell Promotion / MaxWell Exim Private Limited recommending sanction/renewal of various credit limit for conformation or ratification of the branch or permitting the branch to release credit facilities in favour of them which was found to be in violation of RBI guidelines and the directions of the Board of Directors and also beyond the

delegated powers of Branch. Further, it is alleged that the petitioner without ensuring proper enduse of funds with oblique motive had allowed the said companies to obtain undue pecuniary advantage to the said companies. The petitioner as Manager failed to follow the circular, instructions, acted in violation of rules and failed to protect the interest of bank. Hence, he is charged with the other accused in the above case. As regards some of the private individuals this Court had quashed the proceedings which was confirmed by the Apex Court. The case of the accused whose cases quashed and the case of the petitioner are not in parity and similarity, the only new point available to the petitioner between the earlier dismissal of his revision and this quash petition is the adjudication order passed by the Special Directorate of Enforcement under PMLA. The authority therein found that the petitioner was a Branch Manager during the period from 13.12.1988 to 02.07.1991 and the contravention proceeded by the authority for a period from August 1994 to March 1996. In view of the same, the charges against the petitioner was found without logic and the petitioner was exonerated. Further, in this case it is seen that the petitioner functioned as Branch manager, Muthailpet, from 13.12.1988 to 02.07.1991 the period of conspiracy in C.C.No.64 of 2001 is for the period from 1998 to 1996. This Court while dismissing Crl.R.C.No.709 of 2013 by order dated 07.10.2016 reported in 2016 SCC Online MAD 29113, on considering the submissions of the petitioner, elaborately discussed and dismissed the same, in para 31 it had held as follows:

> "So far as the 3rd accused is concerned, the allegations have been made under the Prevention of Corruption Act in the charge sheet. On perusal of the charge sheet, this Court is of the opinion that the allegations made against the petitioner / A3 attract the Provisions of the Corruption Act. Therefore, he is not entitled for discharge from the case. However, the petitioner / A3 is at liberty to make all his contention before the trial Court during the trial."

23. It is not in quarrel, in entertaining and considering the 2nd petition of quash. The only criteria is that the point raised earlier not to be agitated once again, otherwise it would amount to reviewing of its own order which is prohibited under Section 362 Cr.P.C. The Apex Court have permitted entertaining 2nd quash petition on, fresh grounds which was not considered earlier. In this case, the only point which was not raised and considered in the earlier application is the orders of the Enforcement Directorate and all the other points have been considered in Crl.R.C.No.709 of 2013.

24. In view of the same, this Court finds that the contention of the petitioner ought to be decided only during

trial which are factual, which ought to be decided only during the trial and not in this quash petition. Hence, the quash petition is dismissed.

25. Considering the fact that the case is pending without any progress for the past 19 years, the trial Court is directed to give priority in conducting and concluding the trial within a stipulated time.

With the above observation, the petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The VIII Additional Special Court for
CBI Cases Chennai.

2. The Additional Superintendent of Police,
The Central Bureau of Investigation,
Bank Securities and Fraud Cell,
Bangalore.

3.The Special Public Prosecutor,
CBI Cases, High Court, Chennai.

Crl.O.P.No.3726 of 2020

GMR(CO)
CB(15/12/2020)