

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2020

PRONOUNCED ON : 04.12.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1052 of 2020
and Crl.M.P.No.7291 of 2020

R.Subramanian ... Petitioner/1st Accused

Vs.

Central Bureau of Investigation
(BS & FC) Bangalore,
Represented by its
Superintendent of Police,
2nd Floor, CBI Complex,
No.36, Bellary Road,
Ganga Nagar,
Bangalore - 560 032. ... Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 06.10.2020 passed in Crl.M.P.No.349
of 2020 seeking discharge of the petitioner from C.C.No.9635 of
2014 on the file of the Additional Chief Metropolitan Magistrate
Court, Egmore, Chennai.

For Petitioner : R.Subramanian
Party-in-Person

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

WEB COPY
O R D E R

This criminal revision has been filed seeking to set aside
the order dated 06.10.2020 passed in Crl.M.P.No.349 of 2020
seeking discharge of the petitioner from C.C.No.9635 of 2014 on
the file of the Additional Chief Metropolitan Magistrate Court,
Egmore, Chennai.

2. R.Subramanian, the petitioner herein is the first
accused in C.C.No.9635 of 2014 pending on the file of the

Additional Chief Metropolitan Magistrate Court, Egmore, Chennai, for the offence under Section 420 IPC. The allegations being that, R.Subramanian, Managing Director, Subiksha Trading Services Limited (for short "STSL"), had dishonestly and fraudulently availed credit facilities of Rs.25 crores working capital and Rs.50 crores term loan from Bank of Baroda stating that he would carry out genuine business by establishing fast moving consumer stores, which he did not establish and also failed to fulfill the sanction conditions thereby causing wrongful loss of Rs.77.39 crores to Bank of Baroda (as on 31.03.2009) in the term loan account and cash credit account of STSL and obtained corresponding wrongful gain to him and others. Hence the charge.

3. The petitioner filed Crl.M.P.No.752 of 2016 for discharge under Section 239 Cr.P.C. and withdrew the same after the prosecution filed their counter. Then the petitioner filed Crl.O.P.No.4498 of 2020 under Section 482 Cr.P.C. for quashing the final report in C.C.No.9635 of 2014.

4. It appears that on 05.02.2020, the petitioner filed a second petition for discharge under Section 239 Cr.P.C., which was taken on file by the trial Court as Crl.M.P.No.349 of 2020. While so, a learned Single Judge of this Court (Brother M.NIRMAL KUMAR,J.), heard the quash petition in Crl.O.P.No.4498 of 2020 and by a detailed order dated 03.06.2020, has dismissed the quash petition with a direction to the trial Court to proceed with the trial on a day to day basis.

5. It may be pertinent to state here that in paragraph no.21 of the order dated 03.06.2020, passed by this Court in Crl.O.P.No.4498 of 2020, this Court has referred to the pendency of the discharge petition in Crl.M.P.No.349 of 2020 before the trial Court.

6. After the dismissal of the quash petition as stated above, the petitioner argued the discharge petition in Crl.M.P.No.349 of 2020, which has been dismissed by the trial Court on 06.10.2020, on the short ground that the High Court has dismissed the quash petition and has further, directed the conduct of the trial on a day to day basis.

7. Challenging the order dated 06.10.2020 passed by the trial Court in Crl.M.P.No.349 of 2020, the petitioner has filed the present petition under Section 397 r/w 401 Cr.P.C.

8. Heard R.Subramanian (petitioner), Party-in-Person and Mr.K.Srinivasan, learned Special Public Prosecutor for the respondent.

9. R.Subramanian (petitioner) submitted that he is an Advocate and is practicing for the last five years, previous to which, he was the Managing Director of STSL (A2). He further submitted that the trial Court ought not to have dismissed the discharge petition on the aforesaid ground, but, should have gone into the grounds raised in the discharge petition and thereafter, should have rejected the grounds that did not find acceptance by the High Court in the quash petition and should have given findings in respect of the grounds not adverted to by the High Court.

10. This Court is unable to persuade itself to agree with this specious reasoning in this case. The petitioner filed a discharge petition initially in Crl.M.P.No.752 of 2016, withdrew it, filed a quash petition under Section 482 Cr.P.C., contemporaneously filed another discharge petition in Crl.M.P.No.349 of 2020 and after the High Court had dismissed the quash petition on 03.06.2020 with a categorical findings that the element of deception and criminality is available in the case, it is not open to the petitioner to plead before the trial Court for discharging him from the prosecution. The argument that the trial Court should have entertained the discharge petition albeit the finding of the High Court in the quash petition that there are prima facie materials against the petitioner, deserves to be rejected outright, because, it goes against the pyramidal structure of the Court system. The power of the High Court under Section 482 Cr.P.C. is far more expansive than the power of the trial Court under Section 239 Cr.P.C. Thus, when the High Court, while exercising the powers under Section 482 Cr.P.C., has returned a finding that there are sufficient materials against the petitioner for the criminal prosecution to proceed, the trial Court cannot be heard to say that the allegations are groundless under Section 239 Cr.P.C.

In the result, this criminal revision petition is dismissed as being devoid of merits. The trial Court is directed to proceed with the trial expeditiously. If the petitioner does not co-operate with the trial, he may be remanded to custody under Section 309 Cr.P.C. as held by the Supreme Court in State of Uttar Pradesh Vs. Shambhu Nath Singh¹. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

nsd

To

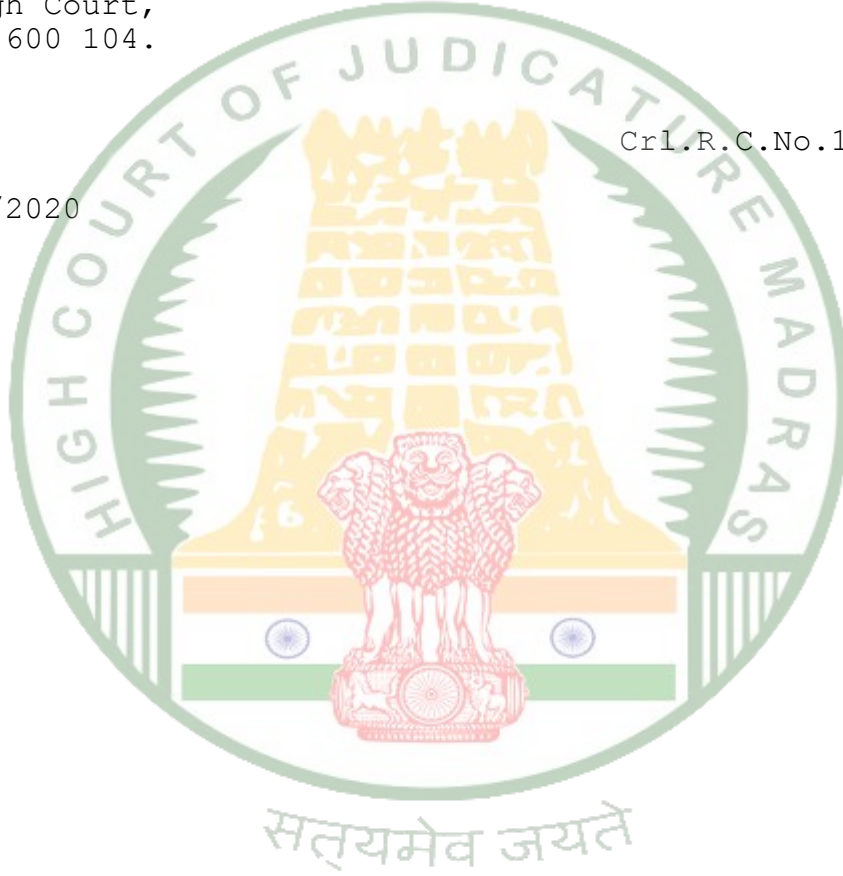
1. The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.

2.The Superintendent of Police,
2nd Floor, CBI Complex,
No.36, Bellary Road,
Ganga Nagar,
Bangalore - 560 032.

3.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

Crl.R.C.No.1052 of 2020

SPD CO
SDR 15/12/2020



WEB COPY