THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 24-01-2020

Order Pronounced on : 27-02-2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Revision Case No. 1341 of 2019

Mrs. K. Jayanthi .. Petitioner

Versus

The Assistant Director
Directorate of Enforcement
Government of India
Ministry of Finance
Department of Finance
Chennai - 600 006 .. Respondent

Criminal Revision Case filed under Section 397 read with 401 of the Criminal Procedure Code praying to call for the records in connection with C.C. No. 13 of 2017 and set aside the order dated 11.10.2019 passed in Crl.M.P. No. 7878 of 2018 in C.C. No. 13 of 2017 pending before the IX Additional Special Court for CBI Cases, Chennai and discharge the petitioner from this case.

For petitioner : Mr. S. Kingston Jerold
For respondent : Mr. Rajnish Pathiyil
Spl.P.P.E.D.Cause

ORDER

R. Subbiah, J

The Petitioner herein has come forward with this Criminal Revision Case praying to set aside the order dated 11.10.2019 passed in Crl.M.P. No. 7878 of 2018 in C.C. No. 13 of 2017, in and by which, the learned IX Additional Special Court for CBI Cases, Chennai refused to discharge the petitioner from the criminal proceedings in C.C. No. 13 of 2017.

2. The defacto complainant by name M. Senthil Kumar, General Manager of Dr. V. Seshiah Diabetes Care Research Institute, Chennai has given a complaint dated 24.11.2014 to the Deputy Commissioner of Police, Central Crime Branch, Office

of the Commissioner of Police, Vepery, Chennai. In the complaint, it was stated that one Kamalakannan was working in their Research Institute in the Accounts Department and during the course of his employment, he had swindled several crores of rupees in collusion with the bank officials. According to the defacto complainant, when the said Kamalakannan was questioned, he admitted his guilt of unauthorisedly transferring funds by forging the signature and by misusing the cheque leaves. Based on this complaint, a case in Crime No. 474 of 2014 came to be registered on 26.11.2014 for the offences punishable under Sections 408, 420, 468 read with 120 (b) of Indian Penal Code (in short IPC). Pursuant to registration of the criminal case, the said Kamalakannan was arrested and remanded to judicial custody. The investigation conducted by the investigation agency revealed startling revelation about the said Kamalakannan that he had invested huge amount out of the booty in various companies by purchasing shares besides he has parted with huge amount to the officials of the Banks. Therefore, the defacto complainant had given yet another complaint dated 10.02.2015 to the Joint Director, Directorate of Enforcement, Chennai to initiate action against the officials of various banks for having colluded with the said Kamalakannan. On the basis of this complaint, an Enforcement Case Information Report (in short ECIR) No. CEZO/ 03/2015 dated 16.02.2015 was registered against the said Kamalakannan and another. While registering the case, the Director, Directorate of Enforcement, on the basis of the material information collected during investigation into the earlier complaint in Crime No. 474 of 2014, the documentary evidence collected thereof, concluded that the proceeds of the crime has been utilised by the accused in the said case for purchasing various properties. Therefore, the Directorate of Enforcement came to a prima facie conclusion that an offence relating to Money Laundering punishable under Section 3 of the Prevention of Money Laundering Act (in short PMLA) has been made out against the accused.

3. After conducting investigation in ECIR No. CEZO/03/2015, a charge sheet has been filed before the learned Principal Sessions Judge at Chennai (Special Court constituted under Section 43 (1) of The Prevention of Money Laundering Act) and it was taken on file as C.C. No. 13 of 2017. In the Criminal case namely C.C. No. 13 of 2017, the Petitioner herein, who is the wife of the said Kamalakannan, was arrayed as second accused. In the charge sheet, reference was made to the statement given by the petitioner herein to the effect that she was a house wife and her husband used to transfer amount into her bank account every month for family expenses. The petitioner's husband Kamalakannan had also given a statement to the effect that he had misappropriated the funds of his employer and invested it in commodity trading, however, he had accounted the money back to the credit of his employer.

4. It is in these circumstances, the petitioner, as Accused No.2, filed Crl.M.P. No. 7878 of 2018 under Section 227

and 239 of the Code of Criminal Procedure seeking to discharge her from the criminal prosecution. According to the petitioner, she is innocent and she has got nothing to do with the alleged offence. According to the petitioner, the defacto complainant, in order to wreck vengeance against the Accused No.1, Kamalakannan and her family has falsely given the instant complaint. Further, the defacto complainant insisted the respondent to register a false case against the petitioner and her husband only to humiliate them in one way or the other. It is also contended that during the course of investigation in this case, there is no document or material recovered from the petitioner and the offence punishable under Sections 3 and 4 of the PMLA is not made out against her. It is also stated that the petitioner never had the knowledge about the activities of her husband, the accused No.1 since there is no contact or interaction between them due to a matrimonial dispute. It is further stated that the property which she purchased in the month of February 2014 for Rs.2,45,000/- was out of the contribution made by her father and it cannot be said to be the one purchased out of the proceeds of the crime. In those circumstances, the petitioner prayed for discharging her from the criminal prosecution.

5. The trial court, upon considering the averments made in the petition for discharge as also the counter affidavit filed by the respondent, concluded that there are sufficient grounds made available to proceed against the petitioner and it is highly pre-mature to discharge the petitioner from the criminal prosecution. The trial court also placed reliance on Section 3 of the PMLA to conclude that the petitioner herein had indirectly indulged or knowingly assisted her husband in amassing wealth through the proceeds of the crime. The trial court also concluded that at the stage of framing charges, the Court has to satisfy that there are strong suspicion, based on the materials available, to hold that the accused has committed an offence and it cannot be decided as to whether the petitioner would ultimately get convicted or acquitted in the criminal case. By coming to such conclusion, the trial court refused to discharge the petitioner from the criminal prosecution.

6. The learned counsel for the petitioner would vehemently contend that the petitioner is only a home-maker and she has no sufficient income to even maintain herself. The petitioner and her husband/accused No.1 were not in good terms and they are living separately due to a matrimonial discord since 2008. While so, it can be reasonably presumed that the petitioner is not guilty of the offence alleged. In such circumstances, the petitioner need not undergo the ordeal of a criminal trial when there are no material available against her. The presumption arrived at by the trial court against the petitioner is without any basis. it is also submitted that there is no material evidence that could be produced by the investigating agency against the petitioner during the course

of trial and the chance of the conviction of the petitioner is very bleak. Above all, the petitioner came to know about the pendency of the criminal proceedings against her upon arrest of her husband/the first accused in this case but it was not properly considered by the trial Court. Therefore, the learned counsel for the petitioner prayed for interference of this Court.

7. Per contra, the learned Standing counsel appearing for the respondent would contend that at the time of framing of charges, it is sufficient for the Court to consider whether materials are available to presume the guilt of the accused. At this stage, the Court need not consider whether those materials would lead to the conviction of the offence in the criminal case. After the charges are framed, the petitioner can participate in the trial and prove her innocence. While so, at this stage, the petitioner cannot be discharged. The learned counsel further stated that there are sufficient materials made available by the respondent in the form of confession statement of the accused, bank statement, documents relating to purchase of property etc., These documents, if scrutinised during trial, would prove that the petitioner had either directly or indirectly abetted and assisted the first accused in the case to purchase several properties either in his name or in the name of the petitioner herein out of the proceeds of the crime. Even though the petitioner is a home-maker, yet properties were purchased in her name and the petitioner cannot feign ignorance of it. When the petitioner contends that she has no wherewithal or resourceful enough to maintain her family, she has to prove as to how she could get the property worth Rs.2,45,000/- registered in her name and the source for purchase of the property. In any event, the effective role played by the petitioner along with her husband can only be substantiated during the course of trial and therefore, the petitioner must be directed to face the trial in the calendar case instead of seeking discharge from the criminal prosecution.

8. In support of his contention, the learned Standing counsel for the respondent relied on the decision of the Honourable Supreme Court in the case of Amit Kapoor vs. Ramesh Chander and another reported in 2012 (9) SCC 460 and contended that a petition under Section 227 of the Code of Criminal Procedure for discharge can be considered by the Court only if there are no suspicion that the petitioner would have committed the offence. In other words, the Court has to apply the test as to whether the un-controverted allegations and the documents submitted therewith would prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion, then the Court can interfere. In the present case, the trial court, on the basis of the material documents produced by the respondent, has satisfied that there exist a prima facie case to proceed against the petitioner. The trial

court, upon a detailed analysis, has rejected the prayer of the petitioner for discharge by assigning valid reasons, which does not call for any interference by this Court.

9. We have heard the counsel for both sides and perused the material records placed. The petitioner, along with other accused were charge sheeted to face trial in the Criminal proceedings for the offences punishable under Sections 3 and 4 of the PMLA. During the pendency of the trial in the criminal proceedings, the petitioner has filed the petition under Section 227 of the Code of Criminal Procedure for discharge from the criminal prosecution. The trial court refused to discharge the petitioner by an order dated 11.10.2019 passed in Crl.M.P. No. 7878 of 2018 in C.C. No. 13 of 2017. Challenging the same, the petitioner has come up with this Criminal Revision Case.

10. Before proceeding further with the rival contentions made in this case, it is necessary to consider as to what are the circumstances under which a petition for discharge under Section 227 of the Code of Criminal Procedure can be considered. In this context, reference can be made to the decision of the Honourable Supreme Court in Amit Kapoor's case mentioned supra, which was relied on by the counsel for the respondent. Useful reference can be made to the decision which reads as under:-

> "11. At the initial stage of framing of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the Court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.
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> 19. Having discussed the scope of jurisdiction under these provisions i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the Courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to stage with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of the jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482

of the Code or together, as the case may be

(i) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

(ii) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offences are not satisfied then the Court may interfere.

(iii) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing charge

(iv) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent jurisdiction.

(v) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused

(vi) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

(vii) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose

(viii) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no element of criminality and does not satisfy the basic ingredients of criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

(ix) Another very significant caution that the Courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute and offence and, if so, is it an abuse of the process of court leading to injustice.

(x) It is neither necessary nor is the Court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

(xi) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

(xii) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

(xiii) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

(xiv) Where the charge-sheet, report under Section 173 (2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

(xv) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e., to do real and substantial justice for administration of which alone, the Court exists."

11. It is evident from the aforesaid Judgment that while considering a case for discharge, in exercise of power under Section 227 of the Code of Criminal Procedure, the court need not analyse or resort to examine the material evidence on record to conclude whether those material evidence would lead to a conviction or acquittal, as the case may be, of the accused in the criminal case. In other words, an astrological precision need not be resorted to by the Court to decide the ultimate end of the trial to which the accused are subjected to. For considering an application for discharge, based on the materials made available by the prosecution, a strong suspicion can be inferred to conclude that a prima facie case exists or not. In the present case, there are several documentary evidence made available against the petitioner in the form of confession statement of the first accused, husband of the petitioner as also the confession statement of the petitioner herself. Further, the sale deed stands in the name of the petitioner was also produced by the respondent to contend that when the petitioner claims herself to be a home-maker, she has to explain as to how she could purchase the immovable property in her name. According to the respondent, the property which stands in the name of the petitioner has been purchased out of the booty shared by the first accused/husband with the petitioner herein. These incriminating circumstances made against the petitioner has to be disproved by the petitioner during trial, particularly to prove that the property has not been purchased out of the proceeds of the crime. The petitioner cannot therefore say that there are no material documents against her and that she need not undergo the ordeal of trial. Even we are of the view that the materials gathered by the respondent against the accused in this case have to be left to be considered by the trial court at the time of trial. Therefore, it is only justifiable that the petitioner has to stand trial and to prove her innocence. Therefore, at the stage of considering a case for discharge, it is not for the trial court or the revisional Court to consider the merits or otherwise of the correctness of the material evidence. All that is required is to see whether there is a strong suspicion that the accused might have been involved in the offence complained of. If such a suspicion is palpable, on verification of the material evidence, then the Court cannot discharge an accused from the criminal prosecution. The trial court, based on the materials produced by the respondent, has raised an initial presumption that the property stands in the name of the petitioner was purchased through the proceeds of the crime. Such a presumption has to be disproved by the petitioner only at the time of trial. It is also seen from Para No.21 of the counter affidavit filed by the respondent before the trial court that the investigation revealed that a part of proceeds of the crime was lying in the form of

immovable property in the name of the accused No.2, petitioner herein. If that be so, the claim of the petitioner for discharge cannot be considered. The petitioner must stand trial and to prove her innocence only after trial. Therefore, we are of the considered opinion that the trial court has rightly dismissed the petition for discharge and it does not call for any interference by us.

12. In the result, the order dated 11.10.2019 passed in Crl.M.P. No. 7878 of 2018 in C.C. No. 13 of 2017 on the file of IX Additional Special Court for CBI Cases, Chennai is confirmed. The Criminal Revision Case is dismissed. Consequently, connected Crl.M.P. No. 18047 of 2019 is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Director
Directorate of Enforcement
Government of India
Ministry of Finance
Department of Finance
Chennai - 600 006

+1cc to M/s.Rajnish Pathiyil Spl PP.SR.17022

Crl.R.C No. 1341 of 2019

GMR(CO)
CB(26/05/2020)