BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation : 13.02.2020

Date of Pronouncement:18.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL.O.P (MD) No.525 of 2020

G.Pitchaimani ... Petitioner/Accused No.8

Vs

State rep. by
The Inspector of Police,
Central Bureau of Investigation, ACB
Sastri Bhavan, Chennai
(FIR No.Rc.21(A)05 dt.27.04.2005) ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to C.C.No.13 of 2006 on the file of the II Additional District Court for CBI Cases, Madurai and quash the same as against this petitioner.

For Petitioner : Mr.C.Muthusaravanan

For Respondent : Mr.N.Nagendran, Spl. P.P. For CBI

O R D E R

The petitioner, who is arrayed as A8 in C.C.No.13 of 2006 on the file of the II Additional District Judge for CBI Cases, Madurai and facing charges the offence under Sections 120-B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, has filed this quash petition.

2.**The case of the prosecution, briefly stated in the petition, are as follows:**

(i)A1, the Branch Manager of Punjab National Bank, Anna Nagar Branch, Madurai in conspiracy with A2, private individual and other private individuals viz., A3 to A8, who are close friends and family members of A2, had joint together in cheating the funds of Punjab National Bank, Anna Nagar Branch, Madurai. In pursuance of the conspiracy, the family members and the friends of A2 has submitted proposal for Cash Credit facilities of Rs.10 lakhs and A1, by abusing his official position, entertained the application for Cash Credit limits knowing fully well that the value of the properties given as security are much below the value of Cash Credit facilities and obtained valuation report and legal opinion as per his requirements and had sanctioned loan. A2 used this loan other than for what purpose the loan was granted and utilised for his personal benefits. The loan had become NPA.

(ii)As regards this petitioner is concerned, in pursuance of the conspiracy, this petitioner opened a current account in Punjab National Bank, Anna Nagar Branch in the name of M/s.Sree Meenakshi Automobiles, a fictitious firm on 02.12.2002. A8 submitted a proposal for Cash Credit facility of Rs.10 lakhs on 09.12.2002 and against various standing instructions of the bank, within 7 days of opening of the current account, in pursuant to the conspiracy, the loan was granted. Address given by A8 as the place of business, it is found that no such business had taken place. Further, 105 cents of land in S.No.99/1A at Arumbanur village was given as the collateral security with an inflated value of the property as Rs.13,12,500/-, further without obtaining any stock statements and proper verification, the said loan was granted. The entire amount of Cash Credit facilities were withdrawn by A2 using several persons during the period between 16.12.20092 and 08.04.2003 and thus the amounts were diverted for other purposes. Hence, all the accused have conspired together in causing wrongful loss to Punjab National Bank and the accused made wrongful gain for themselves. Hence, a case came to be registered against the accused for the offences under Sections 120-B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

3.**Submissions of the learned counsel appearing for the petitioner as follows:**

(i) The petitioner was running an Automobile business in the name and style of M/s.Sree Meenakshi Automobiles at the address mentioned in the loan form and the business was ongoing business; due to recession and uncertainty in the market, the business could not be carried out as initiated and projected and hence, the loan could not be repaid as per the agreed term and the loan became NPA; in the meanwhile, the bank has issued SARFAESI notice and approached DRT for recovery of money. Thereafter, the petitioner had approached the bank seeking one time settlement of the account of M/s.Sree Meenakshi Automobiles; the bank, after getting approval from the authorities approved the onetime settlement with terms and conditions. One of the term is that after the settlement, all the cases including the criminal case would be withdrawn.

(ii)The bank, by letter dated 10.12.2019 had acknowledged the receipt of full compromise and also given a no due certificate and stated that the Court cases filed against the petitioner and guarantors will be withdrawn. This Court quashed the proceedings against one of the accused, who is similarly placed.

(iii)As against the petitioner concerned, the charges against him are under Section 120-B r/w 420 of IPC only and as regards the provision of Prevention of Corruption Act is concerned, the petitioner is not a public servant, the said offence would not attract the petitioner.

(iv)The learned counsel relied upon a decision of the Apex Court in ***CBI Vs. Narendra Lal Jain*** reported in ***(2014) 2 Supreme Court Cases (Cri) 579***, wherein, the Apex Court has held as follows:

> "9. Per contra, the learned counsel for the respondents (accused) have submitted that the High Court, while quashing the criminal proceedings against the respondents (accused), had correctly relied on the judgments of this Court in Central Bureau of Investigation, SPE, SIU(X), New Delhi vs. Duncans Agro Industries Ltd., Calcutta[2] and B.S.Joshi and Others vs. State of Haryana and Another[3]. Learned counsel has submitted that though simultaneous criminal and civil action on same set of facts would be maintainable, in Duncans Agro Industries Ltd. (supra) it has been held that the disposal of the civil suit for recovery, on compromise upon receipt of payments by the claimants, would amount to compounding of offence of cheating. No error is, therefore, disclosed in the order of the High Court insofar as the offence under Section 420 IPC is concerned. As for the offence under Section 120-B it is submitted that this Court in B.S. Joshi (supra) has held that the power under Section 482 Cr.P.C. to quash a criminal proceeding is not limited by the provisions of Section 320 Cr.P.C. and even if an offence is not compoundable under Section 320 Cr.P.C., the same would not act as a bar for the exercise of power under Section 482 Cr.P.C. As the dispute between the parties have been settled on the terms of the compromise decrees, it is submitted that the High Court had correctly applied the principles laid down in B.S. Joshi (supra) to the facts of the present case.
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> 10. Learned counsel has further pointed out that the charges framed against the accused-respondents are under Section 120-B/420 of the Indian Penal Code and the respondents not being public servants, no substantive offence under the PC Act can be alleged against them. The relevance of the views expressed in para 61 of the judgment of this Court in Gian Singh (supra), noted above, to the present case is seriously disputed by the learned counsel in view of the offences alleged against the respondents.
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> 11.The learned counsel has also submitted that by the very same impugned order of the High Court the criminal proceeding against one Nikhil Merchant was declined to be quashed on the ground that offences under Sections 468 and 471 of the IPC had been alleged

against the said accused. Aggrieved by the order of the High Court the accused had moved this Court under Article 136 of the Constitution. In the decision reported in Nikhil Merchant vs. Central Bureau of Investigation and Another[4] this Court understood the charges/allegations against the aforesaid Nikhil Merchant in the same terms as in the case of the accused-respondents, as already highlighted. Taking into consideration the ratio laid down in B.S. Joshi (supra) and the compromise between the bank and the accused Nikhil Merchant (on the same terms as in the present case) the proceeding against the said accused i.e. Nikhil Merchant was quashed by the Court taking the view that the power and the Section 482 Cr.P.C. and of this Court under Article 142 of the Constitution cannot be circumscribed by the provisions of Section 320 Cr.P.C.

12.It is further submitted by the learned counsel that the correctness of the view in B.S. Joshi (supra) and Nikhil Merchant (supra) were referred to the three Judges Bench in Gian Singh (supra). As already noted, the opinion expressed in Gian Singh (supra) is that the power of the High Court to quash a criminal proceeding under Section 482 Cr.P.C. is distinct and different from the power vested in a criminal court by Section 320 Cr.P.C. to compound an offence. The conclusion in Gian Singh (supra), therefore, was that the decisions rendered in B.S. Joshi (supra) and Nikhil Merchant (supra) are correct.

13.In the present case, as already seen, the offence with which the accused-respondents had been charged are under Section 120-B/420 of the Indian Penal Code. The civil liability of the respondents to pay the amount to the bank has already been settled amicably. The terms of such settlement have been extracted above. No subsisting grievance of the bank in this regard has been brought to the notice of the Court. While the offence under Section 420 IPC is compoundable the offence under Section 120- B is not. To the latter offence the ratio laid down in B.S. Joshi (supra) and Nikhil Merchant (supra) would apply if the facts of the given case would so justify. The observation in Gian Singh (supra) (para 61) will not be attracted in the present case in view of the offences alleged i.e. under Sections 420/120B IPC."

(v)Further, he relied upon the decision of the Apex Court in ***C.A.No.1176 of 2015 dated 08.08.2019*** in the case of ***Union of India***

Vs. A.G.Shok, wherein, the principles of ***Narendra Lal Jain's*** case has been upheld. Further, the counsel relied upon the yet another decision of the Apex Court in CBI V. B.B.Agarwal reported in (2020) 1 Supreme Court Cases (Cri) 429, wherein, the Apex Court quashed the criminal proceedings in favour of the parties settling the bank of its dues with reference to charges and documents of the case. Further, in this case, there is no other charge other than 420 of IPC, which is a compoundable offence. Thus, he prayed for allowing of the petition.

4.**The learned Special Government Pleader appearing for the CBI Cases filed counter and his contentions are as follows:**

(i)Pursuant to the conspiracy, the petitioner had opened an account in Punjab National Bank in the name of M/s.Sree Meenakshi Automobiles and he was given Cash Credit Facilities of Rs.10 lakhs, which amount was also withdrawn by A2 by using various persons, however, the loan was not utilized for the purpose for which the loan was granted. Further, the collateral value was inflated by obtaining a false valuation certificate and legal opinion. A1 without inspecting the business premises of M/s.Sree Meenakshi Automobiles and the collateral documents submitted to the bank and without obtaining any stock statement, in pursuance of the conspiracy, had granted Cash Credit limit enabling A2 to withdraw the same and utilise for his own purposes.

(ii)The petitioner's company was functioning from a small room taken on rent. The settlement arrived later cannot be an excuse to escape from the legal proceedings. The petitioner coming to a settlement with the bank would not absolve of criminality committed by him. The petitioner had committed the offence of Section 420 IPC, however, the Omnibus charge were framed against him under the provisions of Prevention of Corruption Act also.

(ii)The learned Special Public Prosecutor relied upon the decision of the Apex Court in ***CBI Vs. Mainder Singh decided on 28.08.2015*** and also the decision in ***State of Maharastra through CBI V. Vikram Anantrai Doshi decided on 19.09.2014.*** Thus, he prayed for dismissal of this petition.

5.Heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor appearing for CBI Cases and perused the materials available on records.

6.Considering the rival submission made on either side and on perusal of the materials available on records, admittedly, the charge as against the petitioner is only for the offence under Section 420 IPC. The decisions relied on by the learned Special Public Prosecutor are the cases, which are inclusive of forgery charges, which are grave in nature. Further, the Apex Court had approved the compromise and settlement of dues of the bank, which would attract the offence under Section 420 IPC simpliciter.

7.As earlier referred, the petitioner had paid the amount due to the bank by way of one time settlement and the bank also approved the same and issued no due certificate and also withdrawn the DRT proceedings as against the petitioner. It is to be seen that in this case, the person, who had given a valuation certificate as well as the legal opinion are not charged in the trial along with the petitioner and it is only non payment of loan amount, which he had paid now. In view of the dues of the bank being settled and the bank had also agreed for withdrawal of the case as against them and the principles of ***Narendra Lal Jain's case*** have been subsequently apporoved by the Apex Court, this Court is inclined to quash the criminal proceedings as against the petitioner.

8.Accordingly, this criminal original petition is allowed and the criminal proceedings in C.C.No.13 of 2006 on the file of the II Additional District Court for CBI Cases, Madurai is quashed as against the petitioner/A8 alone.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

Arul

To

1.The II Additional District Judge for CBI Cases, Madurai.

2.The Inspector of Police,Central Bureau of Investigation, ACB
Sastri Bhavan, Chennai.

3.The Special Public Prosecutor for CBI cases,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.C.MUTHUSARAVANAN, Advocate (SR-7134[F] dated 19/02/2020)

Order made in

CRL.O.P (MD) No.525 of 2020

18.02.2020

DKS(CO)

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