BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.02.2020

Pronounced on : 16.03.2020

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Crl.O.P(MD).No.1999 of 2020

and

Crl.M.P(MD).No.996 of 2020

Srinivasan ...Petitioner/Accused No.5

Vs.

State Rep. by,
The Inspector of Police,
SPE:CBI:ACB:Chennai,
RC/MA1/2015/A0007. ...Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.11 of 2017, on the file of the II Additional District Court for CBI Cases, Madurai and quash the same as against this petitioner is concerned.

For Petitioner : Mr.C.Muthu Saravanan

For Respondent : Mr.N.Nagendran
Special Public Prosecutor

ORDER

The petitioner is facing trial as 5^{th} accused in C.C.No.11 of 2017 for the offence under Sections 120-B r/w 420, 408, 477A, 471 and 201 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 before the II Additional District Court for CBI Cases, Madurai.

2.The respondent filed charge sheet before the learned II Additional District Judge for CBI Cases, Madurai and the same was taken on file as C.C.No.11 of 2017. The case of the prosecution in brief is that A1 Ganesh Kumar, in connivance with A2 to A8 created bogus companies viz., M/s.Naga Agencis, M/s.Shri Naga Trading Company, K.N.Carriers and Varshini Associates and transferred the amounts from the accounts of original companies of the complainant Balakumar viz., M/s.Sri Naga Agencies (dealing with Pepsi Products), M/s.Shri Naga Trading Company (dealing with Hindustan Unilever Limited, K.N.Carriers (Transport business dealing with only Pepsi products) and Varshini Associates (Clearing and Forwarding Trade) having Transactions with ICICI, Thallakulam, IDBI, K.K.Nagar, Madurai and Cash Credit Accounts and Savings Bank Account and misappropriated the funds by forging the signatures of the complainant in the blank cheques and connected documents and thereby, cheated the complainant by causing wrongful loss to him and wrongful gain to themselves.

3.During the period between 2008 and 2012, the petitioner/A5 was working as Chief Manager/Branch Manager, Canara Bank, North Veli Street Branch, Madurai and to cheat the defacto complainant entered into criminal conspiracy by colluding with other accused and knowingly received forged and false documents from A1 to open Cash Credit Account in the name of the defacto complainant's company viz., M/s.Naga Agencies and fraudulently changed the signatory authority of the defacto complainant and allowed A1 to operate a parallel business in the name of the defacto complainant's company. Further, the petitioner had extended the loan in the name of the complainant without any sanction, in the pretext of trade and business and thereby, the petitioner had misappropriated the amount and allowed the other accused to screen the credit liability in the bogus account by colluding with each other.

4.The petitioner while working as Chief Manager/Bank Manager of Canara Bank, North Veli Street, Madurai from July 2008 to July 2015, the alleged offence has been committed. On completion of the investigation, charge sheet was filed before the trial Court. In the meanwhile the petitioner was posted as Chief Manager/Divisional Manager at Canara Bank, DIT Wing Head Office, Bangalore. Further the nature of work is different in two offices. Hence, no sanction for prosecution is requried and charge sheet was filed without sanction under Section 19 of the Prevention of Corruption Act.

5.The primary contention of the learned counsel for the petitioner is that without sanction taking cognizance would arise only in the case of change of nature of work or when the petitioner cease to be a public servant. The petitioner is holding the same post except for change in his designation according to the administrative instructions. The sanction for prosecution under the Prevention of Corruption Act was sought by the CBI and the bank had denied the same. Further, the CBI recommended the bank to proceed against the petitioner for regular departmental action for procedural lapses. The petitioner, admittedly, on the date of filing the final report as well as the date of taking cognizance of the offence by the lower Court, he was a public servant and no sanction was obtained by the respondent before filing the charge sheet. As per Section 19 of the Prevention of Corruption Act, 1988, sanction is absolutely necessary to proceed against the petitioner under the Act.

6.The learned counsel further submitted that the respondent claim that the misconduct committed by this petitioner is in different capacity than one which presently held by him and the dictum of Hon’ble Apex Court in C.A.No.721 of 2016 in the case of ***L.Narayana Swamy Versus State of Karnataka and others reported in (2016) 3 SCC (Cri) 696,*** is not applicable to the facts and circumstances of the case. The respondent suppressed the vital fact that they had applied for sanction from the competent authority and the competent authority refused to accord sanction. The petitioner on the date of commission of the alleged offence he was in the cadre of Scale IV officer and in charge of the branch operations as Chief Manager and now also he is Scale IV officer as General Manager (Human Recourses Wing, Head Office) only the nomenclature of the post has changed. Therefore, the petitioner is in different capacity cannot be countenanced and prayed for quashing of the proceedings against him.

7.In support of his contention, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of the ***Chittaranjan Das Versus State of Orissa reported in (2011) 7 SCC 167*** the relevant portion of the Judgment is extracted as follows:-

> *"14.We are of the opinion that in a case in which sanction sought is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of Public Servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility."*

8.The Special Public Prosecutor appearing for the respondent submitted that the petitioner had conspired with the other accused in creating forged documents and committed the offences including forgery for the purpose of cheating, misappropriation on the account of the defacto complainant whihc has been done in a well concerted manner over a long duration. The petitioner during July 2012 when the offence was committed, he was the Chief Manager/Branch Manager, Canara Bank North Veli Street, Madurai and now he has been transferred and posted as Chief Manager/Divisional Manager of Canara Bank, DIT Wing Head Office, Bangalore. The nature of work in these two offices are completely different. While the petitioner was Branch Manager of a Bank, he had committed the offences. However, when the charge sheet was filed, the petitioner was without any financial power and he is only entrusted with Administrative function. The Hon'ble Supreme Court in ***L.Narayana Swamy Versus State of Karnataka and others reported in (2016) 3 SCC (Cri) 696,*** held as follows "*even if he continues to be a public servant but in a different capacity or is holding a different office than the one which is alleged to have been abused, still there would be no question of sanction*".

9.Thus the misconduct committed by the petitioner is in different capacity than the one which he is presently holding. According to the dictum of the Hon'ble Apex Court ***L.Narayana Swamy Versus State of Karnataka and others reported in (2016) 3 SCC (Cri)***

696 there was no necessity to obtain sanction for prosecution and therefore, the respondent filed the charge sheet and the trial Court accepted the same and took cognizance and issued summons to the accused including the petitioner.

10.The learned Special Public Prosecutor further submitted that earlier in this case charge sheet came to be filed on 30.06.2017, in which the denial of sanction by the competent authority has been mentioned. On 03.07.2017, the trial Court returned the same to comply 12 defects and thereafter, the defects were complied with and amended charge sheet was filed on 20.10.2017. In the defects mentioned by the trial Court, query No.11 pertains to no sanction has been obtained for the petitioner. Thereafter, relying upon the decision of the Apex Court in the case of ***L.Narayana Swamy Versus State of Karnataka and others reported in (2016) 3 SCC (Cri) 696,*** submitted the charge sheet and the same was accepted by the trial Court.

11.Considering the rival submission and on perusal of the materials, this Court finds that in the charge sheet filed on 30.06.2017, it is clearly mentioned that the sanction for prosecution against the petitioner as required under Section 19 of the Prevention of Corruption Act, 1988, has been denied by the competent authority. Further, it is revealed from the communication of Official Memorandum of Central Vigilance Commission, New Delhi in No.1702/BNK/18/352275, dated 26.07.2017 is extracted as follows:-

OFFICE MEMORANDUM

Sub: Sanction for Prosecution in case RC MA1 2015 A 0007 dated 17.02.2015 against Sri S R Srinivasan, Divisional Manager, Canara Bank.

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Please refer to your letter No.VIG:3022:CBI-507:2017:KVS dated 15.05.2017 on the subject cited above.

2. The case has been examined in the Commission. Considering the facts and circumstances of the case, the Commission in agreement with DA & CVO advises for denying sanction of prosecution against Sri.S.R.Srinivasan, Divisional Manager, Canara Bank as allegations indicate procedural lapses.

3.Receipt of this OM may be acknowledged.

(MANISH TANDON)

ADVISOR

Canara Bank

(Shri Anil Kumar Mittal, CVO)

Vigilance and Anti Corruption Wing,

5^{th} Floor, No.112, J C Road,

Bangalore-560 002.

Copy to:

The Superintendent of Police, Central Bureau of Investigation, Anti Corruption Branch, III Floor, Shastri Bhavan, No.26, Haddows Road, Nungambakkam, Chennai-600 006 w.r.t, CBI letter No.C1/RC 7(A)/2015/CBI/ACB/CHEN dated 16.06.2017.

(MANISH TANDON)

ADVISOR

The respondent received the above official memorandum on 04.08.2017.

12.Thus it is crystal clear that the sanction of prosecution against the S.R.Srinivasan petitioner herein has been refused. The Hon'ble Apex Court in the case of ***State of Himachal Pradesh Versus Nishant Sareen reported in (2014) 14 SCC 527*** had clearly held that the sanction to prosecute the public servant on review may be granted only where fresh materials have been collected by the investigation agency subsequent to earlier order and the matter is to be reconsidered by sanctioning authority in light of the fresh materials. In this case no fresh materials are available and relied by the prosecution.

13.Once the sanction is refused by the competent authority under Section 19 of the Prevention of Corruption Act, 1988, remedy is available to the respondent, if aggrieved, on refusal of grant of sanction ought to have challenged the order of sanctioning authority. Further, as referred in the case of ***Chittaranjan Das Versus State of Orissa reported in (2011) 7 SCC 167*** it is held that when sanction sought was refused by the competent authority while the public servant was in service, he cannot be proceeded and prosecuted.

14.In view of the categorical finding of the Hon'ble Apex Court that once the sanction is refused by the competent authority, the Petitioner cannot be prosecuted and proceeded with the offence under the Prevention of Corruption Act, 1988.

15.In view of the above facts, further in office memorandum of Central Vigilance Commission, New Delhi in No.1702/BNK/18/352275, dated 26.07.2017, the petitioner is referred as Shri.S.R.Srinivasan, Divisional Manager, Canara Bank. The reliance of the prosecution on the Judgment in ***L.Narayana Swamy Versus State of Karnataka and others reported in (2016) 3 SCC (Cri) 696,*** would not arise in this case.

16.In the result, this Court quashes the charges framed against the petitioner under the Prevention of Corruption Act, 1988, alone. The trial Court to proceed against the petitioner for other offences. Accordingly, this Criminal Original Petition is Parly-Allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

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

2.The Inspector of Police,
SPE:CBI:ACB:Chennai,

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

+1 CC to M/s.C.MUTHUSARAVANAN, Advocate (SR-11836[F] dated 16/03/2020)

PRE-DELIVERY ORDER IN
Crl.O.P(MD).No.1999 of 2020
16 .03.2020

KB(26.06.2020) 6P 5C