BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 06.02.2020
Orders pronounced on : 19.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.R.C.(MD)No.941 of 2019
and
Crl.M.P.(MD) Nos.11224 and 11226 of 2019

1.M.Nandagopal
2.T.Krishnamurthy ... Petitioners

Vs.

State rep. by Superintendent of Police,
CBA/ACB/Chennai,
Chennai - 600 006.
(RC MA1 2011 A 0042) ... Respondent

PRAYER: Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to Crl.M.P.No.1631 of 2018 in C.C.No.1 of 2014 dated 27.11.2019 pending on the file of the Chief Judicial Magistrate, Trichy and set aside the same and discharge the petitioners.

For Petitioners : Mr.N.R.Elango, Senior Counsel for Mr.A.Saravanan

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

O R D E R

The petitioners/A2 and A3 in C.C.No.120 olf 2014 on the file of the Chief Judicial Magistrate, Trichy, who are facing trial along with 5 others for the offences under Sections 120(B) r/w 468, 468 r/w 471 and 420 IPC filed discharge petition in Crl.M.P.No.1631 of 2018, which came to be dismissed by the trial Court on 27.11.2019, against which, the present revision has been filed.

2.**The case of the prosecution, in brifef, is as follows:**

(i)A1 Company viz., D1 Mohan Bio Oils Ltd. entered into an agreement with Indian Bank for sanction of agricultural loans to prospective borrowers sponsored by them, who comply the guidelines/conditions for sanction of Agricultural Medium Term Loans for Jatropha Contract, further, the farmers should be enrolled with A1 Company; the Farm should be within 50 kilometers from the implementing branch and the Farm should be in a contiguous block of minimum 25-30 acres in a village; the company shall ensure that a village/block of 25-30 acres is given to one bank and avoid multiple banks; margin of 10% of the project cost to be paid; among other conditions, the company has to conduct field inspection and submit status report once in six months; the company shall ensure the supply of healthy seedlings to the farmers and necessary technical support to be provided ; crop insurance for Jatropha is mandatory and in the event of any false certification issued by the company officials, the company shall undertake the responsibility; Loan application to be certified by the company on the bonafide of the farmers, number of acreage being planted; further random inspection of the planted area to be done and the company shall undertake the responsibility to repay the loan obtained on account of falsification by the farmers and non-plantation.

(ii)Investigation revealed that the loan sanctioned were on the basis of false documents against non existence farm, no insurance paid, which is mandatory, no standard and proper seedlings were supplied and in fact, in some of cases, there was no cultivation and false status report, false invoices, false chitta, adangal, land records and VAO certificates have been created by the company and its employees. Thus, A1 to A7 along with approvers conspired together cheated Indian Bank, Musiri Branch in availing Jatropha loan by producing forged chitta, adangal and thus, the petitioners caused wrongful loss to the Bank to the tune of Rs.1,08,81,872/-. Hence, the charge.

3.**Submissions of the learned senior counsel appearing for the petitioners are as follows:**

(i)There is no cogent and acceptable evidence produced to establish a prima facie case as against the petitioners. It was a specific case of the prosecution that there were irregularities in the disbursement of agricultural loans by the Indian Bank, which is alleged to suffer loss. The Bank did not accord sanction to prosecute its officers. The General Manager, Rural Banking Department states that there were no adverse or fraud report regarding Jatropha crop loan. Further, the distribution of loan was within the discretion of the officials of Indian Bank and thus no conspiracy of cheating would arise. The petitioners are no way involved in processing of loan papers and availment of loan by the farmers. The loan agreement was commercial undertaking carries risk associated with it and any loss cannot be termed as cheating. The loss, if any sustained by the bank, being true, so for no recovery proceedings has been initiated. The case projected by the prosecution is based on the approver's evidence viz., Krishnamoorthy and Manivaasan. Ongoing through their statements, it is seen that they have nowhere whispered anything as regards to the petitioners and hence, no case to proceed against the petitioners.

(ii)Investigation has been conducted in a most cavalier fashion. All the statements have been merely cut, copied and pasted from a single format. All the statements of the witnesses have to be seen that it is the employee of the company viz., A6, who is instrumental in preparing and submitting all these documents to the bank and all the farmers have admitted that they had received the loan amount, planted seedlings and due to various factors, the seed could not produce their desired result and A6 advised them not to repay the loan and promised that the loan would be 100% subsidy. Nowhere, it is stated that the petitioners made any false representation or created any false documents. Since they have been the Directors of the company, they have been roped in.

(iii)From the statement of the Village Administrative Officer, it could be seen that one of the accused taken the details of chitta, adangal. From the statements of witnesses from Agricultural University, it is seen that the normal germination of the seed is 50% to 60% and germination depends upon the period of keeping the seed since it has oil content in it. Jatropha is a perennial crop which will start its yielding from 3rd year onwards and may be yielding upto 25 years and research in this field is still going on. Thus, failure of the crop would not be attributed to the petitioners. None of the witnesses have whispered anything against the petitioners and the petitioners are not the cause for identifying ineligible borrowers and in fabrication of any documents for the borrowers in getting loan.

(iv)With regard to any false certificate, the company undertakes the responsibility for the false loan. Hence, no criminal prosecution should be launched against the petitioners. Thus it is seen that they are not in active participation, in consultation with the co-accused employees and with the bank in implementation of the scheme of sanctioning and disbursing Agricultural Medium Term Loan (AMTL) for the cultivating Jatropha. Further, it is seen that as per the arrangement, the company has assured the following:

> "Each loan shall be verified the company for all the details about the farmer and certified with regard to the bonafide of the farmer, number of acreage being planted, before submissions to the branch, Undertaking the responsibility for the loan amount obtained on the basis of false certification issued by the company officials. The company should also ensure plantation of crop as per schedule given in the application.
>
> In this regard, the company has agreed to give an undertaking letter to remit the entries bank dues of the borrowers from the company's resources, in case of

default (due to improper identification of beneficiaries/selection of farmer without availability of irrigation water/non-suitability of crop/issues related to non planting of crops, any fraudulent activities by the company officials etc.) as the bank is relaxing the distance norms as above."

(v)The letter dated 02.02.2006 of the company addressed to the bank has been produced, wherein, some clarification had been sought with regard to disbursement of crop loan based on the certification by the company. From the letter dated 03.02.2006, the company has given undertaking, which is signed by the 2nd petitioner/A3, in which, it has been stated that "The Company undertakes the responsibility for the loan amount obtained on the basis of false certificate issued by the Company Officials". They have also produced a letter given by A6 to the Vigilance Officer, Indian Bank, wherein, he absolved all the other accused taking the responsibility on him. Thus, he prayed for quashing the criminal proceeding pending as against the petitioners herein.

4.**Submissions of the the learned Special Public Prosecutor for CBI Cases are as follows:**

(i)A1 is the company and A2 and A3 are its Directors and they are the main force, active in the day-to-day function of the company. The other accused are only employees and agents of the company, who are acted on the direction of the petitioners herein. The company would identify the prospective growers of Jatropha and each application shall be verified by the company on the details about the farmers, verify the bonafide of the farmers, number of acreage being planted and with these particulars submit the loan application to the bank, during investigation, it revealed that the extent of land was inflated as well as other particulars so as to make them eligible to avail loan under the scheme.

(ii)The company submitted forged chitta, adangal and other documents in the names of the beneficiaries and fraudulently got the loan sanctioned for cultivation of Jatropha to the tune of Rs.75,84,410/-, out of which, the company received Rs.30,19,650/- towards crop insurance, seedlings and manure and the remaining amount was disbursed to the individuals borrowers through their savings bank account towards labour/maintenance. The company had not availed insurance and swindled the amount sanctioned. The company exploited the illiteracy and innocence of the tribal people from Patchamalai village and identified 162 such farmers and projected them as though they are cultivating Jatropha crops. In fact, the word cultivated only Paddy, Banana, Coconut and Cashew trees and they have not cultivated Jatropha for A1 company. The petitioners along with other accused and the approvers had conspired together and cheated the Indian Bank, Musiri Branch in availing Jatropha crop loan to the tune of Rs.1,08,81,872/-. The petitioners are the master mind for the above offence.

(iii)The statement of the witnesses from the revenue department viz.,(W-166 and 168) would clearly prove that the revenue records pertaining to agricultural field for cultivation of Jatropha submitted by A1 company to the bank at the instance of the petitioners were forged and manipulated one. With the manipulation of records, ineligible farmers were shown as eligible and loan was sanctioned and major portion of the loan was credited in the account of A1 company, where the petitioners were functioning as top executives. Out of 162 loans, 89 borrowers did not own lands as mentioned in the land records. Further, A3, on instructions of A2, had given an undertaking to repay the entire loan amount, despite the initiation of the case, completion of investigation, finally on charge sheet, A2 and A3 had so far not made any attempt to make the payment as per the undertaking. Thus, there are enough and more materials to proceed against the petitioners and at this stage the probative value of the documents and veracity of witnesses need not be gone into. The trial Court had given a well reasoned and detailed order, wherein, the role of the petitioners along with other accused in commission of the offence have been clearly deliberated which need not be interfered with.

5.Heard the learned counsel appearing for the petitioners 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, it is seen that the petitioners had meetings and deliberations with the General Manager of the Indian Bank and they arrived at an agreement and thereafter, there were some modifications and amendments to the original agreement, in furtherance the second petitioner had given a letter of undertaking to the bank. In this case, forged revenue records are created and using these forged documents, loans were obtained, the revenue officials had stated about the forgery of chitta, adangal and other revenue records, which confirmed the criminal act and conspiracy of the petitioners and other accused with each other. The petitioner's contention that it is the employees, who had committed the above offence and they were nowhere responsible cannot be countenanced for the reason that major portion of the loan amount had been credited to the company account and the company is the beneficiary of which, the petitioners are Directors, who are the ultimate beneficiaries. The employees had only facilitated the company to enrich itself and caused wrongful gain to the Bank. The Village Administrative Officers viz., L.W.158, L.W.159 and L.W.160 have stated about the forging of the chitta, adangal. Further, the senior officers of the company had abetted the same undertaking to repay the loan have not been honoured. Despite lapse of 14 years from the date of undertaking, the swindled public money has not been paid, further innocent farmers have been used to swindle public money. Thus, these petitioners along with other accused have executed a well orchestrated crime in conspiracy with each other and there are enough materials against the petitioners to be proceeded with.

7.In view of the same, this Court does not find any infirmity or irregularity on the order passed by the lower Court and finds no reason to interfere with the same. Accordingly, this revision is dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Arul

To

1.The Chief Judicial Magistrate,
Trichy.

2.The Superintendent of Police,
CBA/ACB/Chennai,
Chennai – 600 006.

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

Copy to:
The Record Clerk, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.A.SARAVANAN, Advocate (SR-7075 & 7113[F] dated 19/02/2020)

Order made in
Crl.R.C.(MD)No.941 of 2019
and
Crl.M.P.(MD) Nos.11224 and 11226 of 2019
19.02.2020

JMN(03.03.2020) 6P : 8C