IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1270 of 2019
and
Crl.M.P.No.17129 of 2019

Nagajothi
W/o.T.Rajendran ... Petitioner /Petitioner/ Accused No.2

Vs

The State Represented by
The Inspector of Police,
CCB, EDF-II, Group-4,
Egmore, Chennai.
(Crime No.275 of 2015) ... Respondent/Respondent/ Complainant

PRAYER: Criminal Revision case filed under Article 397 r/w 401 of Criminal Procedure Code to call for the records from the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8 in Crl.M.P.No.5978 of 2018 in C.C.No.4818 of 2018 dated 07.11.2019.

For Petitioner : Mr.R.Ganesan

For Respondent : Mr.R.Suryaparakash
Government Advocate

ORDER

This Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C. to call for the records from the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8 in Crl.M.P.No.5978 of 2018 in C.C.No.4818 of 2018 dated 07.11.2019.

2.The respondent police registered the case against the petitioner and others in Crime No. 275 of 2015 on the file of the respondent police. After the investigation, the respondent police laid the charge sheet before the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8. The learned

Magistrate taken the charge sheet on file in C.C.No.4818 of 2018. During the pendency of the case, the petitioner and the first accused filed an application under Section 239 of Cr.P.C seeking discharge from the case. After enquiry the said application was dismissed by the learned Magistrate. Challenging the said order the petitioner is before this Court.

3.The learned counsel for the petitioner would submit that the respondent police converted the simple civil dispute into a criminal case without knowing the basic ingredients of service law that when an employee is working in the contract of employment, the employer could only initiate action under service jurisprudence or under labour law. The alleged offences are completely vague and not sustainable under law and there is absolutely no prima facie case to frame the charges. The first accused carried trade in broiler chicken under the defacto complainant's company and simultaneously doing trade in chicken with Sri Aiyannar Traders, Saheen Chicken Center and K.M. Broilers with the help of engaging some casual labourers and this petitioner was getting payment by cash and also by bank transfer into his bank account and also into the bank account of his wife. In such a way, he has received a sum of Rs.1,25,00,000/-.

4.The petitioner has done the private business only with the consent and full knowledge of the defacto complainant. This petitioner is no way connected with the case since she is the wife and doing chicken business privately and raised income and it fells under agricultural products. Since the husband of the petitioner was working as Assistant General Manager with the defacto complainant company during the period 2008 to 2014 and the case of the respondent that the petitioner's husband in the capacity that he was the servant of the defacto complainant, committed breach of trust and also cheated the defacto complainant to the tune of Rs.1.50 crore without submitting any substance in the charge sheet for the property against which the criminal breach of trust has been committed by the petitioner's husband and also the property against which the alleged cheating has been committed by the petitioner husband/A1.

5.The simplified case of the respondent is that the petitioner's husband during his service with that of the defacto complainant from 2007 to 2014 has purchased several immovable properties in his native at Coimbatore which is disproportionate to the known source of income of the petitioner's husband Rajendran/A1 and therefore the petitioner's husband would have committed the offences under Section 408, 418, 420 of IPC and r/w Section 120-B of IPC in a simpleton manner without any substances as if it is a case of Disproportionate Assets under the Prevention of Corruption Act under Section 13(1)(e) of the Act. He further submitted that she was neither serving in any capacity with the defacto complainant nor did she having any business connection with the defacto complainant and also having any connection with the business of the defacto complainant as a conduit through her husband Rajendran/A1. Excepting the fact that she is the wife of the first accused, there is no prima facie materials to frame the charges as against the petitioner under Section 120-B alone. The offences under Section 120(b) is ill conceived as against the petitioner/A2 even though it has been clearly manifested in the records submitted by the respondent that she was not conduit to the other sections slapped against A1 and A3 to A7. The fact that A1 and A3 to A7 have sold the Chicken to the dealers enrolled with the defacto complainant on the whole sale price fixed by Regional Office on daily basis through the electronic trajectory which has been used for the conduit of the business and the impugned order of the learned Trial Judge is in flagrant violation of Article 51-A of the Constitution of India.

6.Further it is to be noted that A1 and A3 to A7 could not sell the chicken other than the dealers and also sell the chicken to a lower price than the price fixed by the Regional Office daily at 6 A.m., and further it is the fact that A1 and A3 to A7 have sold the chicken during the above period to LW5 to LW7 and the sale proceeds have been duly accounted for any due deposit into the account of the defacto complainant on the next day by 10.30 a.m., and the same has been subjected to the multi checking of the accounts department and the periodical multi checking of the internal and external auditing. The respondent has mis-focused the case by assuming it is a case of disproportionate assets case under Section 13(1)(e) of the Prevention of Corruption Act. The LW5 to LW7 have deposited money into the accounts maintained by the husband of the petitioner/ first accused and also to the account maintained by this petitioner on several dates and the respondent has mistakenly concluded that the said money has been misappropriated from the chicken business in a simpleton manner. The private chicken business that was being conducted by the petitioner with the active advice and assistance of her husband/A1 and in that connection the amount has been paid by LW5 to LW7 into the accounts of her husband/A1 and to the accounts of the petitioner and from and out of which, properties have been purchased by this petitioner and also her husband.

7.The statements recorded by the respondent under Section 161 of Cr.P.C from LW12 to LW16 who are all bank officials and also relied upon by the statements of accounts produced by them. The statements recorded under Section 161 of Cr.P.C from LW17 to LW21 who are all the officials from the Sub Registrar Offices in whose office the property purchased by this petitioner and her husband /A1 have been registered during the above period. There is no materials to show that the petitioner entered the conspiracy with other accused and cheated the defacto complainant and purchased the immovable properties in their name. When the petitioner has filed a petition under Section 239 of Cr.P.C for seeking discharge from the case, at that time there is no material to show that the petitioner involved in the conspiracy and cheated the defacto complainant.

8.The learned counsel for the petitioner vehemently contented that A1 and A3 to A7 could not sell the Chicken other than the dealers and also sell the chicken to a lower price fixed by the head office. The learned trial judge failed to consider these aspects and simply dismissed the petition.

9.The learned Government Advocate (Crl.Side) submitted that the statement of LW5 to LW7 clearly reveals that the first accused sold the Chicken for the price lesser than the price fixed by the Regional Officer and also directed to deposit the amount in his account and her wife account and the same detected by him and also deposited the amount as per the directions of the first accused. Statement of witnesses LW12 to to LW16 clearly shows that the amounts have been deposited in the petitioner and her husband accounts and the statement of witnesses 17 to 21 clearly reveals that the properties have been purchased and the same was registered in the name of the petitioner and her husband. He further submitted that the complaint, charge sheet and also the witnesses' statements clearly show that prima facie incriminating materials are available against the petitioner to frame charges. The trial Court considered the said aspect and dismissed the petition filed by the petitioner and her husband.

10.Heard both sides and perused the materials available on record.

11.Admittedly the case was registered against the petitioner and six others in Crime No.275 of 2015 on the file of the respondent police. After investigation, the respondent police laid the charge sheet under Section 173 of Cr.P.C, in which all the accused have been arrayed as A1 to A7 and the present petitioner has been shown as second accused. After filing the charge sheet, the learned Magistrate taken the charge sheet on file in C.C.No.4818 of 2018. Thereafter, the petitioner and her husband filed petition under Section 239 of Cr.P.C for seeking discharge from the said case and the same was dismissed, against which the petitioner alone has filed the present revision and her husband has not filed any revision.

12.The petitioner was arrayed as an accused in C.C.No.4818 of 2018 and the same was pending before the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai. The allegation against the petitioner is that the petitioner along with other accused cheated the defacto complainant to the tune of Rs.1,25,00,000/- and purchased the immovable properties in their name.

13.It is a well settled proposition of law that while deciding petition under Section 239 of Cr.P.C, the Court has to see the final report filed by the respondent police under Section 173(ii) of Cr.P.C and the documents annexed therein. The Court need not look into the defence taken by the accused or the documents produced by the accused and the trial Court has to only look into the materials shown in the final report and the documents annexed therein. The Court need not conduct roving enquiry upon the documents produced by the prosecution at this stage. In this case, the reading of the FIR and charge sheet filed by the respondent police and statements of witnesses recorded under Section 161 of Cr.P.C namely LW5 to LW7 who are the Chicken dealers, have stated that they have deposited the money in the accounts of the petitioner and her husband and thereafter they purchased the chicken from the husband of the petitioner. The witnesses LW12 to LW16 are the Bank Officials the they have produced the statements of accounts and the witness LW17 to LW21 are working in the registration departments their statements shows that the petitioner and her husband purchased the properties in their names and registered the documents as mentioned in their statements.

14.If prima facie materials are available against the petitioner, the trial Court can frame charge and proceed further and the petitioner's defense can be considered only after trial and the defence taken by the petitioner cannot be looked into at this stage. In these circumstance, this Court finds there is prima facie case made out against the petitioner to frame charges. Therefore, the contention raised by the counsel for the petitioner is not acceptable and this Court does not find any merits in the revision and does not find any illegality or infirmity in the order passed by the trial Court. Therefore, this revision is liable to be dismissed.

15.In the result, the Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

tta

To

1.The CCB & CBCID Metropolitan Magistrate,
Egmore, Chennai-8.

2.The Inspector of Police,
CCB, EDF-II, Group-4,
Egmore, Chennai-8.

3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.R.Ramanlaal, Advocate SR.4071

Crl.R.C.No.1270 of 2019

SRA(CO)
CB(19/02/2021)