



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.04.2021

DELIVERED ON : 29.07.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.O.P.(MD)No.4217 of 2021

WEB COPY

Dr.P.Maragatham

: Petitioner/3rd Accused

Vs.

1.The Superintendent of Police,
Central Bureau of Investigation,
ACB-Madurai, Madurai.

(Cr.No.229 of 2019 A 2012). : 1st Respondent/Complainant

2.M.Paramasivam

:2nd Respondent/defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the Charge Sheet filed in C.C.No.1392/2010, on the file of the Special Court for CBI cases, Madurai, dated 08.12.2020 for offence under Sections 120(B) r/w 420, 468 and 471 of IPC on the file of the first respondent and quash the same.

For Petitioner :Mr.S.K.Mani

For R1 :Mr.L.Victoria Gowri

Assistant Solicitor General of India

For R2 :Mr.N.Dilip Kumar

ORDER

This Criminal Original Petition is preferred to set aside the charge sheet filed in C.C.No.1392 of 2020, dated 08.12.2020 on the file of the on the file of the Special Court for CBI cases, Madurai.

2.Heard Mr.S.K.Mani, learned Counsel for the petitioner, Mrs.L.Victoria Gowri, learned Assistant Solicitor General of India appearing for the 1st Respondent and Mr.N.Dilip Kumar, learned Counsel for the 2nd Respondent.

3.The case of the prosecution is that the petitioner, Maragatham, is arrayed as 2nd accused in a case registered by the CBI, Anti Corruption Branch, Madurai, on 30.07.2019, for the offence under Sections 120(B) r/w Sections 420, 468 and 471 IPC and Section 13(2) r/w 13(1)(a) of Prevention of Corruption Act. The petitioner is employed as Doctor. Her husband, Manickam, is an Engineer by profession. Both of them had registered a Partnership Firm in the name of "Hi-Tech Cranes". They started a small-scale engineering enterprises engaged in the business of heavy engineering fabrication



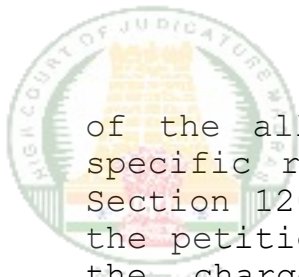
and manufacturing of industrial cranes and material handling equipment. Manickam was the partner of the Hi-Tech Cranes.

4.Hi-Tech Cranes was an ancillary unit for Bharath Heavy Electrical Limited, Outsourcing Department, Tiruchirappalli. Manickam had obtained various loans in the name of the firm from Canara Bank, Thuvakudi Branch, Tiruchirappalli, from 08.05.2013 onwards till 16.10.2015. The loans were obtained as Open Cash Credit (OCC), Term Loan, Working Capital Term Loan, Bank Guarantee and Bill Discount for BHEL Bills. As per the records of the communication between Hi-Tech Cranes and Canara Bank, Thuvakudi branch and BHEL, it turned out that on 18.01.2016, BHEL informed Canara Bank that seven bills that HI-Tech Cranes had raised upon BHEL, Tiruchirappalli, and submitted to Canara Bank, Thuvakudi branch, for discount were allegedly bogus bills. A complaint was filed by M.Paramaeshwaran, General Manager, Madurai Circle Office of Canara Bank on 31.10.2018 with the Superintendent of Police, CBI, ACB, Madurai.

5.The CBI, Madurai, had registered an FIR on 30.07.2019 for the offence under Sections 120(B) r/w Sections 420, 468 and 471 IPC and Section 13(2) r/w 13(1)(a) of Prevention of Corruption Act. This is basically a commercial transaction. There is no mention about any criminal conspiracy in the complaint filed by M.Paramaeshwaran, General Manager, Canara Bank with the CBI. During the period of nine months, between the date of FIR and the date of the complaint, no sort of enquiry was conducted by the CBI officials as per the law laid down by the Honourable Supreme Court in Lalithakumari's case **((2014) II SCC 1)**.

6.The petitioner had not signed any bill raised by Hi-Tech Cranes through out its period of business from 08.05.2013, when the Firm borrowing from Canara Bank commenced. The petitioner was not responsible for any business activity comprising manufacturing, management, administration, etc., in Hi-Tech Cranes. The petitioner being a medical professional, possess no knowledge of the firm's business activity. Admittedly, the petitioner had no technical knowledge about the manufacturing activity of the Firm. The petitioner had signed the loan application and legal documents only due to legal necessity as a partner. There is no business related documents, like, invoices, bank cheques, etc., in the entire bulk papers of the charge sheet running into hundreds of pages to show that the petitioner had participated in the affairs of Hi-Tech Cranes.

7.The Hi-Tech Cranes was a registered Partnership Firm. The entire activities of the Firm were fully handled by the petitioner's husband, Manickam, as its Managing Partner, also, as a person, who had knowledge of manufacturing and administration activities. Though Manickam and the petitioner were husband and wife, in matters



of the alleged events in the partnership activities, there is a specific requirement for a meeting to establish the offence under Section 120(B) IPC. Though there is no specific acts attributed to the petitioner for having conspired, to attract Section 120(B) IPC, the charge sheets specifically mentions the petitioner also. Manickam, who had managed the Hi-Tech Cranes as one man army, died on 09.04.2019 and that the case ought to have been declared as abated and for reasons when the petitioner, being a person, who cannot be accused of the offences found in the charge sheet, the entire case falls.

8.The petitioner was aware of the Hi-Tech Cranes financial distress only after Canara Bank published their possession notice for all the mortgaged properties in local newspapers on 24.05.2016. The petitioner was not aware that the partnership firm loan had been declared as non-performing assets (NPA) on 06.02.2016. The petitioner and her husband, Manickam, promised to repay Canara Bank in many subsequent correspondences. Thus, it is a clear case that the partners never attempted to shrike their liability for payment. The produced reference to BHEL, Bangalore, were not discounted by Canara Bank. In that way, the false documents associated with it did not serve any purpose at all.

9.The gist of the offences is with reference to fake bills numbering seven. The total discounted amount of the seven bills works out to Rs.1,41,30,443/-. The amount recovered by the Canara Bank from the Firms' OCC account works out to Rs.84,88,602/-. The balance amount of Rs.56,47,841/- is the un-recovered amount. Though seven bills are fake bills, the amount realised from the seven bills having been stated as Rs.1,41,30,443/- and Rs.84,88,602/- had been realised in the usual course and the balance amount of Rs.56,47,841/- become the amount due along with interest and this is the accepted liability of Hi-Tech Cranes. The Firm had been making every efforts to pay back the balance amount.

10.The documents, that are provided along with the charge sheet show that the Canara Bank Management gave an offer letter for one time settlement, dated 28.12.2017 to the petitioner's husband, Manickam, offering to accept the sum of Rs.6.30 crores in full and final settlement of the account payable within 30.12.2017 in a sum of Rs.63 lakhs and the balance of Rs.5,67,00,000/- within six months from the date of the said sanction letter. This would show that the partners never shirked their monetary liability to the Bank and even during the course of investigation and charge sheet process, the monetary claim of the Bank over Hi-Tech Cranes has been legally kept alive. When the Bank has no loss, no offence of cheating and forgery could be assailed against Hi-Tech Cranes, including the petitioner. The production of Hi-Tech Cranes stopped forthwith during the life time of the partner, K.Manickam. Therefore, the petitioner seeks to quash the charge sheet filed in C.C.No.1392 of



2020, dated 08.12.2020 on the file of the 1st respondent.

11.Mr.S.K.Mani, learned Counsel for the petitioner relied on the Rulings of the Honourable Andhra Pradesh High Court in the case of **Vunna Visali vs State of Andhra Pradesh**, reported in **2001 (1) ALT Cri 511**. Mr.S.K.Mani, learned Counsel for the petitioner relied on the Rulings of the Honourable Haryana High Court in the case of **Sham Sundar and others vs. State of Haryana**, reported in **1989 SCC (4) 630**, regarding the contention that for the acts done on behalf of the partnership firm, the partner, who was actively engaged the business is alone criminally liable. The sleeping partners are not liable.

12.In the counter affidavit filed by the CBI, they had stated that there was an offer to settle the dues even before the registration of the case and even before the charge sheet was filed. The petitioner herein and her son offered to settle the due, but, did not do it. They had successfully evaded to repay the amount to the Bank and whatever loan was availed and whatever amount was derived and whatever gain was derived by use of fake bills by the other partners, the petitioner, as a sleeping partner of the same Firm and as wife of the deceased managing partner, she had enjoyed the fruits of that transactions. Therefore, she is legally and morally liable to settle the dues. She had admitted to settle the dues and took time, but, had not done and instead filed this petition on the ground that she was a sleeping partner and seeking to quash the proceedings.

13.Mrs.L.Victoria Gowri, learned Assistant Solicitor General of India appearing for the 1st Respondent relied on the following rulings of the Honourable Supreme Court:

(1)**Ram Narain vs State of Rajasthan**, reported in **AIR 1973 SC 1188**, the relevant portion of which reads as follows:

"It is not necessary that there should be express proof of the agreement, far from the acts and conduct of the parties the agreement can be interfered."

(2)**Nazir Khan and others vs State of Delhi**, reported in **2003 (6) SCC 461**, the relevant portion of which reads as follows:

"Conspiracies are not hatched in the open, by their nature, they are secretly planned. The lack of direct evidence relating to conspiracy has no consequence. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion open to public view."

(3)**Mohamad Usman Mohammad Hussain Maniyar and another vs State of Maharashtra**, reported in **1981 SCC (Cri) 477**, the relevant portion

<https://hcservices.ecourts.gov.in/hcservices/>



of which reads as follows:

"for the offence of criminal conspiracy the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done an illegal act. Such an agreement may be proved by necessary implication. To prove conspiracy it is not necessary that there should be direct communication between each conspirer and every other but the criminal design alleged must be common to all"

(4) **Shivanarayanan Lakshminarayanan Joshi and others vs State of Maharashtra**, reported in (1980) 2 SCC 465, the relevant portion of which reads as follows:

"a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the interferences drawn from the acts or illegal omission committed by the Conspirators in pursuance of a common design-Once such a conspiracy is proved, act of one conspirator becomes act of the other-A Co-conspirator, who joins subsequently and commits overt acts in furtherance of the conspiracy, held, is also liable."

(5) **Kehar Singh vs State (Delhi Admn.)**, reported in AIR 1988 SC 1883, the relevant portion of which reads as follows:

"The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter is. It is however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to Prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.

The relative acts of conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict.



Section 10 of the Evidence Act introduced the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the co-conspirators. Section 10 will come into play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be, in other words, a prima facie evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such prima facie evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it."

(6) **CBI Vs Manider Singh**, reported in **2010 1 SCC 389**, the relevant portion of which reads as follows:

10. The allegation against the respondent is 'forgery' for the purpose of cheating and use of forged documents as genuine in order to embezzle the public money. After facing such serious charges of forgery, the respondent wants the proceedings to be quashed on account of settlement with the bank. The development in means of communication, science & technology etc. have led to an enormous increase in economic crimes viz. phishing, ATM frauds etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at public at large.

.....

11. The inherent power of the High Court under Section 482 Cr.P.C. should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is a well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a



misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

(7) **State of Maharashtra vs Vikram Anantrai Doshi and others**, reported in **2014 (15) SCC 29**, the relevant portion of which reads as follows:

"23. We are in respectful agreement with the aforesaid view. Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominanting of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and



the crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible."

(8) **Rajeev Kourav vs Baishab and others**, in Crl.A.No.232 of 2020, SLP.(Crl)No.1174 of 2017), the relevant portion of which reads as follows:

6. It is no more *res integra* that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a *prima facie* case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

Point for consideration:

14. Whether the petition seeking to quash the charge sheet in C.C.No.1392 of 2020 on the file of the Court of the learned Chief Judicial Magistrate Court, Tiruchirappalli, is to be allowed.

15. In the reported Rulings of the Honourable Andhra Pradesh High Court in the case of **Vunna Visali vs State of Andhra Pradesh**, reported in **2001 (1) ALT Cri 511** and the Honourable Haryana High Court in the case of **Sham Sundar and others vs. State of Haryana**,



1989 SCC (4) 630, the facts are different. Here, the petitioner is a Doctor. The other partner is none other than her husband. She had in her petition had stated that the Firm was registered and the registration for the Firm, was signed by her. Actually, the engineering business, the Hi-Tech Cranes, design, manufacture and sale of the cranes were carried out by her husband Manickam. The transaction between the Bank was conducted by Manickam. When she is the partner, who had signed the partnership firm for registration, she is liable, even though she had not signed cheque. Now, she had approached this Court with sole intention of quashing the criminal case on the ground that she was a sleeping partner and her husband, who was an Engineer by profession, had been carrying out business of the partnership firm and who died before the investigation report was filed in the Court of the Special Judge.

16. Therefore, grounds seeking to quash the criminal case after filing charge sheet and pending trial before the Court of the Special Judge for CBI Cases, at Madurai, on the ground that the Managing Director, who was a technically qualified person died and the petitioner being a Doctor by profession and was a sleeping partner was unaware of the dealings will not hold good. The petitioner had enjoyed the fruits of the transactions or fraud committed by her husband. The petitioner had made the 2nd respondent Bank to believe that she will settle the dues along with her son. But, now having taken much time, she did not settle the dues. In the course of the petition averments, it has been mentioned that the Bank had initiated proceedings to recover the dues through the advertisement in newspapers regarding the assets, over which the Bank intends to initiate action. Only on the strength of this case, the Bank can proceed. If this petition is allowed, the petitioner will not settle the dues. Therefore, it is not a fit case for quashing the proceedings as per the rulings of the Honourable Supreme Court relied on by Mrs.L.Victoria Gowri, learned Assistant Solicitor General of India appearing for the 1st Respondent.

The point for consideration is answered in favour of the first respondent and against the petitioner.

In the result, this petition is dismissed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr



To

1. The Superintendent of Police,
Central Bureau of Investigation,
ACB-Madurai, Madurai.

2. Mrs.L.Victoria Gowri,
Assistant Solicitor General of India,
Madurai Bench of Madras High Court, Madurai.

Copy to
The Special Judge for CBI Cases
Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-24492[F] dated 29/07/2021)

order made in
CRL.O.P. (MD)No.4217 of 2021
29.07.2021

TP (CO)
TR(06.08.2021) 10P 5C