IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2022

PRONOUNCED ON : 26.05.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.2952 of 2021
and
Crl.M.P.Nos.1668 & 1669 of 2021

N.S. Gnaneshwaran ... Petitioner/Accused No.3

Vs.

1. The Inspector of Police,
   SPE CBI ACB,
   Chennai. ... 1st Respondent/Complainant

2. The Deputy General Manager,
   Canara Bank,
   Disciplinary Action Cell,
   Circle Office, Teynampet,
   Chennai - 600 018.
   ... 2nd Respondent/Defacto 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 2008 pending on the file of the XI Additional Special Court for CBI Cases at Chennai and quash the same by allowing the present Criminal Original Petition.

For Petitioner : Mr. R. Singaravelan, Senior Advocate
for M/S. R. Jayaprakash

For Respondents: Mr. K. Srinivasan, for R1
Special Public Prosecutor for CBI Cases
Mr. Nithysh Sekhar, for R2

O R D E R

This petition is filed to call for the records pertaining to C.C.No.11 of 2008 pending on the file of XI Additional Special Court for CBI Cases, Chennai and quash the same.

2. Final report was filed in this case on the basis of the complaint by Deputy General Manager, Canara Bank and FIR registered in Crime No.RC MA 1 2005-A-0042 dated 25.08.2005 for the offences under Section 120-B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1998.

3. The complaint allegations are that,

M/s.Sriram Trading Company, a proprietorship firm with Shri.N.S.Krishna kumar as proprietor, opened a Current Account No.3778 on 23.10.2002 at Canara Bank, Kellys Branch, Chennai. From 18.12.2002, the firm started discounting bills. Until 14.01.2003, a total number of 59 bills have been discounted to the tune of Rs.37.85 lakhs. The branch sanctioned SDB Limit of Rs.30 lakhs for a period of three months. Most of the bills have not been realised and as many as 40 bills were returned by various banks, for the reason "non payment by consignee". The limit is not backed by any collateral security as no EMT was put through. The liability in the account as on date is Rs.28.58 lakhs with unapplied interest up to 28.02.2005. Bank filed a suit before Debts Recovery Tribunal, Chennai for claiming Rs.32.66 lakhs. The investigation by the bank revealed that Sri.K.N.Subramanian, the then Chief Manager, in collusion with N.S.Krishnakumar, proprietor of M/s.Sriram Trading Company had fraudulently and by abusing his official position, sanctioned the SDB Limit of Rs.30 lakhs to M/s.Sriram Trading Company and indiscriminately discounted the bills presented by M/s.Sriram Trading Company thereby, caused a wrongful loss to the Canara Bank of Rs.28.58 lakhs plus interest up to 28.02.2005 and a corresponding gain to M/s.Sriram Trading Company.

3(i). On the basis of investigation, the first respondent filed a final report against the petitioner and other 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. The specifics of the final report are that the accused entered into criminal conspiracy during 2002 and 2003 at Chennai and other places to cheat Canara Bank. In pursuance of the criminal conspiracy, first accused was abusing his official position as Chief Manager, purchased Secured Demand Bills by reducing the initial margin of 25% on 18.12.2002 and 19.12.2002 and later, further reduced it to 10% by exceeding his limit of purchase. Approver Sri.S.Narasimha Ragavan prepared ante-dated office note on the basis of papers submitted by M/s.Sriram Trading Company represented by N.S.Krishnakumar-A2 requesting for SDB Limit for Rs.30 lakhs for the period of one year. First accused-K.N.Subramanian, approved it on the same day, knowing fully well that there was no collateral securities for the bills already purchased. Third accused-N.S.Gnaneshwaran dishonestly and fraudulently arranged for guarantor T.R.Krishnamoorthy (since deceased) with a property worth Rs.1 lakh as a collateral security. Sixth accused D.V.Balasubramanian, who is a private valuer, fraudulently inflated the value of the said property to Rs.13.50 lakhs. Third accused along with second accused fraudulently made arrangements to fill up cheques through fifth accused-A.R.Madan Rao and Kasturi Roa. Also obtained signature from A.R.Madan Roa/A5, B.K.Senthil, H.S. Kannan, V.S.Kannan on the reverse side of the cheque and encashed at Canara Bank, Kellys Branch, Chennai. Third accused, dishonestly and fraudulently filled and signed on the cheques in the name of B.V.K.Kumar etc., in the name of non existing persons and withdrew the proceeds of the discounted amounts. Second accused knowing fully well that the addressee mentioned in the invoices had not ordered the goods and furnished the names and addresses of Shri.Jayaraman, Proprietor of M/s.Radha Textiles, Arakkonam, Shri.Moheedeen Basha, Proprietor of M/s.Alankar Jawli Stores, Sholinghur and Shri.Syed Hassan, proprietor of M/s.Jailani Jawli Stores, Sholinghur to S.S.Kasthuri Rao. 'Gumastha' of third accused used their addresses in the invoices for discounting the Secured Demand Bills. Thus, they cause wrongful loss as afore mentioned to the bank.

4. After the accused entered appearance, the trial Court framed charges against the accused and the case is pending for trial.

5. Learned counsel for the petitioner submitted that the specific charge against the petitioner is that he arranged one guarantor T.R.Krishnamoorthy with a property worth Rs.1 lakh and that was fraudulently valued by sixth accused with inflated value of Rs.13.50 lakhs and that he fraudulently filled up cheques with second accused and arranged to fill up the cheques through A5 and S.S.Kasthuri Rao and withdrew the discounted amounts in the names of non-existing persons. The loan was obtained by the firm in connection with commercial transaction. Subsequently, this amount was repaid and settled. The full satisfaction memo was filed by the bank, before the Debts Recovery Tribunal on 03.09.2020. The bank had also issued a letter dated 30.12.2020 informing that the loan stands settled through one time settlement and the account stands closed. When the amount is settled, there will be no purpose served by continuing the prosecution, especially when the amount is only below Rs.30 lakhs in a commercial transaction.

5(i). Learned counsel for the petitioner pressed into service, the following judgments for the proposition that the criminal cases can be quashed if the amount is repaid and settled.

6. In response, the learned Special Public Prosecutor

submitted that the trial is at the fag end and at that time this quash petition is filed. Petitioner is charged along with public servant with a aid of Section 120-B, 13(2) r/w 13(1)(d) of Prevention of Corruption Act. Merely because the ill gotten money is repaid, petitioner cannot be exonerated from the charges. When the trial is almost concluded, filing of this petition is nothing but an exercise to delay the proceedings.

7. Learned counsel for the second respondent also submitted that the accused had caused wrongful loss of Rs.28.58 lakhs to the Canara Bank. In the proceeding in O.A.No.333/2007 on the file of Debts Recovery Tribunal, for recovering Rs.40,56,293.56, a compromise was reached under One Time Settlement Scheme and a sum of Rs.13.50 lakhs was paid and the loan account was closed, in view of the settlement of the matter in dispute.

8. Considered the rival submission and perused the records.

9. It is the submission of the learned counsel for the petitioner that without going into the merits of the case, considering the quantum of the money said to have been involved, the fact that money had been re-paid, the continuance of criminal proceedings would be an abuse of process of law and therefore, the proceedings has to be quashed. In this aspect, he relied on the following judgments:

10. From the facts narrated above, it is not in dispute that the proprietorship firm M/s.Sriram Trading Company represented by his proprietor A2-N.S.Krishnakurmar, obtained a loan facility from Canara Bank at Kellys Branch, Chennai. First accused is the public servant and was working as Chief Manager of this bank at the relevant point of time. The allegations against the accused is that after obtaining the loan, loan was diverted and used for different purpose and wrongful loss of Rs.28.38 lakhs was caused to the bank. The role of each and every accused is clearly narrated in the charge sheet. The only ground on which this petition is filed that in view of the settlement of loan amount, further proceeding in this case is a futile exercise and harassment of the petitioner. The following judgments are relied by the learned counsel for the petitioner in support of his submission. In Nikhil Merchant Vs. Central Bureau of Investigation reported in (2008) 9 SCC 677, it was observed as follows:-

> "31. On an overall view of the facts as indicated herein above and keeping in mind the decision of this Court in B.S. Joshi case and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank,

we are satisfied that this a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise."

11. Relying on the judgment, learned counsel for the petitioner submitted that the case concerned in this judgment was registered for the offences under Section 120-B r/w Sections 420, 467, 468, 471 IPC r/w Sections 5(2) and 5(1)(d) of Prevention of Corruption Act, 1947 and Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.

11(i). In this case, criminal complaint and civil suit were filed. In the civil suit, a compromise was reached. Therefore, accused filed discharge petition and that petition was rejected by the trial Court. When that was challenged before the High Court, the High Court had also rejected the petition. The Hon'ble Supreme Court taking note of the factual background, the settlement of banks claim, held that the dispute involved has overtones of civil dispute with certain criminal facets. When discussing the powers of the Hon'ble Supreme Court of India, under Article 142 of Constitution of India, the relevant portion in the judgment, reported in "1988 4 SCC 409 in Supreme Court Bar Association Vs. Union Of India and Another is extracted:- "This Court would possibly or be justified in giving direction in the instant case, even under Article 142 of the Constitution, since the Constitution Bench had held that in exercise of its plenary powers under Article 142, this Court would not ignore any substantive statutory provision dealing with the subject. It is a residual power, supplementary and complementary to the powers specifically conferred on the Supreme Court by statute, exercisable to do complete justice between the parties where it is just and equitable to do so. It was further observed that power and Article 142 of the Constitution, was vested in the Supreme Court to prevent any obstruction with the stream of justice." Finally, the Hon'ble Supreme Court has held that considering the decision in B.S.Joshi's case, when the compromise arrived at between the Company and the Bank, technicality should not be allowed to stand in the way of quashing the proceedings and thus, quashed the proceedings."

12. No doubt that this judgment shows that the settlement reached was one of the main reasons for quashing the proceedings. However, the Hon'ble Supreme Court in its plenary powers under Article 142 of the Constitution of India, to do complete justice in the matter in dispute, permitted the quashing. The High Courts have no such powers. Thus, this

Court is of the view that this judgment cannot be applied to the facts of this case.

13. The judgment reported in (2014) 5 SCC 364 in Central Bureau of Investigation ACB, Mumbai Vs. Narendra Lal Jain and Others, is a case instituted for the offences under Sections 120b/420 IPC and Section 5(2) r/w Section 5(1)(d) of Prevention of Corruption Act, 1947. Corresponding to Section 13(2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988. The proceeding against the respondent was quashed despite the offence under Section 120-B is not compoundable. While discussing the powers of High Court to quash the proceedings, once the monetary loss suffered by the Bank was mutually settled between the parties, it was found that quashing of the proceedings against the accused for the offences under Sections 120-B / 420, in the given facts and circumstances of the case, was correct.

14. It is seen from this judgment that though the case was registered for the offences under Section 120-B/420 IPC with the offences under Section 5(1)(d) of the Prevention of Corruption Act, 1947 corresponding to Section 13(2) r/w13(1) (d) of Prevention of Corruption Act, 1988, the accused concerned in the judgment referred, was charged only for the offence under Section 120b/420 IPC. The accused were not public servants.

15. Relying on this decision, learned counsel for the petitioner submitted that the petitioner in this case is also not a public servant. Therefore, proceeding against him has to be quashed, in view of the settlement of monetary dispute with the Bank.

16. The judgment in Gian Singh Vs. State of Punjab and Another reported in (2012) 10 SCC 303 is relied, for the proposition as to the powers of the High Court to quash even the non-compoundable offence under Section 482 Cr.P.C. It is observed in this judgment as follows:-

> "61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend

on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases haveing overwhelmingly and predominantly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

17. The judgment reported in AIR 2019 SC 1045 in CBI, New Delhi Vs. B.B.Agarwal and Others is also relied for the proposition that in view of the recovery of outstanding dues and also the fact that no criminality issue is found involved, the Hon'ble Supreme Court dismissed the appeal filed by the CBI.

Learned counsel for the petitioner also relied on the judgment reported in (2016) 1 SCC 389 in Central Bureau Of Investigation Vs. Maninder Singh with regard to the powers of the High Court in quashing a case under Section 482 Cr.P.C. The judgment reported in 2021 SCC OnLine SC 966 in Ramawatar Vs. State of Madhya Pradesh is relied, for the proposition as to the powers of Hon'ble Supreme Court under Article 142 of the Constitution of India, to quash a criminal proceedings on the basis of voluntary compromise between a complainant / victim. The order of this Court in Crl.O.P.(MD).No.16698/2019 in N.G.Bharathi Vs. State and the order in Crl.O.P.No.525/2020 in G.Pitchaimani Vs. State are also relied for the same proposition.

18. A careful reading of the judgments aforesaid, especially the judgment reported in AIR 2019 SC 1045 shows that the Hon'ble Supreme Court dismissed the appeal filed by the CBI against the order passed in batch of Crl.M.Cs. allowing the petition under Section 482 of Cr.P.C. After examining the issue with reference to charges and documents, the High Court held that no criminality issue is found involved notwithstanding the settlement of the case between the parties. The Hon'ble Supreme Court also found that there is no criminality issue surviving qua those accused, who are alive so as to allow the prosecuting agency to continue with a criminal trial on merits. In deed, it will be an abuse of process. Thus, it is clear that the main consideration for arriving at this decision was that notwithstanding the settlement, there was no criminality issue found involved.

19. In the case before hand, it is seen from the final report and the submission of the learned counsel for the second respondent that this petitioner is a co-borrower of the loan. He arranged for a guarantor T.R.Krishnamoorthy (since deceased) with a property worth Rs.1 lakh as a collateral security and in pursuance of conspiracy, it is seen D.V.Balasubramanian(A6), a private valuer, fraudulently inflated the value of the said property, to the tune of Rs.13.50 lakhs. Not only that it is also alleged that petitioner in conspiracy with the accused N.S.Krishnakumar, dishonestly and fraudulently made arrangements to fill up the cheques through Sri.A.R.Madhanrao (A5) and S.S.Kasthuri Rao and also obtained signatures from A.R.Madhan Rao, B.D.Senthil, SH.Kannan and V.S.A.Kannan, on the reverse side of the cheques and got the money encashed at Canara Bank, Kellys Branch. Petitioner had also dishonestly and fraudulently filled up and signed on the cheques in the name of B.V.K.Kumar and in the names of non-existing persons and withdrew the proceeds of the discounted amounts. There are specific allegations against the petitioner which have the clear aspects of criminality.

20. In the judgment reported in (2009) 6 SCC 364 in Rumi Dhar Vs. State Of West Bengal and Another, it is observed that "All though the accused had paid the entire due amount as per the settlement with the bank, in the matter of recovery before the Debts Recovery Tribunal, the accused has been proceeded with for the commission of offences under Sections 120-B/420/467/468/471 IPC along with the Bank officers who have been prosecuted under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash the case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge.

21. Any compromise between the victim and offender in relation to the offences under Special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc., cannot form any basis for quashing criminal proceedings involved in such offences. Only the criminal cases having overwhelmingly and predominantly civil flavour, stand on a different footing for the purpose of quashing, particularly, in cases involving offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc or the family disputes where the wrong is basically private or personal in nature and the parties have resolved the entire dispute, quashing is permitted, if there was a compromise between the offender and victim and the possibility of conviction is removed and bleak, continuing of the criminal case would put the accused to great prejudice and result in extreme injustice.

22. In the case before hand, as narrated above, the allegations against the petitioner are very serious. He along with other accused conspired together in cheating the bank and making the bank to advance loan resulting in wrongful loss caused to the Bank. Petitioner is one of the prime accused in this case. Criminality in his act is very much evident. Finding that there are materials available for framing charges, the charges had been framed against him for the offences under Sections 120b/420, 467, 468, 471 IPC and Section 13(2) r/w 13(1)(d) IPC; under Section 420, 467, 468, 471 IPC. It is submitted by the learned Special Public Prosecutor that the trial is at the fag end. The judgments aforesaid and discussed, in the considered view of this Court, are not applicable to the facts and circumstances of this case. The trial must be allowed to proceed further and reach its logical conclusion.

23. In this view of the matter, this Court finds that there is no merits in this petition and this petition is

dismissed. Consequently, connected miscellaneous petitions are closed. The trial Court is directed to dispose of the case at the earliest, without being influenced by the observations made in this order.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

AT

To

1. The XI Additional Special Court
for CBI Cases at Chennai.

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

3. The Public Prosecutor,
High Court, Madras.

4. The Special Public Prosecutor,
for CBI Cases, Chennai.

5. The Deputy General Manager,
Canara Bank,
Disciplinary Action cell,
Circle Officer,
Teynampet, Chennai - 18.

+1cc to Mr.R.Jaya prakash, Advocate, S.R.No.31770

CRL.O.P.No.2952 of 2021 and
Crl.M.P.Nos.1668 & 1669 of 2021

CA(CO)
UMA(16/06/2022)