IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 23.06.2022	Date of Pronouncing Order 06.07.2022

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.OP.No.3086 of 2022
and
Crl.MP.No.1382 of 2022

S.Muralidharan,
S/o.S.R.Srinivasan,
Chartered Accountant,
B-4, Kavya Court, 89,
Ponnurangam Road West,
RS Puram, Coimbatore – 641 002. ... Petitioner

Vs.

State by Inspector of Police,
CBI/BS & FC
36, Bellary Road, Ganganagar,
Bangalore 560 032.
(Crime Number 1 of 2017) ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the proceedings in CC.No.13 of 2018 on the file of the Chief Judicial Magistrate, Coimbatore and quash the same.

For Petitioner	:	Mr.Mahesh Jethmalani Senior Counsel for Mr.K.R.Sankaran
For Respondents	:	Mr.K.Srinivasan Special Public Prosecutor for CBI Cases

ORDER

The Petitioner has filed this Criminal Original Petition to call for the records pertaining to the proceedings in CC.No.13 of 2018, on the file of the learned Chief Judicial Magistrate, Coimbatore and to quash the same.

2.The summary of facts leading to filing of the above quash Petition are as under:

2(a).The respondent registered a criminal case on 09.01.2017 under section 420 IPC against four persons viz., N.Ashok. S/o.Nagendran, N.Balaji, S/o.Nagendran, V.Nagendran, S/o.A.P.Viswanatha Chettiar and V.Manoharan, S/o.Venkataraman Chettiar, in compliance with the order of this Court dated 02.02.2016 in CRL.O.P.No.13835/2014 filed by the Deputy General Manager, SBI, MID Corporate Group, Commercial Branch, Coimbatore for transferring the FIR in Crime No.1264/2013 registered by B4, Race Course Crime Police Station, Coimbatore to the respondent for investigation.

2(b).After transfer, investigation was conducted by the respondent and an FIR was registered in Cr.No.1/2017. Final Report was filed by the respondent against N.Ashok, N.Balaji, Lavanya Gold Jewels India Pvt. Ltd and the Petitioner herein. The Petitioner herein did not figure as accused in both the Crime Numbers.

2(c).The other two accused viz., V.Nagendran and V.Manoharan who have been arrayed as accused in the FIR in Crime No.1264/13 were deleted in the final report.

2(d).The case was taken on file by the learned Chief Judicial Magistrate and summons were issued to all the accused including the Petitioner herein in CC No.13/18. On 13.03.2018, the learned Chief Judicial Magistrate, Coimbatore had framed charges against the Petitioner and other accused under Section 120-B r/w. Sections 420, 468 and 471 IPC. The Petitioner and the other accused denied the guilt and charge.

3.After framing of all the charges, the Petitioner herein (A-4) had filed Crl.RC.No.465 of 2018 and the same was dismissed with a direction. In the said order, this Court has directed the trial Court to revisit the charges, which was framed. In the light of certain observations made therein and to rectify the omission at the earliest, the trial Court redrafted the charges and after completion of the formalities, commenced the trial and prosecution witnesses PW1 to PW10 were examined. At this juncture, the present Criminal Original Petition was filed for the above stated prayer.

4.After charges were revisited by the trial Court, the substantial allegation against the Petitioner is that he along with other accused submitted inflated balance sheet, inflated sundry debtor statement and inflated stock statement to the State Bank of India, Commercial Branch, Coimbatore, to facilitate A-1, M/s.Lavanya Gold Jewels India Private Limited to obtain credit facility. In this regard, the CBI, as a prosecution, relied upon financial statement of LW42, partner of M/s.K.Jayachandran and Co., Chartered Accountant, Coimbatore, which was submitted to the income tax department.

5.The summary of prosecution case against all the accused is as under:

5(a).M/s.Lavanya Jewels, a partnership firm was incorporated on

25.07.2007 with N.Ashok (A-1) and N.Balaji (A-2) as partners. With effect from 01.04.2012, it was converted into a Private Limited Company registered with the Registrar of Companies, Coimbatore, Tamil Nadu under the name and style "Lavanya Gold Jewels India Private Limited" (A-3) with N.Ashok (A-1) and N.Balaji (A-2) as the Promoter Directors of the newly formed company. M/s.Lavanya Jewels was enjoying credit facilities to the tune of Rs.30 Crores from Indian Overseas Bank, Coimbatore.

5(b).On 20.05.2011, State Bank of India, Commercial Branch, Coimbatore had taken over the credit facilities from IOB and enhanced the Cash Credit (CC) facilities to the tune of Rs.40 Crores for the purpose of manufacture and sale of gold ornaments/antique jewellery to reputed clients like MMTC against hypothecation of gold and gold ornaments/jewellery. In addition to the primary security of gold, the credit facilities were secured by way of collateral securities in the form of properties held in the name of A-1, A-2 and other guarantors.

5(c).During the month of March 2012, Lavanya Jewels were sanctioned with Rs.5 Crores adhoc facility in addition to the Cash Credit facility of Rs.40

Crores. After incorporating the Private Limited Company on 27.03.2012, the partnership firm was converted into a Private Limited Company and started functioning from 01.04.2012. The credit facilities sanctioned to Lavanya Jewels were transferred to the newly formed Private Limited Company. On 17.04.2012, the credit facilities were further enhanced by Rs.20 Crores raising the limit of credit facilities to Rs.60 Crores, after including the adhoc credit facility in the regular enhanced cash credit facility. Again during September 2012, another adhoc facility of Rs.5 Crores was sanctioned and the same has been recouped during April 2013. Thus, the total credit facilities sanctioned to the borrowers stood at Rs.60 Crores.

5(d).For the purpose of availing the credit facilities from State Bank of India, the then partners of Lavanya Jewels and the Promoter Directors of Lavanya Gold Jewels India Pvt. Ltd., i.e., N.Ashok (A-1) and N.Balaji (A-2) had submitted audited Financial Statements for the financial years 2010-2011, 2011-2012, which were certified by the Petitioner S.Muralidharan (A-4), Chartered Accountant.

5(e).Further, the stocks and sundry debtors statement prepared by N.Ashok (A-1) were also certified by the Petitioner, based on which State Bank of India had fixed the drawing power of M/s.Lavanya Jewels against the credit facilities sanctioned. In addition, A-1 had appointed M/s.K.Jayachandran & Co., Chartered Accountant also to certify Financial statements as well as obtain Tax Audit Report for financial years 2010-2011 and 2011-12 and filed the same with the Income Tax Department.

5(f).In pursuance of the conspiracy with N.Ashok (A-1), the Petitioner/ Auditor (A4) certified the balance sheet as well as the stock statements of the accused company, M/s. Lavanya Gold Jewels India Pvt. Ltd. (A-3), containing false and inflated figures and thereby facilitated A-3 Company to avail higher credit limits from State Bank of India. The Bank account of the petitioner was further used as a conduit for diverting/siphoning of the loan proceeds to other account of the accused Company

5(g).Balance sheet, certified by the petitioner was not submitted to the Income Tax Department. The first accused (A-1) had appointed M/s.K.Jayachandran & Co.. Chartered Accountant as the Statutory Auditor of

M/s.Lavanya Jewels for the Financial Year 2010-11 and Financial Year 2011-12 and the balance sheet certified by M/s.K.Jayachandran & Co., Chartered Accountant has been filed with the Income Tax Department.

5(h).The balance sheets certified by the Petitioner/Auditor were not submitted to the Income Tax Department and the same were utilised only for availing credit limits from the Bank.

6.The summary of allegations as against the Petitioner (A-4) herein is as under:

6(a).The Petitioner certified the Financial Statements for Financial Years 2010/11 (MR No.1581/17 Item No.4) and 2011/12 (MR No.1581/17 Item No.5) for bank purposes and M/s. K.Jayachandran & Co for the purposes of filing the Income Tax Returns with the Income Tax Department.

6(b).The Credit facilities for M/s.Lavanya Jewels India Private Limited were enhanced by State Bank of India (SBI) from Rs.45 Cr to Rs.60 Cr, during the month of April 2012, on the basis of the balance sheets certified by the Petitioner/Auditor (A4).

6(c).The Drawing Power for releasing the Cash Credit limit was computed by SBI and released on the basis of the Stock & Receivables Statement as on 31.3.2012 certified by the Petitioner/Auditor (A4).

6(d).The figure of Stocks as on 31.03.2012 as per Balance sheet certified by the Petitioner was Rs.38.57 Cr and the figure as per the stock statement for the same date was Rs.44.85 Cr.

6(e).The figures certified by the Petitioner for the Financial Years 2010-11 and 2011-12, are less than the figures certified by M/s.K.Jayachandran & Co, more particularly, the figures of Stocks, Turnover and Profits certified by M/s.K.Jayachandran & Co were less than the figures certified by the Petitioner.

6(f).On 29.09.2012, a sum of Rs.69 lacs was transferred by the accused company to the Petitioner and it was transferred back to the company after two days, which is diversion of funds.

7.Thus the alleged 'modus operandi' amongst all the accused as per final report by the CBI is that the accused persons (A1 to A3) entered into a criminal conspiracy with the Petitioner/auditor to induce the bank to give credit facilities by furnishing false and fraudulent documents by way of balance sheet etc., and in dishonest manner obtained the money which they were not eligible for and used that money for extraneous purposes and resultantly caused wrongful loss to the extent of Rs.41.52 Crores to the Central Government and the State Bank of India and corresponding wrongful gain to themselves, attracting offences punishable u/s 120 (B) r/w sections 420, 468 and 471 of IPC.

8.Heard Mr.Mahesh Jethmalani, learned Senior Counsel for Mr.K.R.Sankaran, learned counsel for the Petitioner and Mr.K.Srinivasan, learned Special Public Prosecutor for CBI Cases and perused the affidavit, counter affidavit, rejoinder and reply to the rejoinder, typed set and additional typed set filed by both the parties.

9.The Petitioner herein is the 4th accused in the above Calender Case and he is a qualified Chartered Accountant and is doing private practice for the more than 30 years and his Membership Number is 26554 of 1987.

10.Mr.Mahesh Jethmalani, learned senior counsel appearing on behalf of the Petitioner would contend that the statement audited by the present Petitioner/4th accused is found to tally with the statement given by the Salem Auditor M/s.K.Jayachandran and Co., and the income tax statement filed by A-1 & A-2 is not within the knowledge of the Petitioner. He would further contend that the said income tax statement, even for the assessment order passed by one Mrs.J.Bhuvaneswary, I.R.S., Assistant Commissioner of Income Tax also falls in a close margin and tallies with the value assessed by this Petitioner/Auditor, even after 10% thumb rule. He relied upon the deposition of PW9 and PW10 in the cross examination, wherein those bank witnesses have deposed before the trial Court that the Petitioner/Auditor has not played any role in getting enhancement of loan facility by A-1 and A-2 is discussed infra, along with last submission of the Petitioner/Accused.

11.The learned Senior Counsel for the Petitioner would contend that the Petitioner/Auditor is not aware of the fact that M/s.K.Jayachandran & Co was also appointed as statutory auditor for filing income tax returns. It is within the knowledge of A-1 & A-2.

12.At this juncture, it remains to be stated that the Petitioner is a Chartered Accountant, who is very much aware of the fact that the financial papers of a company signed by him shall be utilised for different purposes by the client and as such it is obligatory on the part of the auditor to ensure that the data certified by him are true and correct.

13.From the statement of witnesses of one K.Jayachandran (LW-42) along with document D-1118 are to the effect that the Tax Audit of the M/s. Lavanya Jewelswas carried out by the Partner of M/s.K.Jayachandran & Co., Chartered Accountants. K.Jayachandran being the Senior Partner of the Firm, had responded to the correspondence with CBI during investigation and gave the required clarifications, which clearly established that the petitioner had certified the balance sheet with inflated figures, higher than the figures as per the balance sheet certified by M/s.KJayachandran & Co.. Chartered Accountants, which was submitted to the Income Tax Department. Therefore, this Court has no reservation to reject the contention raised by the learned counsel for quashing the proceedings. Since, the document produced along with charge sheet and statement of witnesses clearly points out the receivables, which form part of the stock of the borrower, as shown in the stock statement certified by the petitioner are incorrect and inflated to benefit A-1 & A-2, they are found to be in support of the charges so framed and any dispute on factual aspects, the same is the matter for trial.

14.The next point urged by the learned Senior Counsel is that another witness V.Madhukar, Chartered Accountant appointed by the bank to verify the stock statement is him, who supported the financial statement filed by the Petitioner/Auditor herein. On perusal and comparison of these two stock statements submitted by the said auditor and this accused, I find that the dates of reference with regard to the audit report is different. Since the matter is pending before the trial Court and the said list witness LW-38, V.Madhukar is yet to get into witness box, this Court is imposing restriction upon itself, in commenting upon the same.

15.However, in order to repel the arguments of the learned Senior Advocate, about the statements, made by V.Madhukar, Chartered Accountant, he had conducted the stock/receivable audit of M/s. Lavanya Jewels as on 30.09.2012 and submitted the report on 15.10.2012. Therefore the findings of the said audit report cannot be considered as an excuse for the false stock statement as on 31.03.2012 certified by the petitioner. The said V.Madhukar has done stock audit as on 30.09.2012 and submitted the report, pertaining to that date. Moreover it is on record that in the stock statement as on 31.03.2012, submitted to State Bank of India, Commercial Branch, Coimbatore, certified by the petitioner, the value of closing stock was shown as Rs.44.85 Cr., whereas in the balance sheet for the same period certified by the petitioner himself, the value of the stock is shown as Rs.38.57 Cr. The figures of sundry debtors, shown in the stock statement and the balance sheet certified by the petitioner are also highly inflated.

16.There is sufficient material in respect of the allegation against the Petitioner/Auditor that what was certified to be true and correct stock report /audit report is not correct and any contradiction which is sought to be made by way of differences between the statement of witnesses is a matter for trial, not for the enquiry in the quashment Petition.

17.Learned Senior Counsel also relied upon the fact that the Petitioner/Auditor/Accused had signed the balance sheet for the purpose of filing the same with the income tax department. The accused viz., Directors of the company did not summit the same to the income tax department. However, in a clandestine manner, chosen to file the balance sheet certified by M/s.K.Jayaraman & Co., for the income tax assessment and therefore, he has no role to play in the sin committed by A-1 & A-2.

18.It remains to be stated that the Petitioner is a Chartered Accountant, he is very much aware of the fact that financial statement certified by the auditor is a valid document and the same may be used by the client, wherever it is required. Therefore, the duty is cast upon the auditor to ascertain the genuineness of the data certified by him. After perusing the order passed by the Assistant Commissioner, I find that even the balance sheet certified by M/s.K.Jayachandran & Co, Chartered Accountant was rejected by the Income Tax department on 28.03.2014 only on the failure of A-3 company to produce relevant documents for assessment. Therefore, I find that the order of adjudication passed by the Income Tax department on the income tax assessment statement given by M/s.K.Jayachandran & Co cannot come to the rescue of the Petitioner/Auditor. It is also pertinent to note that no other reason has been assigned except to say that since the company has refused to file relevant document, on their failure, penal provision has been invoked as 10%

thumb rule and it does not say anything about the genuineness of the balance sheet or otherwise also assumes significance.

19.My brother justice while dealing with the discharge Petition in Crl.RC.No.465 of 2018 dated 03.05.2018 has observed that during investigation, the false entries certified by the Petitioner in the stock statement/Balance sheet were verified by collecting documents and also recorded the statements of witnesses, which clearly established that the stock statement certified by the Petitioner was having false entries regarding the debtors (receivables) of the borrower Company also.

20.Since those witnesses are yet to enter into witness box, this Court is not commenting upon anything except to say that there are materials available, which have come to light during the investigation of the CBI Respondent/prosecution and the matters have to be gone into only by the trial Court not by this Court in the quash Petition.

21.After perusing the entire documents and the rival submissions made by the respective counsel, this Court finds that two sets of balance sheets containing different figures were certified by two auditors viz., the Petitioner/Auditor and M/s.K.Jayachandran & Co. The balance sheet certified by the Petitioner was filed before the bank, while the balance sheet certified by M/s.K.Jayachandran & Co was filed with the income tax department. The stock figures mentioned in the stock statement and balance sheet as on 31.03.2012 are different and both these documents were certified by the Petitioner and submitted to the bank by the borrowers.

22(a).Learned Special Public Prosecutor for CBI cases also drawn my attention to the stock statement as on 31.03.2012 certified by the Petitioner was signed without any date and the same was relied upon by the bank, based upon which drawing power was fixed for the month of April 2012. This document is listed as D-1120 filed along with charge sheet.

22(b).My attention was drawn to the statement of witnesses viz., LW9, LW15, LW24, LW25, LW26, LW28, LW30 who are said to be the borrowers. However, their statements are to the effect that there was no outstanding amount to be paid by their company or partnership firm to the accused company/A-3, as mentioned in the certified receivable statement signed by the

Petitioner auditor, which is a part of the stock statement, based upon which the bank has enhanced the limit of the accused company and therefore, I have no hesitation to reject the contention put forward by the learned Senior Counsel appearing on behalf Petitioner/Auditor that stock statement certified by the Petitioner was duly corroborated with V.Madhukar, cannot be accepted and further, the above stated list of witnesses' statement which is yet to be testified before the Court of law as witnesses during the period of trial.

23(a).For the reasons stated above along with the fact that whether stock and receivable audit conducted by V.Madhukar, Chartered Accountant supports the case of the Petitioner/Auditor or the prosecution is a matter for trial, on examination of the relevant witnesses as mentioned in the preceding paragraphs.

23(b).It remains to be stated that certification under Section 44 AB on behalf of M/s.K.Jayachandran & Co., has been filed before the income tax department. As could be seen from the proceedings of the Assistant Commissioner referred above clearly demonstrate that M/s.K.Jayachandran & Co was appointed as statutory auditor as contemplated under Income Tax Act.'

23(c).Hence, I find that all the points raised by the learned Senior counsel for the Petitioner/Auditor are all based on the facts that have to be elicited or be proved during the course of the trial and hence, I find that this is not a fit case for quashment of the proceedings as against A-4, as if there is no document for allowing proceedings to proceed further and hence in this view of the matter, the Criminal Original Petition is found to be devoid of merits and liable to be dismissed.

24.After going through the income tax proceedings as filed by the Respondent CBI under Section 44 AB of the income tax Act and Section 3(e)(b) of the income tax Act, statutory report and also stock statement certified by the Petitioner/Auditor and auditor report of V.Madhukar, bank auditor for the stock statement and oral evidence of PW7 and PW8 as pointed out by the learned Senior Counsel, I find that in view of the discussion in the preceding paragraphs, these are all matters for evidence during trial. It is hereby clarified that any finding rendered by this Court on the above four points is only for the purpose of determination of this quashment Petition and trial Court shall independently apply its mind in arriving at its own conclusion, without being influenced by the finding rendered in the preceding paragraphs.

25.In fine, the Criminal Original Petition is dismissed with the above observations. Consequently, connected Miscellaneous Petition is closed.

06.07.2022

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order

sai

To

1.The learned Chief Judicial Magistrate,
Coimbatore.

2.The Public Prosecutor,
High Court,
Chennai 600 104.

RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Order made in

Crl.OP.No.3086 of 2022
and
Crl.MP.No.1382 of 2022

Dated: 06.07.2022