IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED	:	24.01.2022
ORDERS PRONOUNCED	:	04.02.2022

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CRIMINAL ORIGINAL PETITION NO.3277 OF 2021
AND
CRL.R.C.NO.129 OF 2021
&
CRL.M.P.NOS.2514 AND 2515 OF 2021

CRL.O.P.NO.3277 OF 2021

Ms.S.Arokia Mary (A8) ... Petitioner/Accused

-Versus-

The State Rep. By
The Deputy Superintendent of Police,
CBI, ACB, Chennai. ... Respondent/Complainant

PRAYER:- Petition filed under Section 482 of the Code of Criminal Procedure, 1973, prying to call for the entire records pertaining to the criminal proceedings in C.C.No.4 of 2017 pending on the file of the learned XI Additional Special Judge for CBI Cases, Chennai, and to quash the same.

CRL.R.C.NO.129 OF 2021

C.Edward (A9) ... Petitioner/Accused

-Versus-

The State Rep. By
The Deputy Superintendent of Police,
CBI, Chennai.
[RC MA1 2015 A044] ... Respondent

PRAYER:- Revision Petition filed under Section 397 and 401 of Cr.P.C. praying to call for the records in Crl.M.P.No.7395 of 2019 in C.C.No.4 of 2017 on the file of the learned XI Additional Special Judge, Special Court for CBI Cases, Chennai and to set aside the order dated 22.10.2020 passed in Crl.M.P.No.7395 of 2019 dismissing the petition filed by the petitioner seeking to discharge him from the charges.

For Petitioners : Mr.K.M.Subramaniam
Standing Counsel
For Mr.P.Govindarajan
in Crl.O.P.No.3277
of 2021

Mr.N.R.Elango
Senior Counsel
For ***Mr.S.Manuraj**
in Crl.R.C.No.129
of 2021

For Respondents : Mr.K.Srinivasan
Special Public Prosecutor
For CBI Cases
in Both Cases

COMMON ORDER

Original Petition in Crl.O.P.No.3277 of 2021 has been filed by A8 seeking to quash the criminal proceedings in C.C.No.4 of 2017 which was taken cognizance by the learned XI Additional Special Judge, Special Court for CBI Cases, Chennai, for the alleged offence u/s 120-B, r/w 420, 409, 468 r/w 471 and 411 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, pursuant to the police report, while criminal revision petition in Crl.R.C.No.129 of 2021 has been filed by A9 challenging the order dated 22.10.2020 passed by the learned Additional Special Judge for CBI Cases dismissing the application in Crl.M.P.No.7395 of 2019 filed by the petitioner under Section 239 of Cr.P.C. seeking to discharge him from the charges.

2. There are totally 10 accused in this case and they stood charged for offence various offences the details of which would be enumerated at an appropriate place in this common order. Since the issues involved in both the original petition and revision petition are one and the same arising out of the a single criminal proceedings both of them were heard together and are being disposed of by way of this common order.

3. The case of the prosecution in brief is as follows:-

(i) One T.Saravanan (A7) is the said to be the main conspirator and beneficiary in this case. A7 already availed loan from Oriental Bank of Commerce, Adyar Branch in the name of M/s.S.J.S. Associates and, therefore, he could not avail further loan. As such A7 floated a new firm by name M/s.SPSR Traders along with A2 in the name of A2 one of his employees and opened a Current Account in the name of the firm showing A2 as Proprietor with Oriental Bank of Commerce. The above said firm is alleged to have engaged in multi media services, web designing, animation, consultancy and outsourcing office automation. Thereafter, the said firm applied for a loan of Rs.73,00,000/- from Oriental Bank of Commerce, Adyar, in which A1 was the Senior Manager by submitting forged documents and with the help of A1, A2 had managed to avail loan and later on diverted the loan amount to various other accused and the loan was also not repaid by A2. One Smt.Lakshmi Devi (A3), who is the wife of A7, also availed some loan from Oriental Bank of Commerce, Adyar Branch, and diverted the funds. One Sriram Prabhu , a nephew of A7, also availed loan to the tune of Rs.16.05 lakhs from Oriental Bank of Commerce and that loan amount was also diverted and the loan amount was not repaid. One N.Ashokan, a friend of A4 also availed loan to the tune of Rs.6.07 lakhs and that loan amount was also diverted to A6. From out of the loan availed by A2, a sum of Rs.34,96,611 was paid to A10, who is a close friend of A7, and A10, in turn, transferred a sum of Rs.04.50 lakhs to the account of A8, who, in turn, gave a cheque in favour of A9 which was later on encashed by him. Both A8 and A9 knowing fully well that the amounts were diverted from out of the loan amount, they had received the amounts and thereby committed the offences as alleged in the final report.

(ii) According to the prosecution, all the accused hatched a criminal conspiracy among themselves andin furtherance of the same, at the instigation of A7, A2 submitted forged and fabricated documents to the bank and A1, knowing fully well that the documents submitted by A2 were forged, by abusing his official position, committed breach of trust, sanctioned loan infavour of A2 and released the amount and also allowed A2 and the other accused to divert the amounts for the purpose other than the one for which loan was sanctioned. Hence, on the complaint given by one Shri.Dinesh Kumar Vishoni, Deputy General Manager of Oriental Bank of Commerce, Reginal Office, Chennai, a case was registered. On completion of investigation, final report was filed by the respondent - CBI for offence u/s 120-B, r/w 420, 409, 468 r/w 471 and 411 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and the learned Special Judge took cognizance of the same and issued process to the accused. Pending criminal proceedings, A9 filed an application invoking Section 239 of Cr.P.C. before the learned Special Judge seeking to discharge him from the charges which was dismissed by the learned Judge. Challenging the same , A9 has come up with Crl.R.C.No.129 of 2021, while A8 has come up with original petition invoking section Section 428 of Cr.P.C seeking to quash the criminal proceedings.

4. Mr.N.R.Elango, the learned senior counsel appearing for A9 and Mr.K.M.Subramanian, the learned counsel appearing for A8 would submit that A8 is the friend of A3, the wife of A7. A3 availed loan from A8 and only in order to discharge the loan

through A10, the amount was transferred to the account of A8. A9, who is closely related to A8, has advanced a loan for her medical expenses and only in order to discharge the above said loan, she had given a cheque to A9 and absolutely there are no connection for A8 and A9 with the other accused. The transactions between A8 and A9 were purely money transaction and nothing more. According to the learned senior counsel, there is absolutely no material available on record to establish that A8 and A9 were part of the conspiracy and in furtherance of the alleged criminal conspiracy, they had received the amount from the other accused. That apart, there is no material to establish that A8 and A9 cheated the complainant bank and forged the documents for the purpose of availing loan. There is also no materials to establish that A8 and A9 committed criminal breach of trust. Thus, according to the learned senior counsel appearing for A9 and the learned counsel appearing for A8, the available materials would not make out a prima facie case against A8 and A9. Therefore, the learned senior counsel would pray to discharge A9 thereby allowing the revision petition and setting aside the order of the court below and the learned counsel for A8 would pray to quash the criminal proceedings against A8.

5. Per contra, Mr.K.Srinivasan, the learned Special Public Prosecutor for CBI cases, would contend that A7 is the main conspirator in the case and he only set up A2, who is one of his employees, to float a firm and availed a huge sum as loan from Oriental Bank of Commerce by producing forged and fabricated documents and subsequently, diverted the loan amount released in favour of A2 to the other accused. A8, admittedly, received a sum of Rs.4.50 lakhs from A10, which was part of the loan amount and thereafter, A8 transferred the amount to A9. Both A8 and A9 were thus part of conspiracy and hence, they have been implicated with the aid of Section 120-B of IPC.

6. The learned counsel would further submit that, if at all, there were any loan transactions between A8 and A3 & A7, it is for them to substantiate the same during trial and the defence raised by them cannot be gone into at the initial state of frame of charges. According to him, the statements of L.W.16, L.W.19 and L.W.31 would clearly establish the role played by A8 and A9 and the materials available on record would prima facie make out a case against them for proceeding further. Therefore, the original petition is liable to be dismissed and there is no illegality or irregularity in the order of the learned Special Judge in dismissing the discharge application and therefore, the same does not require any interference and the revision petition is also liable only to be dismissed.

7. That apart, the learned Special Public Prosecutor would submit that earlier A9 in this case had filed a petition under section 482 of Cr.P.C. to quash the criminal proceedings in

Crl.O.P.No.11317 of 2017 and this court, by order dated 22.08.2017, after considering the entire materials placed on record, dismissed the original petition holding that the petitioner did not make out any ground for quashing the criminal proceedings invoking the inherent jurisdiction of this court under Section 482 of Cr.P.C. In view of such findings of this court, the revision petition is not maintainable and A9 cannot challenge the order of the court below by way of revision petition and therefore, the revision petition is liable to be dismissed.

8. I have considered the rival submissions carefully and also considered the materials placed on record carefully.

9. The case of the prosecution is that A2, who is one of the employees of A7 floated a firm at the instigation of A7 and A1 to A9 entered into criminal conspiracy and in furtherance of such criminal conspiracy, A2 availed loan by submitting forged and fabricated documents. A1, who was the Senior Manager of Oriental Bank of Commerce, knowing fully well that the documents submitted by A2 in support of the loan application were all forged and fabricated, sanctioned a huge sum as loan and the loan amount was not utilized by A2 for the purpose for which it was sanctioned and the same was diverted to other Accused namely, A3, A4, A6, A8 and A10. Further, according to the prosecution, after sanctioning of loan, A2 transferred a sum of Rs.34,96,611/- to the account of A10, who is said to be a close friend of A7 and A10, in turn, transferred a sum of Rs.4.50 lakhs to the account of A8 and A8 issued a cheque in favour of A9, ultimately, A9 withdrew the amount, knowing fully well that such amount was diverted from the loan amount availed by A2 thereby A8 and A9 committed the offence as alleged in the final report. In order to implicate A8 and A9, the prosecution relies upon the statement of L.W.16, Chief Manager of State Bank of Patiala, Chennai, wherein, A8 maintained his account. According to L.W.16, on 05.08.2013, a sum of Rs.4.50 was credited into the account of A8 through RTGS from Punjab & Sind Bank which was subsequently withdrawn through cheque by A9.

10. The next witness is L.W.19 said to be a friend of A7. He speaks about the conspiracy theory. According to him, A7 had issued various cheques to him and on one occasion, he, in turn, issued a cheque from the account maintained by A10-Saravanakumar, who was a close friend of A7. It could be seen from the statement of L.W.19 that subsequently, he transferred the amounts received from A7 to various persons. According to L.W.19, A9 used to visit A7's office and had discussions with him at that time A1 was also used to be present. Further, according to him, when A9 was discussing about the loan matter of his relative (A8), she was also present at A7's office with regard to loan availed from her and A7 was promising her to

repay the same as soon loan is sanctioned by bank. A9 also requested A1 to sanction loan. The relevant portion of the statement L.W.19 is extracted hereunder:-

> "... ... ... Shri.Edward was discussing about some loan matters of him or his relative viz. Smt.Arockiamary. I also saw Smt.Arockiamary visited Shri Saravanan's office at Kodambakkam with regard to the loan amount availed from her. Shri.Saravanan had promised them for repayment and informed that, he will be getting some loans from Oriental Bank of Commerce and will repay. Shri.Edward had also requested Shri Ganesh to sanction loan to Shri.Saravanan as early as possible , so that, the loans will be repaid. I also came to know that, Shri.Saravanan had repaid the loan amount to Smt.Arockiamary after the loans were sanctioned from Oriental Bank of Commerce."

11. L.W.31 was working in the complainant bank and known to A1. He speaks about various meetings held with the accused in which A1 and A7 also took part and discussed with him for saction of loan. He further speaks that he also heard A9 saying about the financial transaction between A7 and A8. The relevant portion of the statement is extracted hereunder:-

> "I also heard Shri Edward saying that, there are financial transaction between Shri Saravanan and his relative Smt.Arockiamary. I don't have any connection with loans availed by Shri J.Saravanan and any body on his behalf."

Thus, according to the prosecution, the statements of L.W.16, L.W.19 and L.W.31 would establish that both A8 and A9 had discussions with A7 and A1 with regard to sanction of loan and they were part of the conspiracy.

12. From the statements of L.W.16, L.W.19 and L.W.31 it could be seen that there were some loan transactions between A7, A8 and A9, a relative of A8 also said to have advanced loan to A8 and requested A7 to settle her loan amount. It is the case of A8 and A9 that A3 in the case borrowed some amount from A8 and when she demanded her to repay the loan, A3 executed an under taking affidavit agreeing that he would repay the amount. A7 also executed a separate undertaking affidavit and also a promissory note for Rs.4 lakhs. Copies of those affidavits and promissory note were produced before the court. A8 and A9 placed reliance heavily upon those undertaking affidavits and promissory note but, the same cannot be considered at the stage of framing of charges. It is the settled law that at the time of framing of the charges any material evidence produced by the accused cannot be considered. However, there is some exception that the materials which are unimpeachable in character having

sterling quality could be looked into by the court to consider the case of the accused.

13. In fact, the statements of L.W.19 and L.W.31 only support the contention of the petitioners/A8 and A9. From the statement of L.W.19, it could be seen that, A9 only was discussing about the loan transaction with A7 and A8 and A9 requested A1 to sanction the loan so that the amount due to A8 could be repaid. The statement of L.W.31 is also to the similar effect. According to L.W.31, there were financial transactions between A7 and A8. To that extent, promissory note and an undertaking affidavit said to have been executed by A3 and A7 in favour of A8 have got some relevance. Therefore, the submissions of the petitioners that there were loan transactions between A3, A7 and A8 and in order to discharge the same, amount from out of the loan was transferred to the account of A8.

14. That apart, there is no allegation as against A8 and A9 that they have fabricated any document and committed criminal breach of trust. The main allegation against them is that they hatched conspiracy with the other accused and in furtherance of such criminal conspiracy, a portion of the loan amount was diverted to their hands and thereby A8 and A9 cheated the complainant bank and therefore, they are liable to be prosecuted under Section 420 r/w 120-B of IPC.

15. Insofar as A9 is concerned, according to him, he advanced loan to A8 for her medical expenses and A8 in turn repaid the amount by transferring the amount through bank to his account. From the statement of L.W.19 and L.W.31 it could be sen that A9 approached A7 for repayment of loan to A8 and only made a request to A1 to sanction loan sought by them in order to repay the amount to A8 and in turn, the money was transferred to A9 through A8. It is simply a money transaction between A7, A10 and A8 and in order to discharge the loan the money was transferred to A8.

16. It is the settled law that to bring home an offence under Section 120-B of IPC mere presence of an accused is not sufficient, the prosecution should necessarily establish that there was an agreement between the parties for doing an unlawful act and there should be material for meeting of mind between the conspirators to commit the illegal act. The materials placed on record do not show that there was any agreement between the petitioners and the other accused to commit an illegal act and nothing available on record to indicate that there was meeting of mind between the petitioner and the other accused to commit the illegal act. That apart, to bring home the offence under Section 12 of PC Act also, there is no material available on record, except the confession statement of the co-accused to

show that the petitioner has abetted the offence. Similarly, to attract the offence Section 420 of IPC, there must be some material to establish that the accused had intention to cheat from the very inception. But, absolutely there is no materials to prima facie show that A8 an dA9 were part of the criminal conspiracy and they cheated the complainant bank. Therefore, on considering the materials available on record, this court is of the view that the materials available on record do not make out a prima facie case against A8 and A9

17. The next submission of the learned Special Public Prosecutor is that A9 already approached this court by way of original petition in Crl.O.P.No.11317 of 2017 under Section 482 of Cr.P.C. seeking to quash the criminal proceedings which was dismissed by this court on merits by order dated 22.08.2017, thereafter, A9 approached the trial court by way of an application under Section 239 of Cr.P.C. seeking to discharge him from the charges and the trial court after considering the entire materials placed on record has come to a conclusion that there was a strong suspicion against A9 which would be sufficient to frame the charges, dismissed the application. In view of the finding given by this court earlier in the quash petition filed by A9 that there were sufficient materials available to proceed against A9, he can not maintain the discharge application and the present revision petition challenging the order of the learned Special Judge dismissing the discharge application on the very same contentions raised earlier.

18. The grounds for quashing the criminal proceedings and discharging the accused from the charges are totally different. In the petition filed under Section 482 of Cr.P.C. seeking to quash the criminal proceedings, the court has to see whether the allegations made prima facie constitute any offence or make out a case against the accused and the materials collected during investigation disclose any commission of offence by the accused. Whereas in a petition filed under Section 239 of Cr.P.C. for discharge, the court below has to find out whether there are sufficient grounds available to try the accused and for that purpose, the court can sift and weigh the evidence for the limited purpose of finding tout whether or not a prima facie case has been made out against the accused.

19. In State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335:1992 SCC (Cri) 426, the Honourable Supreme Court issued some guidelines. At para 4 of the judgment, the Honourable Supreme Court has held as under:-

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under

Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

20. Recently the Honourable Supreme Court in Harish Dahiya @ Haish v. State of Punjab, (2019) 18 SC 69, while explaining the scope of petition filed under tSection 482 of Cr.P.C. and petition under 227 or 239 of Cr.P.C. has held as under:-

"4. Be that as it may, we find that the order dated 26-10-2018 refusing to discharge the appellants suffers from abdication of jurisdiction. Merely because an earlier application to quash the entire prosecution under Section 482 CrPC may have been dismissed, the Additional Sessions Judge could not decline to consider the application for discharge on that ground. The grounds for quashing a criminal proceeding and the reasons for allowing or disallowing an application for discharge preferred by the accused are completely different. The grounds falling for consideration in the two jurisdictions are completely different."

21. Very recently in Sanjay Kumar Rai v. State of Uttar Pradesh (Criminal Appeal No.472 of 2021 dated 07.05.2021), the Honourable Supreme Court has explained the power of court while considering the application to discharge the accused has held as under:-

"16. The correct position of law as laid down in Madhu Limaye (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of CrPC. That apart, this Court in the above-cited cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases. As a caveat it may be stated that the High Court, while exercising its afore-stated jurisdiction ought to be circumspect. The discretion

> vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This Court, nonetheless, does not recommend a complete hands off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law."

22. Therefore, the earlier dismissal of application to quash the proceedings under Section 482 of Cr.P.C. was dismissed cannot be considered as a bar for approaching the trial court seeking discharge fromt eh charges and the trial court should necessarily consider the materials available on record, independently apply its mind and find out as to whether any sufficient grounds available to proceed against the accused. From the perusal of the order under revision, it could be seen that after considering the statements of L.W.19, the trial court has come to a conclusion that A9 has involved in the crime and it prima facie created a strong suspicion against him and therefore, dismissed the application for discharge. So far as the statements of L.W.19 and L.W.31 are concerned, this court has already considered that their statements do not make out any prima facie case against the accused and there are no sufficient material to prima facie hold that A9 entered into a criminal conspiracy with the other accused and in furtherance of the same, the loan amounts were diverted to his account by the other accused. Therefore, this court is of the view that the trial court did not consider the statements of L.W.19 and L.W.31 in a proper perspective for the reasons and has come to an erroneous conclusion that a prima facie case made out against him.

23. In view of the foregoing discussions, this court is of the view that there is no case made out against A8 and A9 and as such there is no sufficient ground available to proceed against A8 and A9 and the charges against them are groundless. Therefore, the criminal proceedings against A8 is liable to be quashed and A9 is liable to be discharged from the charges.

In the result, (i) Crl.O.P.No.3277 of 2021 is allowed and the criminal proceedings in C.C.No.4 of 2017 pending on the file of the learned XI Additional Special Judge for CBI Cases, Chennai, is quashed insofar as the petitioner (A8) is concerned. (ii) Crl.R.C.No.129 of 2021 is also allowed and the order dated 22.10.2020 passed by the learned XI Additional Special Judge, Special Court for CBI Cases, Chennai in Crl.M.P.No.7395 of 2019 in C.C.No.4 of 2017 is set aside and the petitioner (A9) is discharged from all the charges.

Consequently, connected Miscellaneous Petitions stand closed.

Sd/-
Assistant Registrar(CS II)
dated:23.02.2022

***Corrected Vide Letter dated 24.02.2022 by counsel for petitioner in Crl.R.C.NO.129/2021**

Sd/-
Assistant Registrar(CS-II)
dated:07.03.2022

//True Copy//

Sub Assistant Registrar

kmk

To

1.The XI Additional Special Judge for CBI Cases, Chennai.

2.The Deputy Superintendent of Police, CBI, ACB, Chennai.

3.The Public Prosecutor (For CBI Cases), High Court, Madras.

Copy To:-

The Section Officer,
Criminal Section,
High Court, Madras.

(*)To be Substituted the order already despatched 23.02.2022

+1cc to Mr.K.Srinivasan, Advocate, S.R.No.7239
+1cc to Mr.S.Manuraj, Advocate, S.R.No.7231

CRL.O.P.NO.3277 OF 2021 AND
CRL.R.C.NO.129 OF 2021

BS(CO)
PBS/23/02/2022
SB(07/03/2022)