IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2022
DELIVERED ON : 16.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P.Nos.5091 & 7103 of 2021 and
Crl.M.P.Nos.3239, 3240, 4717 & 4716 of 2021
and Crl.R.C.No.28 of 2022 and M.P.No.196 of 2022

Crl.O.P.No.5091 of 2021

G.Vijayalan .. Petitioner/A2

Vs.

1. State rep by
The Inspector of Police,
CBI/ACB/Chennai,
RC MA1 2016 A 0018

2. S.Trinath Sridhar,
Zonal Manager,
Andhra Bank,
Zonal Office, Coimbatore. .. Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in C.C.No.2 of 2018 on the file of the learned II Additional District Judge (CBI Cases), Coimbatore and quash the proceedings.

For Petitioner : Mr.V.Gopinath, Sr.Advocate for Mr.Swami Subramanian

For Respondent 1 : Mr.K.Srinivasan, Spl.P.P.(CBI)

Crl.O.P.No.7103 of 2021

K.Ravi .. Petitioner/A1

Vs.

1. State rep by
The Inspector of Police,
CBI/ACB/Chennai,
RC MA1 2016 A 0018

2. S.Trinath Sridhar,
Zonal Manager,
Andhra Bank,
Zonal Office, Coimbatore. .. Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in C.C.No.2 of 2018 on the file of the learned II Additional District Judge (CBI Cases), Coimbatore and quash the proceedings.

For Petitioner : Mr.K.V.Sridharan

For Respondent 1 : Mr.K.Srinivasan, Spl.P.P.(CBI)

Crl.R.C.No.28 of 2022

K.Ravi .. Petitioner/A1

Vs.

State rep by
The Inspector of Police,
CBI/ACB/Chennai,
RC MA1 2016 A 0018 .. Respondent

Prayer: Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the order dated 03.02.2021 made in C.M.P.No.315 of 2019 in C.C.No.2 of 2018 on the file of the learned II Additional District Judge (CBI Cases), Coimbatore.

For Petitioner : Mr.K.V.Sridharan

For Respondent : Mr.K.Srinivasan, Spl.P.P.(CBI)

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COMMON ORDER

(The case has been heard through video conference)

The issue involved in both the criminal original petitions and the criminal revision petition are one and the same and hence they are heard together and disposed of by means of this common order.

2. The petitioner in Crl.O.P.No.7103 of 2021 is arrayed as A1 and the petitioner in Crl.O.P.No.5901 of 2021 is arrayed as A2. Both these criminal original petitions were filed to quash the criminal proceedings in C.C.No.2 of 2018 pending on the file of the learned II Additional District Judge (CBI Cases), Coimbatore.

3. A1, in this case has earlier approached the trial Court to discharge him from the charges and that application came to be dismissed. Now challenging the same the present criminal revision has been filed.

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

(i) Totally there are four accused. They stood charged for offences under Sections 120-B r/w Section 420, 471 of I.P.C., and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act').

(ii) A1, was working as Senior Branch Manager, in Andhra Bank, SME Branch, Coimbatore. After A1 got transferred, A2 succeeded A1 as the Senior Branch Manager in that branch. A3 is the Proprietor of one M/s.Es R Es Mills, Coimbatore and A4 is the younger brother of A3.

(iii) The allegation is that, A3 engaged in the manufacture of Gada clothes by using power looms. The firm has received credit facilities in Union Bank of India, subsequently, the credit facility was taken over by Andhra Bank, SME Branch, Coimbatore. At the time of taking over, the total balance outstanding was Rs.168.70 lakhs.

(iv) A3, entered into a criminal conspiracy with A1, and in furtherance of the said conspiracy, he submitted a proposal for taking over of Open Cash Credit (OCC) of Rs.100 lakhs and Working Capital Term Loan of Rs.69 lakhs, from Union Bank of India to Andhra Bank, with an enhanced limit of OCC to Rs.200 lakhs, existing Working Capital Term Loan of Rs.69 lakhs and also two term loans of Rs.35 lakhs each for the construction of proposed factory building at an estimated cost of Rs.70 lakhs, and a term loan of Rs.150 lakhs for the purchase of machineries for a value of Rs.201.19 lakhs. A1 forwarded the above proposal to higher officials for sanction. Thereafter, based on the recommendations of A1, the above loan was sanctioned on 11.05.2010.

(v) After sanction of the loan, in furtherance of the conspiracy A3 with an intention to cheat the bank submitted a fabricated quotation for purchase of 12 new looms at the cost of Rs.16.00 lakhs each and purchased the same in the name of M/s.Sun Apparels, in which A3 is the proprietor. Thereafter, A3 transferred Rs.1,34,14,400/- from the loan account to the account of M/s.Sun Apparels towards purchase of machinery, whereas, the same was used for other purposes.

(vi) So far as A1 is concerned, the allegation was while sanctioning the term loan for purchase of machineries failed to comply with the rules and regulations and without verifying the necessary documents sanctioned the loan amount. That apart, being fully aware of the fact that the money was diverted in pursuance of the conspiracy, A1 initiated a proposal for enhancement of OCC limit for purchase of new machineries to the tune of Rs.2.25 lakhs and fresh term loan of Rs.2.70 lakhs.

(vii) Thereafter, A1 was transferred to Zonal Office at Coimbatore, subsequently promoted as Chief Manager in August, 2012. Then A2 joined the post of Senior Branch Manager in the

SME Branch, Coimbatore and he also in furtherance of the conspiracy released the enhanced OCC limit to A3 without following the Zonal Office communication that working capital limit should be released only after the purchase and installation of new machineries and only with the permission of the Zonal Office.

(viii) That apart, A2 also released the term loan without collecting margin money and sanctioned a sum of Rs.45 lakhs to A3 knowing very well that the said firm has defaulted on repayment of loan, he has also exceed his discretionary power while sanctioning the loan.

(ix) Accused 1 and 2, being public servants, abused their official position, dishonestly recommended for sanction and disbursed loan proceeds to the tune of Rs.734.96 lakhs, along with interest a total sum of Rs.1129.25 lakhs, thereby caused wrongful loss to the bank and corresponding wrongful gain for themselves.

(x) Hence, based on the complaint given by the bank, a crime was registered. After completion of investigation, on 19.06.2017, the first respondent forwarded the investigation report along with all the materials collected during investigation to the sanctioning authority to accord sanction to prosecute both A1 and A2 as they were public servants. While the application seeking for sanction was pending, the first respondent filed final report before the Special Court, on the ground that the time of commencement of the offence, A1 and A2, were working as Senior Managers, Scale-III, subsequently at the time of filing final report, they were promoted as Chief Managers in the Andhra Bank, holding a different office, hence no sanction is necessary.

(xi) In the meantime, as there was a difference of opinion between the CBI and the competent authority regarding grant of sanction, therefore the matter was referred to the Central Vigilance Commission for advice and it is stated that the Central Vigilance Commission by its order dated 20.02.2019, adviced for denial of sanction for prosecution for both A1 and A2. Consequently, the competent authority did not accord sanction for prosecution. Based on that both A1 and A2 filed petitions to discharge them from the charges under Section 239 Cr.P.C., the trial Court dismissed both the applications. Thereafter, the trial Court has taken cognizance of the offence and issued process.

5. Now, to quash the above proceedings A1 and A2 have filed the above two criminal original petitions and A1 alone filed the criminal revision petition challenging the order of dismissal of the discharge petition.

6. Mr.V.Gopinath, learned senior counsel and Mr.K.V.Sridharan, learned counsel appearing for the petitioners/A1 and A2, would submit that the competent

authority refused to grant sanction for prosecution and in the absence of sanction for prosecution, the Court below ought not to have taken cognizance of the offence. Hence, the very taking of cognizance by the Court below is not valid and on that ground the criminal proceedings are liable to be set aside.

7. The learned senior counsel further submitted that admittedly at the time of commencement of the offence, both the petitioners were working as Senior Managers in the Middle Management Grade III (MMGS III Grade) in the SME Branch, Coimbatore, and at the time of filing of final report both of them were promoted and working as Chief Managers in the Senior Management Grade IV, (SMGS IV Grade), subsequently attained superannuation. The learned counsel would further contend that, the competent authority for according sanction for both the Senior Manager (MMGS III Grade) and Chief Manager (SMGS IV Grade) is General Manager (Human Resources) and there is no separate sanctioning authority. In such circumstance, even though both the accused were holding different office, since the competent authority to grant sanction is one and the same, obtaining sanction for prosecution is necessary.

8. The learned senior counsel further submitted that, in the instant case, after considering all the materials, the sanctioning authority refused to accord sanction, hence for want of sanction the criminal proceedings against them cannot proceed, and are liable to be quashed. The learned senior counsel on merits submitted that, even the materials available on record prima facie does not make out any offence against the petitioners and on that score also the proceedings are liable to be quashed.

9. Per contra, Mr.K.Srinivasan, learned Special Public Prosecutor would contend, that the allegations are very serious in nature. The petitioners A1 and A2 were working as Senior Managers in a nationalised bank, indiscriminately sanctioned loan to A3 without verifying the documents and disbursed the loan amount against the rules and regulations and thereby caused huge loss to the bank to the tune of more than Rs.1000 lakhs and the material collected during interrogation clearly makes out a prima facie case against the accused.

10. The learned Special Public Prosecutor further submitted that, as regards obtaining sanction for prosecution, admittedly both the accused are hold different office at the time of commencement of the occurrence and on the date when cognizance, was taken, in these circumstance, there is no necessity to get sanction. Whether the sanction is necessary or not are all matter to be decided in trial and it cannot be a ground to quash the criminal proceedings.

11. The learned Special Public Prosecutor further submitted that, both the accused have already approached the trial Court and filed a petition for discharge them from the charges, which was dismissed by the trial Court and in these circumstance, they cannot maintain another petition under Section 482 of Cr.P.C. to quash the criminal proceedings. Hence these petitions are not maintainable in the eye of law.

12. I have considered the rival submissions and also perused the materials available on record carefully.

13. The primordial submissions of the learned senior counsel appearing for the petitioners is that, when the competent authority refused to grant sanction for prosecution, the Court below ought not to have taken cognizance, and proceed with trial without a sanction for prosecution. It is an admitted fact that, the competent authority did not accord sanction for prosecuting the petitioners. It is contended by the prosecution that, at the time of commencement of crime, both the accused were working as Senior Manager (Middle Management Grade-III) and subsequently at the time of taking cognizance they were holding a different office viz., Chief Manager (Senior Management Grade-IV), and as both of them were holding different office, sanction is not at all necessary.

14. Section 19 of the Act, speaks about obtaining previous sanction from the competent authority for prosecuting a pubic servant, which reads as follows:

> "Section 19. Previous sanction necessary for prosecution.—
>
> (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)—
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent to

remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

> Explanation.—For the purposes of this section,— (a) error includes competency of the authority to grant sanction;
>
> (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

15. Under Section 19 of the Act, the power to grant sanction was conferred on the authority, who is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motive, for which a prosecution is intended to be launched against him. The power has been conferred on the competent authority for oblivious reasons that, that authority alone could decide whether a serious offence has been committed or the prosecution is either frivolous or speculative. However, the position is different when the accused is holding a different office in a different capacity then the one which they were holding at the time of commencement of the offence, then, no sanction is necessary and the accused are not entitled to get protection under Section 19 of the Act. This position has been explicitly considered by the Hon'ble Supreme Court and in Abhay Singh Chautala Vs. CBI, reported in (2011) 7 SCC 141, the Hon'ble Supreme Court has held in paragraphs 54 and 56 as follows:

> "54. The learned Senior Counsel tried to support their argument on the basis of the theory of "legal fiction". We do not see as to how the theory of "legal fiction" can work in this case. It may be that the appellants in this case held more than one offices during the check period which they are alleged to have abused; however, there will be no question of any doubt if on the date when the cognizance is taken, they are not continuing to hold that very office. The relevant time, as held in S.A. Venkataraman v.State [AIR 1958 SC 107 : 1958 Cri LJ 254] , is the date on which the cognizance is taken. If on that date, the appellant is not a public servant, there will be no question of any sanction. If he continues to be a public servant but in a different capacity or holding a different office than the one which is alleged to have been abused, still there will be no question of sanction and in that case, there will also be no question of any doubt arising because the doubt can arise only

when the sanction is necessary. In case of the present appellants, there was no question of there being any doubt because basically there was no question of the appellants' getting any protection by a sanction.

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56. Thus, we are of the clear view that the High Court was absolutely right in relying on the decision in Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19 of the Act as held in K. Karunakaran v. State of Kerala [(2007) 1 SCC 59 : (2007) 1 SCC (Cri) 251] and the later decision in Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] . The appeals are without any merit and are dismissed."

16. The above judgment has been considered subsequently by the Hon'ble Supreme Court in L.Narayanan Swamy Vs. State of Karnataka reported in (2016) 9 SCC 598, wherein the Hon'ble Supreme Court has held that when a public servant ceases to hold the office which he was holding at the time of commencement of the offence and holding a different office at the time of taking cognizance, no sanction would be necessary. The relevant portion of the said judgment reads as follows:

"21. It clearly follows from the reading of the judgments in Abhay Singh Chautala [Abhay Singh Chautala v. CBI, (2011) 7 SCC 141 : (2011) 3 SCC (Cri) 1 : (2011) 2 SCC (L&S) 735] and Parkash Singh Badal [Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] that if the public servant had abused entirely different office or offices than the one which he was holding on the date when cognizance was taken, there was no necessity of sanction under Section 19 of the PC Act. It is also made clear that where the public servant had abused the office which he held in the check-up period, but had ceased to hold "that office" or was holding a different office, then sanction would not be necessary. Likewise, where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction......."

17. Applying the above principles in the instant case, admittedly, both the petitioners were holding different office in different capacity, at the time of commencement of the offence both the accused were working as Senior Managers, however at the time of filing of the final report and taking cognizance, they were working as Chief Managers.

18. The learned senior counsel relying upon the service regulations of the Andhra Bank, would contend that the competent authority to remove the petitioners in both the grades i.e., Senior Manager (MMGS-III) and Chief Manager (SMGS-IV) from service is one and the same, namely, General Manager (Human Resources), in that circumstances, the principles laid down in L.Narayana Swamy case (cited supra) is not applicable to the instant cases and obtaining sanction for prosecution is necessary. However, it was disputed by the prosecution.

19. In the instant case, whether sanction for prosecution is required or not cannot be decided based on the materials placed by the petitioners before this Court and it would require some evidence to be taken at the time of trial. Considering the nature of dispute involved and peculiar facts of this case, it would not be possible to decide the same at this stage. However, it is open to the petitioners to raise this issue during the course of trial and if any such issue is raised, the trial Court is directed to consider the same and decide the issue and on that score, the criminal proceedings cannot be quashed.

20. So far as on the merits of the case, during investigation, the prosecution examined as many as 48 witnesses and collected voluminous documents. A careful perusal of the statements of the witnesses collected during the investigation, it could be seen that a prima facie case is made out against the petitioners for proceedings further, and on that ground also the proceedings cannot be quashed.

21. In the Criminal Revision Petition filed by A1, also the very same issue was raised and in view of the above findings, this Court, finds no reason to interfere in the the order passed by the trial Court.

22. Considering the above circumstances, this Court finds that there is no merit in these criminal original petitions and no ground has been made out to quash the criminal proceedings. Hence both the criminal original

petitions are liable to be dismissed and accordingly dismissed. Consequently the criminal revision petition is also dismissed. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kk
To

1. The II Additional District Judge (CBI Cases),
   Coimbatore.

2. The Inspector of Police,
   CBI/ACB/Chennai,
   RC MA1 2016 A 0018.

3. The Public Prosecutor,
   High Court, Madras.

Copy to:
The Section Officer,
Criminal Section,
High Court,Madras

+1 cc to Mr.Swami Subramanian, Advocate Sr.NO.10210
+3 ccs to Mr.K.Srinivasan, Advocate Sr.NO. 10564,10565

Crl.O.P.Nos.5091 & 7103 of 2021 and
Crl.M.P.Nos.3239, 3240, 4717 & 4716 of 2021
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GSM(CO)
A.SK(03/03/2022)