IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 17.06.2022

ORDER PRONOUNCED ON : 21.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.582 OF 2022

N.Gunasundari ... Petitioner

Versus

The State by
The Sub-Inspector of Police,
Bank Fraud Team – XV,
Central Crime Branch,
Egmore, Chennai – 600 008.
Crime No.15 of 2001 ... Respondent

PRAYER:-

Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed in Crl.M.P.No.5133 of 2021, dated 30.12.2021 in C.C.No.80 of 2007 on the file of the learned Judicial Magistrate No.I, Poonamallee.

For Petitioner : Mr.N.Bhaskaran

For Respondent : Mr.S.Vinoth Kumar
Government Advocate
(Criminal Side)

ORDER

This Revision Case is filed against the order of the learned Judicial Magistrate No.I, Poonamallee, dated 30.12.2021 in Crl.M.P.No.5133 of 2021 in C.C.No.80 of 2007, whereby, the application for discharge filed by the petitioner/accused No.2 was dismissed by the Trial Court.

2. The learned Counsel for the petitioner would submit that the first accused in the case is the husband and the second

accused is his wife. The allegation is that the first accused, while working as Clerk in a Bank, had falsified the accounts of the bank by not showing the credit of the various amounts deposited by the customers and misappropirated the amounts to his personal use and thereby, committed the offences under Sections 409, 420, 477A, 467, 468, 471 of I.P.C. As far as the allegations against the accused No.2, who is the petitioner in this Criminal Revision Case, is that she conspired with him , aided and abetted the commission of the said offences by lending her name to open an account in the name and style of 'Sree Vari Agencies' in another bank namely, Allahabad Bank, in which, such misappropriated amounts are parked and transacted to the tune of about Rs.54,00,000/- approximately.

3. The primary contention of the learned Counsel for the petitioner is that a perusal of the said bank account, produced by the prosecution, does not show any amount being directly transferred from Majura Bank, in which, the accused No.1 was working to the said account in the Allahabad Bank. Therefore, in the absence of any evidence by the prosecution to prove that the said amounts transacted are the amounts which are misappropriated, the charge will not be made out.

4. Per contra, learned Government Advocate (Crl. Side) would submit that at the stage of framing of charges, the version of the defence to look into each and every entry of their account need not be gone into. According to him, L.W.1, Nagaraj had, in his statement under Sec.161 of Cr.P.C., stated as follows:-

> "Mr.G.Nagarajan serving as a clerk in our branch is also maintaining a current account with Allahabad Bank, Jawahar Nagar Branch, Chennai-82 in the name of M/s Srivari Agencies for which the wife of Mr.G.Nagarajan by name N.Gunasundari is the proprietrix. Both Mr.Nagarajan and his wife colluded with other in diverting some of the misappropriated amount into the account of M/s Srivari Agencies and withdrew the amount. I have been the Branch Manager of Bank of Madura Ltd., Padiyanallur Branch, Chennai-52 since 24.05.2000 and presently residing at No.3, Abirami Nagar, Second Street, Virugambakkam, Chennai-92 with my family members."

5. To corroborate the same, L.W.28 namely, one Tamilarasan, the Manager of the said Allahabad Bank, Jawahar Nagar, is examined, who speaks about the opening of the current account during the relevant period and the transactions in the account. Therefore, he would submit that there is prima facie material to show that the second accused, namely the wife of the first

accused, has aided and colluded with the first accused in committing the crime.

6. In reply thereof, the learned Counsel for the petitioner would submit that even taking the said evidences on face value, L.W.1 merely says that the account has been opened in the name of Sree Vari Agencies, by showing the accused No.2 as proprietrix. L.W.28 speaks only of the details of opening of the account and the transactions in the account. Still the prosecution has got no evidence to further conclusively prove the charge that any amount, deposited/transacted in the said account, is the misappropriated amount and the said amounts are from the customers of Sree Vari Agencies, which was in the brick business, then the accused No.2 cannot be convicted for the offences complained against her.

7. Therefore, a careful consideration of the arguments made on behalf of the petitioner is that the prosecution does not have ample material to prove the charge beyond reasonable doubt and therefore, the discharge application has to be allowed. But, however, the law on the point has been now categorically laid down by the Hon'ble Supreme Court of India as to what is the criteria for discharging an accused and it is useful to extract the paragraph No.21 of the judgment of the Hon'ble Supreme Court of India in Sajjan Kumar Vs. Central Bureau of Investigation[1] which reads as follows:-

> " 21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:
>
> (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
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> (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.
>
> (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case,

1 (2010) 9 SCC 368

the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

Therefore, at this stage, the exercise is not to go into each and every transaction in the said bank account of the Allahabad Bank and to further see whether there is any further material on behalf of the prosecution so as to conclusively prove the charge, but, it is only to see whether there is any prima facie material to frame the charge. Therefore, to that extent, the evidence of L.W.1 and L.W.28 is prima facie enough to frame the charge and therefore, the discharge application has been rightly dismissed by the Trial Court.

8. In this case, it is further seen that the Calendar Case is of the year 2007. It is unfortunate that the case is still in the stage of framing charges. Therefore, considering the fact that the occurrence is of the year 2000 and Final Report was filed in the year 2006 after investigation for six long years and the case is taken on file thereafter in the year 2007 and the matter is pending somehow for fifteen long years, the matter has to be taken up for framing of charges on conduct of trial with due sensitivity and urgency which the matter requires.

9. Therefore, this Criminal Revision Case is ordered as follows:-

(i) The order of the learned Judicial Magistrate No.I, Poonamallee, dated 30.12.2021 in Crl.M.P.No.5133 of 2021 in C.C.No.80 of 2007 is upheld;

(ii) The learned Judicial Magistrate No.I, Poonamallee, is directed to take up the C.C.No.80 of 2007 for framing of charges and thereafter, for trial on a day to day basis and complete the trial and dispose off the C.C.No.80 of 2007 as expeditiously as possible, in any event, not later than a period of three months from the date of receipt of s copy of the order;

(iii) The respondent Police is directed to co-operate by duly locating all the listed witnesses and serving summons on the witnesses and examining them without fail on the dates which are allotted by the Trial Court;

(iv) It goes without saying that the petitioner/accused shall also co-operate for the trial;

(v) Consequently, Crl.M.P.Nos.6156 and 6158 of 2022 are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

grs

To

1. The Judicial Magistrate No.I,
Poonamallee.

2. -Do Through The Chief Judicial Magistrate,
Thiruvallur.

3. The Sub-Inspector of Police,
Bank Fraud Team - XV,
Central Crime Branch,
Egmore, Chennai - 600 008.

4. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.N.Bhaskaran, Advocate, S.R.No.37575

CRL.R.C.NO.582 OF 2022

SKM(CO)
PBS/30/06/2022