IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.27423 of 2022

1.Vijay R.Singh

2.M/s.India Household and Health Care Ltd.,
Rep. by its Managing Director,
Mr.Vijay R.Singh,
No.47, 8th Main,
Jaya Nagar, 4th Block,
Bangalore. ... Petitioners

Vs.

State Rep. by the Inspector of Police,
SPE/CBI/BSFC/BLR,
Bangalore.
R.C.No.1(E)/2007. ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash the proceedings against petitioner/A3 and petitioner/A5 in C.C.No.32 of 2008 pending on the file of the learned XI Additional Special Judge for CBI Cases relating to Banking and Financial Institutions, Chennai.

For Petitioners	:	Mr.A.V.Somasundaram
For Respondent	:	Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases.

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ORDER

Criminal Original Petition has been filed to quash the proceedings in C.C.No.32 of 2008, pending on the file of the XI Additional Special Judge for CBI Cases relating to Banking and Financial Institutions, Chennai against the petitioners/A3 & A5.

2.The gist of the case is that on the basis of the written complaint, dated 27.04.2006 by the Chief Vigilance Officer of Union Bank of India, Central Office, Mumbai, a case was registered on 17.01.2007 in RC.No.1(E)/2007/CBI/BS & FC/BLR against A1/A.K.Alva, Former Assistant General Manager of Union Bank of India, Industrial Finance Branch, Chennai, A2/Krishna Pillai Jayaram, Chairman of M/s.India Household & Health Care Limited and A3/Vijay R.Singh, Managing Director of M/s.India Household & Health Care Limited for offence punishable under Sections 120-B r/w 420, 409 IPC and 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act, 1988 in connection with defraud of Union Bank of India, IFB, Chennai to the tune of Rs.4.93/- Crores.

3.A1, the then Assistant General Manager of Union Bank of India, Industrial Financial Branch and A4, the then General Manager of the Bank at Chennai were parties to the criminal conspiracy entered into with A2 and A3, Chairman and Managing Director respectively of M/s.India Household & Health Care Limited to cheat the Union Bank of India, Chennai in the matter of sanction and release of the credit facilities to the company. In furtherance of the criminal conspiracy, the accused officials by committing criminal breach of trust in respect of the funds of the bank over which they had dominion and by committing criminal misconduct by abusing their official position by corrupt or illegal means, by allowing the release of the sanctioned loan amount to the associate concerns of M/s.India Household & Health Care limited knowing fully well that the agreement between M/s.India Household & Health Care Limited and M/s.LG Household and Healthcare Limited, Korea were terminated on 05.02.2005 itself and also that the sanction conditions were not complied with. Thus, they cheated the Union Bank of India to the tune of Rs.16.86/- Crores as on 31.03.2006. During the course of investigation, A4/R.Viswanathan, the then General Manager of the Bank at Chennai was included as accused as it was disclosed that he was also a party to the criminal conspiracy to cheat the bank.

4.After completion of the investigation, charge Sheet filed against the accused including the petitioners herein, for offence under Sections 120-B r/w 409, 420, 468 & 471 of IPC and Section 13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988 and substantive offences thereof before the trial Court on 26.07.2008 in connection with the defraud of Union Bank of India, Industrial Finance Branch, Chennai to the tune of Rs.4.93/- Crores. Challenging the charge sheet filed by the respondent, the petitioners/A3 & A5 are before this Court.

5.The learned counsel for the petitioner submitted that the quantum of loan amount as mentioned in the charges framed by the trial Court against the petitioners for Rs.16 Crores is contrary to the facts as disclosed by the respondent in the charge sheet. As per the case of the prosecution, the alleged wrongful loss to the bank is only to the tune of Rs.4.93 Crores and not Rs.16 Crores. He further submitted that the trial Court framed charges against the petitioners on 17.10.2012 with wrong quantum of loss to the bank and hence, a petition under Section 216 of Cr.P.C., filed to amend the charges with regard to the quantum of the loan and alleged wrongful loss, which was not entertained by the trial Court. The present Advocate, who is now defending the petitioners before the trial Court, came into picture only at the stage of examination of the Investigating Officer. After that, the error and variation in respect of alleged wrongful loss in FIR, complaint, charge sheet was found. The only apprehension of the petitioners is that the trial Court may wrongfully consider the alleged wrongful loss of Rs.16.86 Crores when the admitted case of the prosecution is only for Rs.4.93 Crores. He further submitted that the outstanding cash credit loan was converted into working capital terms loan, by way of restructuring of loan under Ex.P150, which was sanctioned by the Board of Directors of Union Bank of India on 13.09.2005 with the time given until 30.09.2006 i.e., the loan installment payment in 20 months after 30.09.2006.

6.The learned counsel further submitted that in the sanction of credit limits (Exs.P27 & 28), dated 14.02.2008, there is no clause with regard to creation of equitable mortgage is necessary before the dispersal of the loan. He further submitted that belated auction of stocks/goods held under the lock and key with the Union Bank of India for worth over Rs.75 Crores is without reason. Despite knowing the fact that the stocks held with the bank had shelf life and degradable, the act of the bank is sheer abuse of process of law, by holding the stocks of M/s.India Household and Health Care Limited for five long years without any justification i.e., from 2005, the Central Warehousing Corporation belatedly auctioned the expired goods in the year 2010 for a low and minimum value. Had the stocks sold much earlier within the shelf life period, the value would have been equal to the loan amount issued. The total amount disbursement was Rs.15.07 Crores to the company A5. An amount of Rs.12.04 Crores was recovered by the sale of the collateral property, Rs.1.2 Crores by way of rentals received and Rs.1.2 Crores by way of auctioning of goods by STC. If the Union Bank of India auctioned unexpired goods in the year 2005 itself, then there would have been no outstanding of loan amount and no case against the petitioners. Hence, the loss sustained to the bank is not correct.

7.The learned counsel further submitted that in this case, there is inordinate delay in progress of the trial despite mandated provision under Section 4(4) of Prevention of Corruption Act, 1988 and Section 292 of the Criminal Rules of Practice, 2019. Thus, the petitioners have been unnecessarily facing trial from the year 2008 without any fault of them. Hence, he prayed for quashing the proceedings against them in C.C.No.32 of 2008.

8.*Per contra*, the learned Special Public Prosecutor appearing for the respondent submitted that M/s.India Household & Healthcare Limited/A5 was incorporated on 02.12.2003, consequent to the Memorandum of Understanding (MOU) entered into with A2/Chairman and A3/Managing Director on 30.10.2003 for import, marketing and distribution of household and healthcare products under the brand name 'LG'. This products to be imported from Korea, for which, they entered into MOU with M/s.LG Household Limited, Korea on 01.11.2003. On 08.05.2004, M/s.India Household & Healthcare Limited/A5 represented by A2 & A3 entered into the license agreement with M/s.LG Household and Healthcare Limited and thereby, they became the sole distributor in

India for the M/s.LG household and Healthcare products. They also entered into MOU with State Trading Corporation (STC), a Government of India Company on 26.03.2004 for the import of products from M/s.LG Household and Healthcare Limited and they had imported the goods under Letter of Credit opened by STC.

9.He further submitted that the 1st petitioner/A3, Managing Director of M/s.India Household & Healthcare Limited/A5 with the criminal intention to cheat Union Bank of India, Industrial Finance Branch, Chennai had conspired with other accused persons A1, Assistant General Manager of Union Bank of India, IFB, Chennai, A2, Chairman of M/s.India Household & Healthcare Limited and A4, General Manager of Union Bank of India. A3 in collusion with A2 had availed Working Capital limit and Letter of Credit limit of Rs.20 Crores (Rs.10 crores each) from Union Bank of India, IFB, Chennai fraudulently and dishonestly without doing any business by way of submitting fake/forged and fabricated documents viz., copy of bogus orders, photocopy of an agreement purportedly signed between M/s.Eurolife Worldwide Ltd., and M/s.India Household and Health Care Limited and suppressing the information regarding the dispute between the two companies viz., M/s.LG Household and Health care Limited and M/s.India Household and Health care Limited.

10.It is further submitted that A3 without complying and fulfilling the sanction conditions for creation of Equitable Mortgage (EM) or obtaining the CA certificate, he in collusion with A1 got released Rs.4 Crores towards payment of Rs.2.50 Crores to STC, Mumbai and Rs.1.50 Crores to account No.024651100000046 of M/s.Innovative Concepts India Private Limited, a company of A3 towards media expenditure. A3 got this amount credited in the account of his company maintained with IDBI Bank and subsequently, it was transferred to account No.168010200003681 of M/s.India Household Health Care Limited with UTI Bank, Chennai by way of cheque issued by him from the account of M/s.Innovative Concepts India Pvt Limited. On 05.02.2005, M/s.LG Household and Healthcare Limited, Korea terminated the license agreement with M/s.India Household Healthcare Limited/A5. A3 with the criminal intention to cheat Union Bank of India submitted a letter to the Bank on 15.02.2005 requesting for release of 8 pay orders amounting to Rs.2,50,59,250/-, which includes Rs.110 lakhs to M/s.Eurolife Worldwide Limited, a sister concern of A5 towards advance (purportedly) and he had got the funds released from the Union Bank of India, in connivance with A4 knowing fully well and by wilfully suppressing the information that they could not do business of the LG products after the termination. A3 got credited the pay order of Rs.110 lakhs in the account No.0040330007133 of M/s.Eurolife Worldwide Limited with HDFC Bank on 18.02.2005 and on the same day, it was transferred to the account No.168010200003681 of A5 maintained with UTI Bank by A3. Further, A3 with the active connivance of A1 fraudulently and dishonestly got released Rs.463.97 lakhs on 11.03.2005 towards State Trading Corporation and Customs duty by violating the sanction terms & conditions.

11.He further submitted that A3 with the criminal intention to cheat Union Bank of India, IFB, Chennai had submitted photocopy of agreement, dated 17.01.2005 to the Bank on 16.03.2005 purportedly entered between M/s.Eurolife Worldwide Limited and A5 for making A5 as the sole licensee of the products of M/s.Eurolife Worldwide Limited and requested the Bank to release Rs.330 lakhs to M/s.Eurolife Worldwide Limited (sister concern of M/s.India Household Healthcare Limited). The agreement was signed by A3 for A5 company and he also forged the signature of Umesh Chandra Pandey in the agreement by showing Umesh Chandra Pandey as the CEO of M/s.Eurolife Worldwide Limited. Thus, A3, Managing Director of M/s.India Household and Healthcare Limited/A5 had conspired with other accused persons and in furtherance of the said criminal conspiracy, he in collusion with other accused persons had availed Working Capital Limit and Letter of Credit limit of Rs.20 Crores (Rs.10 crores each) from Union Bank of India, IFB, Chennai fraudulently and dishonestly by submitting fake/forged/fabricated agreements and cheated the Bank and caused wrongful loss to the tune of Rs.4.93 Crores to Union Bank of India and corresponding wrongful gain to themselves and M/s.India Household and Healthcare Limited.

12.He further submitted that the reason given by the petitioners for filing petition under Section 216 Cr.P.C., belatedly is not acceptable. The Hon'ble Apex Court time and again reiterated that the change of counsel will not be a ground for filing petition belatedly. In this case, the prosecution case is that A3 diverted and caused wrongful loss to the Union Bank of India, Industrial Finance Branch, Chennai to the tune of Rs.4.93 Crores. The trial Court at any time can alter the charge on the evidence and material. The only condition is that in the event of any prejudice is cause, the accused to be given an opportunity to file appropriate petition. The Hon'ble Apex Court in the case of "***P.Kartikalakshmi Versus Sri Ganesh and another reported in (2017) 3 SCC 347***" clearly held that Section 216 Cr.P.C., is a matter of right either for addition or alteration of charge and the power only vests with the Court. The power available under Section 216 Cr.P.C., can be exercised only by the Court on its own and no party has any right to seek for passing any orders invoking said provision. In this case, the trial is at the advance stage of arguments. The petitioners have to advance their arguments and they can refer the charge as well as the corresponding evidence and bring its to the knowledge of the trial Court. He further submitted that except the petitioners, the other accused A2 has to advance his arguments, at this stage, filing the present criminal original petition, is only to protract the progress of the trial. Hence, he prayed for dismissal of this Criminal Original Petition.

13.This Court considered the rival submissions and perused the materials available on record.

14.The ground raised by the petitioners that the counsel, who is defending before the trial Court, come into picture belatedly at the stage of examination of the Investigating Officer, after that only, the error in the charge has been found, cannot be countenanced. As rightly submitted by the learned Special Public Prosecutor for CBI Cases, the Hon'ble Apex Court as well as this Court time and again held that the change of counsel would not be a ground for any recalling the witness or filing any Miscellaneous Petitions blaming the earlier counsel. The ground for delay cited by the petitioners under Section 4(4) of the Act, 1988 as amended, which came into force with effect from 26.07.2018. As per Section 4(4) of the Act, prior to amendment, the trial of an offence shall be held, as far as possible, on day to day basis. From the adjudications in C.C.No.32 of 2008, it is seen that several Miscellaneous Petitions including recall petitions were filed by the accused alternatively during trial. Further, the petitioners also contributed for the delay. Having contributed for the delay, now raising the delay as a point for consideration is not sustainable.

15.Now coming to the point raised by the petitioners with regard to the alteration of charge. As regards alteration of charge is concerned, in the case of "***P.Kartikalakshmi Versus Sri Ganesh and another reported in (2017) 3 SCC 347***", the Hon'ble Apex Court held that '*Section 216 Cr.P.C., empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right*'. It is also observed that '*it may be that if there was an omission in the framing of the charge and it if comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 Cr.P.C., to either alter or add the charge and that such power is available with the Court* *at any time before the judgment is pronounced*'. Thus, the power to the trial Court either to alter or add the charge is always available under Section 216 Cr.P.C., at any time before the judgment is pronounced. Further, the power vested to the Court is exclusive to the Court and no party neither the defacto complainant nore the accused to seek for such addition or alteration of charge by filing any application as a matter of right.

16.On the similar line, the Hon'ble Apex Court in the case of "***Dr.Nallapareddy Sridhar Reddy Versus State of Andhra Pradesh and others reported in (2020) 12 SCC 467***", referring to ***P.Kartikalakshmi*** case held as follows:-

> "21.*From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and*

reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."

17.The prosecution in the counter admitted that funds of Union Bank of India, Industrial Finance Branch, Chennai was diverted to the tune of Rs.4.93 Crores. In view of the above dictum of the Hon'ble Apex Court, it is for the trial Court to consider, based on the evidence and materials, contention put forth by the petitioners seeking alteration or addition of charges. It is not in dispute that alteration of charge can be made at any time before the judgment is pronounced. The only requirement is that the Court to ensure no prejudice is caused to the accused in the event of addition or alteration of charge.

18.In view of the above, this Court is of opinion that this is not a fit case where this Court should exercise its inherent power under Section 482 Cr.P.C., to quash the proceedings against the petitioners. This Court finds no merit for consideration in the Criminal Original Petition and it accordingly fails and, is dismissed.

18.11.2022

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No

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Note: Issue Order Copy on 21.11.2022.

To

1.The XI Additional Special Judge for CBI Cases
relating to Banking and Financial Institutions,
Chennai.

2.The Inspector of Police,
SPE/CBI/BSFC/BLR,
Bangalore.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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