



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.3857 of 2019

and

Crl.MP(MD)No.2267 of 2019

and

Crl.MP(MD)No.7455 of 2020

R.Nakkiran : Petitioner/Sole Accused

Vs.

1.The State rep by
The Inspector of Police,
The District Crime Branch (DCB)
Virudhunagar District. : R1/Complainant

2.Krishnakumar : R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in Crime No.9 of 2017 dated 23.01.2017 on the file of the first respondent for offences U/s 120(B), 406, 420, 465, 467, 468 and 471 of IPC and quash the same.

For Petitioner : Mr.T.Lajapathi Roy
For 1st Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)
For 2nd Respondent : Mr.S.Sukumar

O R D E R

This petition has been filed seeking quashment of the case in Crime No.9 of 2017 on the file of the first respondent.

2.The case of the prosecution in brief:-

The accused was a customer of State Bank of India, Srivilliputhur. He was also helping the beneficiaries to secure the social benefits. In the course of time, the accused secured the loan to about 59 farmers under various schemes of the Government. The accused would not repay the loan amount properly. So cases have been



registered against those persons. During the course of the producing documents, it was found that many of the documents that were supplied through this accused were found to be forged. It is also found that he has misappropriated huge amount by cheating the bank officials. He also forged the letter head pad, seal, etc. and by this way, the amount to the tune of Rs. 48,45,000/- have been misappropriated by the accused. Seeking action against all those persons including this petitioner, the Bank Manager lodged a complaint. Upon which, the present case has been registered.

3. Seeking quashment of the same, this petition came to be filed by the petitioner solely on the ground that on the very same set of allegations, several prosecutions have been initiated against this petitioner, such as CC Nos.68 of 2009, 102 of 2009, 103 of 2009, 128 of 2009 and 266 of 2008 etc., In all the above said cases, the petitioner has been acquitted. Against which, the State has not preferred any appeal.

4. Head both sides.

5. The learned counsel appearing for the petitioner would straightaway rely upon section 300(1) Cr.P.C and Article 20(2) of the Constitution of India.

6. Article 20(2) of the Constitution of India reads as under:-

"20. Protection in respect of conviction for offences:-

(1).....

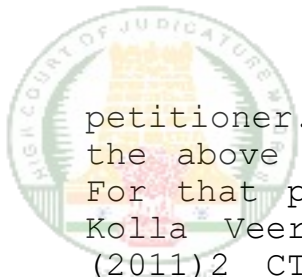
(2) No person shall be prosecuted and punished for the same offence more than once.

(3)....."

7. Similarly section 300(1) Cr.P.C reads as under:-

"(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof."

8. As mentioned earlier, it is a simple case of the petitioner that on the very same set of facts, the above said cases have been registered and investigated and nothing was proved against this



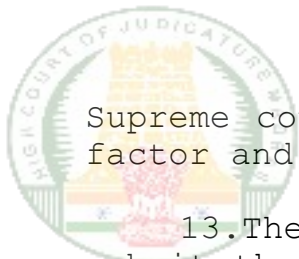
petitioner. So according to him, the present complaint is hit under the above said provisions viz., Cr.P.C and Constitution of India. For that purpose, he would rely upon the decision of the case of Kolla Veera Raghav Rao Vs. Gorantla Venkateswara Rao & another (2011)2 CTC 459). Noting that there is vast difference between Article 20(2) of the Constitution of India and section 300(1) Cr.P.C, the Hon'ble Supreme Court has observed that even though the offences may be different in nature, if the facts are one and the same, then bar under Article 20(2) of the Constitution of India and section 300(1) Cr.P.C will apply. Further, the petitioner would rely upon the decision in the case of R.M.Mayilvasagam Vs. State (Government of India) [(2019)1 LW (Cri) 460], M.Murugappan Vs. State [(2018)1 Mad.WN (Cri) 466] and P.Sreekumar Vs. State of Kerala & others (Criminal Appeal No.408 of 2018, dated 19/03/2018 stating that the parameters set out in various cases are not attracted to the present case and so, quashment of the investigation should not be ordered.

9.In the light of the above said rival submissions, let us go back to the factual aspects.

10.Reading of the entire materials on record as well as the earlier judgments in the above said previous cases, as well as the deposition copies of the complaints in the previous cases, it is seen that there is an allegation of large scale fabrication of records, misappropriation of money and cheating etc. This petitioner was directed to stand trial in the above said cases on the ground that he misused his acquaintance with the Bank Officials and created fabricated documents for the purpose of obtaining loan.

11.It is not in dispute that this petitioner along with his wife namely Stella was running a Trust called Ganesh Anna Trust. Through the above said Trust, he arranged loan to several persons and availed loan from SBI, Srivilliputhur. Several complaints have been lodged on the ground that the amount was directly transferred to the account of the petitioner. But failed to perform and carry out the obligation I.e., supply of machineries, putting up a construction etc. In all the cases, as mentioned above, one Velusamy, who was the Bank Manager of SBI, Srivilliputhur has supported the case of the accused and he has stated that those loans were sanctioned only as per the Rules and Regulations of the Bank and there is no misappropriation of money. Based upon the statement of the above said Velusamy, the trial court acquitted the petitioner and his wife, in all the cases. As stated above, no appeal was preferred by the State Government.

12.Now a simple question which arises for consideration is whether the second prosecution at the instance of the Bank Official will lie, in the light of the above said judgment of the Supreme Court in the case of Kollla Veera Raghava Rao Vs. Gorantla and another (2011)2 CTC 459. No doubt, the Hon'ble



Supreme court has pointed that only the facts will be the deciding factor and not the capacity of the complainants.

13.The learned counsel appearing for the petitioner would submit that even though the previous prosecution has been lodged on the basis of the complaint given by the loaner on the very same set of facts, the present complaint has been filed by the Bank Official. So even though the capacity of the complaint, in both the cases are different, the facts are one and the same. So bar will come into operation.

14.I have gone through the entire judgment of the trial court in the above said case, the evidence of Bank Official namely Velusamy, the entire present facts and CD file. Here, it is a case of fabrication of records, falsification of accounts, creation of forged seals and creation of companies in fictitious name. But it appears that the previous complaints have not been lodged with this specific allegation of forged records. During the course of trial also, it has not been brought to the notice of the trial court that there were falsification of documents. The de-facto complainants, in all the cases, have merely stated that the investigation has been undertaken and the petitioner failed to perform his obligation and thereby cheated. So, I am of the considered view that when serious allegation of falsification of records, creation of accounts in fictitious name and seal, it requires thorough investigation.

15.Stalling the investigation at the initial stage in the light of the above said circumstances, may not be proper and if during the course of investigation, any material has been collected by the Investigating Officer to the effect that there was no forgery of records, then the petitioner can take advantage of the same. This is too a premature stage to record any finding on the veracity of the allegation. So I find that this is not a fittest case to exercise the discretionary power of this court in favour of this petitioner. I find no merit in this petition.

16.In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

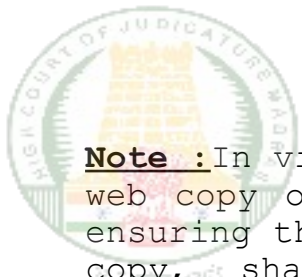
Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To,

1.The Inspector of Police,
The District Crime Branch (DCB)
Virudhunagar District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-20007[F]
dated 21/04/2022)

+1 CC to M/s.S. SUKUMAR, Advocate (SR-20163[F] dated 21/04/2022)
Crl.OP(MD)No.3857 of 2019
20.04.2022

NA(CO)
GC(24.06.2022) 5P 5C