IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1396 of 2022 and Crl.OP.No.24132 of 2022
and Crl.MP.Nos.15305, 15540 and 15541 of 2022

T.D.Naidu ...Petitioner in both the cases

Vs.

The State Represented by
Inspector of Police,
CBI-BS & FC, Bangalore.
RC.12 (E)/ 2016.

...Respondent in both the cases

2. The Deputy General Manager &
Regional Head,
Union Bank of India,
Nodal Regional Office,
No.139, Broadway, 2nd Floor,
Union Bank Bhava,
Chennai-108.

.... 2nd respondent in Crl.OP.No.24132 of 2022

Prayer in Crl.RC.No.1396 of 2022: The Criminal Revision case filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the order passed by the learned Additional Chief Metropolitan Magistrate, Egmore in Crl.MPNo.1333 of 2018 dated 02.07.2019 and consequently, allow the discharge petition filed by the petitioner in Crl.MP.No.1333 of 2018 in CC.No.4306 of 2018 re-numbered as CC.No.1 of 2020 pending on the file of the learned XI Additional Special Judge for CBI Cases, Chennai.

Prayer in Crl.OP.No.24132 of 2022: The Criminal Original petition has been filed under Section 482 of Code of Criminal Procedure to call for the records relating to CC.No.1 of 2020 pending on the file of the learned XI Additional Special Judge for CBI Cases, Chennai and quash the same.

For Petitioners : Mr.R.Johnsathyan
Senior Advocate
(For both the cases)

For Respondents : Mr.K.Srinivasan For R1
Spl. Public Prosecutor
For CBI Cases
(For both the cases)

COMMON ORDER

These two cases are disposed of by way of this common order since the issue involved and the relief sought for are one and the same.

2. Crl.RC.No.1396 of 2022 has been filed seeking to quash the order passed by the learned Additional Chief Metropolitan Magistrate, Egmore in Crl.MPNo.1333 of 2018 dated 02.07.2019 and consequently, allow the discharge petition filed by the petitioner in Crl.MP.No.1333 of 2018 in

CC.No.4306 of 2018 re-numbered as CC.No.1 of 2020 pending on the file of the learned XI Additional Special Judge for CBI Cases, Chennai.

3. Crl.OP.No.24132 of 2022 has been filed seeking to quash the CC.No.1 of 2020 pending on the file of the learned XI Additional Special Judge for CBI Cases, Chennai.

4. The case of the prosecution is that M/s.Deen Dayal Medical and Educational Trust running Hospital at 61, Deen Dayal Nagar, Kunnavalam Village, Thiruvallur had proposed to establish Medical College within its hospital complex. The petitioner viz., T.D.Naidu, is the Chairman and Managing Trustee and his wife T.D.Prabhavathi, Trustee of M/s.Deen Dayal Medical and Educational Trust (hereinafter referred to as "the Trust") entered into a criminal conspiracy with each other with fraudulent intention to cheat Union Bank of India in the matter of sanction ad disbursement of Credit facilities. The Trust represented by its Managing Trustee, the petitioner herein availed term loan of Rs.37 Crores and letter of guarantee of Rs.9.50 Crores in the name of the Trust for the purpose of construction of building for hospital and medical college together with infrastructural

facilities for full 4 years MBBS Course for the above said address by offering Paripassu charge (along with Andhra Bank) on the land ad-measuring 25.85 ½ acres and the buildings standing thereon situated at 61, Ramancheri Village, Tiruvallur Taluk and District. In furtherance of the said conspiracy, the accused dishonestly and fraudulently with an intention to cheat the bank availed the term loan and bank guarantee by submitting false and forged documents and diverted the funds for the purposes other than for which the loan was sanctioned and also failed to clear the outstanding against their loan account, causing wrongful loss to Union Bank of India, Overseas Branch, Chennai to the tune of Rs.115,20,85,558.72/- payable as on 30.06.2016.

5. Based on the written complaint lodged by the Deputy General Manager and Regional Head, Union Bank of India, Nodal Regional office, Chennai, who is the second respondent in Crl.OP.No.24132 of 2022 beore the first respondent police against the petitioner herein viz., T.D.Naidu and two others, the first respondent has registered a case in RC.12(E)/2016-CBI/BS & FC/BLR under Section 120-B read with Sections 420, 468 & 471 of IPC against the present petitioner and two others. After investigation, the

respondent police filed charge sheet before the learned Additional Chief Metropolitan Magistrate, Chennai. The learned Additional Chief Metropolitan Magistrate taken the charge sheet on file in CC.No.4306 of 2018. During pendency of the case, the petitioner, who is arrayed as A1 in the above said case, had filed a petition in Crl.MP.No.1333 of 2018 under Section 239 of Cr.P.C., to discharge the petitioner from the charge of the said case. The said petition was dismissed by the learned Additional Chief Metropolitan Magistrate, vide his order dated 02.07.2019.

6. Against the said order, the petitioner has filed the Revision in Crl.RC.No.1396 of 2022 before this Court.

7. Seeking to quash the case filed against him in CC.No.1 of 2020, the petitioner has filed Crl.OP.No.24132 of 2022.

8. Mr.R.John Sathyan, the learned Senior counsel for the petitioner vehemently submitted that the petitioner has no intention to cheat the bank. Therefore, once the prosecution has not stated at the inception of obtaining loan that the petitioner had an intention to cheat the bank, no *prima facie*

case could made out against the petitioner.

9. The learned Senior counsel further submitted that the learned XI Additional Special Judge for CBI cases, Chennai does not have jurisdiction to try the IPC offence as per section Sections 1 (1)(a) and (b) of the Prevention of Corruption Act, 1988. It is crystal clear that the learned Special Judge may deal with only the offences punishable under the Prevention of Corruption Act, 1988 and not any offence punishable under Indian Penal Code or any other law and Section 4 (1) of the Prevention of Corruption Act, 1988 makes it more explicit that Section 4 (1) of the Prevention of Corruption Act, 1988 has used a non-obstante clause. The said Section reads as follows:

> *"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the offences specified in Sub-section (1) of Section 3 shall be tried by special Judges only".*

10. The learned Senior Counsel further submitted that the accused persons who are government servants as well as private persons, the offences referred to in Section 3(1) cannot be tried by the ordinary criminal

court, since jurisdiction has been specifically conferred on a Special Judge appointed under Section 3 (1) of the PC Act.

11. The learned Senior Counsel also drew attention to Sub-section (2) of Section 4 of PC Act,1988. The said Section makes it clear that every offence specified in Sub-section (1) of Section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the Special Judge appointed for the Case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

12. A Conjoint reading of Section 3 (1) along with Sections 4 (1) and (2) the Prevention of corruption Act, 1988 makes it amply clear that the Special Judge has got jurisdiction only to try the offences specified in Sub-section (1) of Section 3 the Prevention of corruption Act, 1988 committed by a public servant or alone or jointly. Hence the petitioner cannot be prosecuted by the Leaned XI Additional Special Judge for CBI Cases, Chennai for the alleged offence under sections 120 r/w 420, 468 & 471 of Indian Penal Code. Hence, this Petition. Therefore, the petitioner cannot be

prosecuted by the learned Additional Special Judge for the offences registered under Section 120(b) read with 420, 468 and 479 of IPC. The learned Senior Counsel submitted that there is no prima facie case made out against the Petitioner for framing of charges as aforementioned.

13. The learned Senior Counsel also submitted that Andhra bank and Union Bank of India have already initiated proceedings under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities interest Act, 2002 (SARFAESI Act), after declaring the accounts of petitioner as NPA and they now tried to achieve what they are not able to achieve there in Civil proceedings under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Securities interest Act, 2002 (SARFAESI Act) and they lodged the above false criminal case against the petitioner. The entire loan amount sanctioned by the Union bank of India was secured by the prime assets of mortgaged medical college land and building with paripasu charges with Andhra Bank.

14. The learned Senior Counsel also submitted that the case in

C.C.No.1 of 2020 is liable to be quashed on the ground that a loan transaction cannot be converted into a criminal prosecution in the absence of any discriminating evidence since the bank loan is always supported with heavy surety and third party personal guarantees. Hence the case of the respondent that the above Trust has cheated the bank is false since the same is secured by the above securities which can be sorted out by initiating the appropriate civil proceedings. But the 1st respondent has initiated false criminal case against the petitioner for the purpose of recovery of loan.

15. The learned Senior Counsel also submitted that the Bank officials have already taken steps against the first accused for default of repayment of loan under the SARFAESI Act before the DRT. Therefore, it is criminal liability so it is very clear that it cannot be termed as double jeopardy.

16. The learned Special Public Prosecutor appearing on behalf of the respondent police vehemently objected the arguments advanced by the learned Senior Counsel appearing on behalf of the petitioner. The learned Special Public Prosecutor submitted that M/s.Deen Dayal Medical and Educational Trust had proposed to establish medical college within its hospital complex, the petitioner, who is the Chairman and Managing Trustee, and his wife had entered into a criminal conspiracy with each other with fraudulent intention to cheat Union Bank of India in the matter of sanction and disbursement of Credit facilities. According to the learned Special Public Prosecutor, the bank has taken necessary care by making payments to the suppliers of the borrower instead of the borrower directly to avoid any mischief. However, the petitioner has cheated the Bank by managing to receive back the funds from the suppliers.

17. The learned Special Public Prosecutor submitted that it has been established that the petitioner/accused had availed the facilities from Union Bank of India by showing inflated net-worth of A-1 and A-2 with false and fake Income Tax Returns and further constructed the college buildings on the land that was not mortgaged with the banks. Due to the same, the banks are not in a position to enforce the collateral properties under SARFAESI Act. This will be proved by the documentary evidence (D-75 & 139) as well as statements of LW. 31 & 32.

18. The learned Special Public Prosecutor submitted that it has been

established that the petitioner submitted the false and fabricated IT Returns of himself and his wife Smt. T. D. Prabhavathi (A-2) and induced the bank to part with funds. The fact of submitting the false and fabricated IT Returns will be proved by the documentary evidence as well as oral evidence. Further, the petitioner induced the bank by submitting the previous invoices issued by M/s. Zuari Cement Ltd and requested to make payment of Rs.12,70,02,000/- to M/s. Zuari Cement Limited, Chennai for the purchases made during the period from April 2009 to July 2009 on credit basis and submitted Invoices dated 01-04-2009, 02-05-2009, 03-06-2009, 02-07-2009 and 19-07-2009 pertaining to the customer code No.90003217. Accordingly, bank disbursed an amount of Rs.12.70 Cr. in the form of Pay Order from the loan proceeds in the name of supplier, M/s. Zuari Cement Ltd, Chennai. The acts of the petitioner will be proved by documentary evidence as well as oral evidence. In addition, the amounts got reimbursed by the Petitioner/Accused from the Union Bank of India in the names of M/s. Booja Steels and M/s. Karishma Steel Suppliers were received back into the account of the Trust of the Petitioner/Accused maintained with a Private Bank i.e. Axis Bank which will be proved. All these facts will prove that the case is not a mere failure to pay back the loan dues but as actively committed criminal acts which is criminally liable. The Learned Additional Chief Metropolitan Magistrate considered all the facts on record as narrated above and passed the orders dated 02.07.2019 in Crl. M. P. No.1333 of 2018 in CC No.4306/2018{renumbered as CC No.01/2020(on the file XIV Addl. Sessions Judge) presently on the file of XI Addl. Sessions Judge)} that *"Considering this fact, under the circumstances this court comes to conclusion that prima facie materials is available and the prima facie case against the petitioner. Hence, there is a devoid of merit in this application; hence, this petition is dismissed accordingly."* In view of the above, since there is sufficient material to prove the case against the petitioner/accused and therefore, both the cases are liable to be dismissed.

19. Heard Mr.R.John Sathyan, learned Senior Counsel appearing on behalf of the petitioner and Mr.K.Srinivasan, learned Public Prosecutor, appearing on behalf of the respondent police in both the cases.

20. A1 being the Managing Trustee of M/s.Deen Dayal Medical and Educational Trust, had approached the banks seeking loan for construction of Medical College, for which, the petitioner has submitted the fake and

fabricated IT returns to cheat the bank for sanctioning and disbursement of Credit facilities. The petitioner has produced the bank guarantees and the land documents that were shown to the bank officials were different from the land where the building was actually constructed. This is a matter of serious concern because the Bank officials are unable to proceed the matter against the petitioner under SARFEASI Act. However, proceedings has been initiated before the DRT and the same is said to be pending. The contention of the learned Senior Counsel that the transaction is purely civil in nature and therefore, filing of the criminal case would amount to double jeopardy, is liable to be rejected for the simple reason that there is wealth of evidence to connect the petitioner with the crime. He is the main conspirer and he has produced the fake and fabricated IT returns to get higher loan amount from the Bank.

21. As rightly pointed out by the learned Additional Chief Metropolitan Magistrate that at the time of hearing a discharge petition, the Court has to see whether there are materials to connect with the crime and whether a *prima facie* case is made out against the accused to make him face trial. The learned trial Judge has found *prima facie* material available

before him to connect the petitioner with the crime.

22. In such view of the matter, this Court does not find any reason to take a different view from the one taken by the trial Court. Therefore, while confirming the order passed by the trial Court, Crl.RC.No.1396 of 2022 is dismissed

23. In the same manner, the petitioner has not made out any case to enable this Court to exercise its extraordinary jurisdiction under Section 482 of Cr.P.C. to quash the proceedings before the learned Special Judge. Therefore, Crl.OP.No.24132 of 2022 is also dismissed.

20.01.2023

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Index : Yes/No
Speaking order/non speaking order

To

1. The Inspector of Police,
CBI-BS & FC, Bangalore.
RC.12 (E)/ 2016.

2. The Additional Chief Metropolitan Magistrate, Egmore.

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

4. The Public Prosecutor,
High Court of Madras.

P.VELMURUGAN, J.,

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