BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	16.04.2024
Pronounced On	:	14.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD).No.2620 of 2024
and
Crl.M.P(MD). Nos.2022 and 2024 of 2024

M/s.Star Agri Warehousing & Collateral Management Ltd.,
1st and 2nd Floor, B Wing, Litoliers Chamber,
Next to Marol Naka Metro Station,
Andheri-Kurla Road, Marol Naka,
Andheri East, Mumbai-400 059.
Rep. by its Authorised Signatory
T.Murukappan ... Petitioner/Accused No.21

Vs.

1. The Inspector of Police,
   CBI, Economic Offences Branch,
   Chennai. ... Respondent/Complainant

2. M/s.Lakshmi Vilas Bank Ltd.,
   Regional Office,
   No.49-A, Bharathi Ula Road,
   Race Course, Madurai-625 002.
   (Now merged with DBS Bank India Ltd.,)
   DBS Bank India Ltd.,
   19th Floor, Express Towers,
   Nariman Point, Mumbai-400 021. ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in Charge Sheet No.5 (Final Report) dated 28.12.2021 in C.C.No.4 of 2022 on the file of the learned II Additional District Judge for CBI Cases, Madurai and quash the same in so far as the Petitioner Company is concerned, being arrayed as Accused 21.

For Petitioner : Mr.Om Prakash, Senior Counsel
for M/s.VastLaw Associates

For Respondents : Mr.M.D.Poornachari,
Special Public Prosecutor for CBI Cases
for R1

ORDER

The the petitioner company has been arrayed as a 21st accused in C.C.No. 4 of 2024, on the file of the Learned Additional District Judge for CBI Cases, Madurai. The petitioner company and other accused are said to have committed offence under section 120 (b) r/w. 409, 420, 477 (A) of I.P.C. and 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act 1988. The petitioner company have filed this petition to quash the said proceedings.

Brief facts of the case :-

2. The petitioner company is M/s. Star Agri Warehousing and Collateral Management Ltd., The company was acting as a collateral manager, being the

custodian of the pledged agricultural goods stored in the leased/ sub-leased godowns in the nature of the Government Warehousing and providing the collateral management service. The company have entered an agreement with the 2nd respondent bank for providing the said collateral management service. To provide the same the company appointed A6 to A8 to act on behalf of the said company. The said manager /staff of the company conspired with the officials of the 2nd respondent bank and the other accused, created the false document and had facilitated main accused namely one S.Surulivel and one S.Siva partners of M/s. Shree Sharavana Traders, Madurai to avail 31 Lakshmi Commodity Power (LCP) loan to the tune of Rs.80 crores in the name of the various borrowers without their knowledge for availing the loan, for which the main accused had to provide pulses/ commodities as a collateral. The company gave the fraudulent documents to show that the said main accused stored huge quantity of the pulses/ commodities in that godown. On the basis of the same the bank officials granted loan. The same subsequently came to the knowledge of the higher officials of the bank and therefore complaint was preferred before the Commissioner of Police on 14.09.2017 and there was no action. Therefore the 2nd respondent have filed the Crl.O.P.(MD).No. 14413 of 2017 and Crl.O.P.(MD).No.14437 of 2017 on the file of this Hon'ble Court for direction to register the case and transfer the same to the CBCID. This court by order dated 15.07.2017 had directed the state police to hand over the entire case filed to the respondent/ CBI to investigate the crime and file a report. After completion of the preliminary enquiry, the respondent police registered the case in No.RC.09/E/2017-CBI-EOB-Chennai under section 120-B r/w. 409, 420 and 477A of I.P.C. and section 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act 1988 against the 48 named accused and unknown accused. After completion of the investigation, the CBI /respondent police deleted the names of Managing Director, Vice President, Head of the Operation of the company, Regional Head, Senior Executives, Assistant Manager, Manager, Executive Manager, Senior Executive Manager of the petitioner company namely A35, A36, A40,A41, A42,A43,A44,A45,A46,A47 and A48 and filed the final report with the array of the petitioner company area managers and other officials who were said to have made agreement with the 2nd respondent bank to give the loan with material relating to their involvement in the entire conspiracy and alleged offence. The said final report was taken on file in C.C.No. 4 of 2024 on the file of the Learned Additional District Judge for CBI, Cases, Madurai.

3(1).The Learned Senior Counsel Thiru.Om Prakash representing the M/s.Vast Law Associates made the following submission to quash the said proceedings against the company :

3(2). The CBI initially registered the case against various high level officers of the petitioner company in the FIR by arraying them as A35, A36, A40,A41, A42,A43,A44,A45,A46,A47 and A48. After investigation, they deleted the names of the said high level officers and added the company alone as accused A21. In the final report, it is alleged that the company staff namely A6 to A8 are involved in the fraudulent documents and therefore company was added as accused. The company made a complaint against the said transaction prior to the complaint preferred by the 2nd respondent bank on 30.08.2017, stating that the said A6 to A8 are the erstwhile staffs of the main accused and they had conspired with the bank officials and made such fraudulent act. The said complaint was not taken on file and hence they preferred a direction petition under section 156 (3) of Cr.P.C. and the same was allowed and FIR was registered. Pending investigation of the said FIR, arraigning the petitioner company after deleting the Managing Director and other high level officers is not legally permissible. They relied the judgment of the Hon’ble Supreme Court reported in 2015 (4) SCC 609 and elaborated the argument to apply the principle of “alter ego” to this case and seeks the exoneration of the charges against the petitioner company. They also relied the various judgment of this Hon’ble

Supreme Court reported in 2011 (1) SCC 74, 2020 (3) SCC 240, 2023 (10) SCC 685, 2022 (15) SCC 430.

3(3). From the collected material of the CBI, neither of the ingredients of the offences nor any of the circumstances sufficient to presume the said commission of the offence are made out. Therefore, no material is available either to presume or draw inference from the available records that the company had acted with intention to defraud the 2nd respondent bank at the inception.

3(4). Therefore they seek for quashing of the charge sheet against the petitioner company.

4. The submissions of the Thiru.Poornachari, learned Special Public Prosecutor appearing for the CBI are as follows :-

4(1). This is the case of corporate fraud committed by the petitioner company and the other accused resulting in misappropriation of fund of the bank to the tune of Rs. 60 Crores. The defence of the company that they have made a complaint against his own officers and same is under the investigation and the relevancy all are to be considered and appreciated at the time of the trial. The petitioner company after facing the allegation of the corporate fraud, now trying the modern day corporate trick making allegation against their own staff in order to escape from the pending prosecution. He strongly relied the judgment of the Hon'ble Constitution Bench of the Supreme Court reported in **2005 (4) SCC 530.** As per the law laid down by the Supreme Court, the prosecution is maintainable against the company along with their staff who had been discharge their day to day affairs. Even if the investigating agency deleted the names of high level officers, the same is not a ground to quash the proceedings against the company when sufficient materials were collected by the investigating agency regarding their active role in the fraudulent transaction entered by the company and their staff. He further elaborated his argument and firmly submitted that the principle of "alter ego" is not applicable to the present case. Hence this is for the dismissal of this quash petition and made specific submission that this case does not come under the extraordinary circumstances case to invoke the inherent power to quash the proceedings. He also cautioned this court by submitting number of precedents to show that some limitation is be exercised in dealing with the quash petition under section 482 of Cr.P.C.

5. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on records and precedents relied upon by both parties.

6. From the submissions of the both counsel and perusal of the documents produced before this Court, which form part and parcel of the final report filed before the learned Special Judge, this Court finds that there is a specific allegations with supporting material that the Company officials are involved in the fraudulent act of the preparation of the material documents to obtain loan of Rs.60 crores.

7. The case of the petitioner is that the Company officials A6 to A8 have conspired together before joining the Company, with bank officials to cheat the bank is the matter for trial. As on date, CBI collected the incriminating material against the Company officials namely, A6 to A8. In view of the said circumstances, the deletion of the some of the high level officials of the Company is not a ground to quash the proceedings against the petitioner/Company. Section 11 of IPC defines the person as follows:-

“The word “person” includes any Company or Association or body of persons, whether incorporated or not.”

8. The Hon’ble Constitution Bench of the Supreme Court in the case of ***standard chartered Bank Vs Directorate of Enforcement***[21] reported in ***2005 (4) SCC 530*** has held as follows:-

> *“6. There is no dispute that a company is liable to be prosecuted and punished for criminal offence. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through is agents”.*

9. The similar contention was raised before the Hon'ble Supreme Court in the case of **Central Bureau of Investigation Vs. Blue Sky Tie-up Private Limited and Others** reported in **2011 15 SCC 144** and the same has not been accepted by the Hon'ble Supreme Court and the relevant paragraphs of the said judgment is as follows:

> ***3.****On being noticed, Respondents 1 to 3 filed an application under Section 482 CrPC for quashing the proceedings of Special Case No. 6 of 1999 by claiming that they*

had not committed any offence. The learned Single Judge partly allowed the application and quashed the proceedings insofar as Respondent 1 is concerned. He did so on the premise that the entire money due to the complainant has been paid and the company being a body corporate cannot be prosecuted.

9.*Since the majority of the Constitution Bench ruled in Standard Chartered Bank v. Directorate of Enforcement[(2005) 4 SCC 530 : 2005 SCC (Cri) 961] that the company can be prosecuted even in a case where the Court can impose substantive sentence as also fine, and in such case only fine can be imposed on the corporate body, the contrary view taken by the learned Single Judge cannot be approved. We also find that for majority of offences with which Respondent 1 has been charged, the Court has the discretion to impose fine. Therefore, quashing of proceedings against Respondent 1 cannot be sustained.*

10.*In the result, the appeal is allowed. The impugned order is set aside and the Court concerned is directed to proceed against Respondent 1 in accordance with law.*

10. Therefore, there is no legal impediment to prosecute the Company. The said Company was represented by A6 to A8. There are lot of materials available against A6 to A8. In the said circumstances, the case that they have already given a complaint against A6 to A8 is a material to be appreciated during the course of

trial. Therefore, this Court is not inclined to accept the argument of the learned Senior Counsel to exonerate the Company from the legitimate prosecution only on the ground that top level Company officials were already deleted by CBI in the final report. The deletion of the some of the officials by the Investigating Agency is not a matter for quashing final report against the Company.

11. The submission of the learned Senior Counsel that there is a remedy available to recover the losses for breach of contract is not a ground to quash the proceedings. At this stage, there is an allegation with supporting materials about the fraudulent documents prepared by the officials of the Company with active connivance of the remaining accused, and there was misappropriation of funds to the tune of Rs.80 crores.

12.Therefore, this Court is unable to appreciate the self contradictory or self destructive stands taken by the petitioner Company that complaint was made against the Company officials namely, A6 to A8 and the prayer of the deletion of the Company on the ground that the Company is not represented by any person. This Court has also accepted and appreciated the argument of the learned Special Public Prosecutor, namely, Mr.M.D.Poornachari, that in this corporate fraud case, modern day corporate subterfuge has been adopted in order to escape from the legitimate prosecution when there are sufficient materials to prosecute the Company along with A6 to A8. Therefore, this Court finds no merit to allow this petition.

13. Accordingly, the above Criminal Original Petition is dismissed and the connected miscellaneous petitions are closed.

14.11.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
vsg/dss

To

1. The Learned II Additional District Judge for CBI Cases,
   Madurai.

2. The Inspector of Police,
   CBI, Economic Offences Branch, Chennai.

3. The Special Public Prosecutor for CBI Cases,
   Madurai Bench of Madras High Court, Madurai.

K.K.RAMAKRISHNAN, J.

vsg/dss

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