IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2025
PRONOUNCED ON : 15.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.25855 of 2024 and
Crl.M.P.Nos.14405 & 14407 of 2024

N.S.Krishnakumar ... Petitioner

Vs.

1.The Inspector of Police,
SPE CBI ACB,
Chennai.

2.The Deputy General Manager,
Canara Bank,
Disciplinary Action Cell,
Circle Office, Teynampet,
Chennai – 600 018. ... Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 to call for records relating to the impugned proceedings in C.C.No.11 of 2008 on the file of XI Additional Special Court for CBI Cases at Chennai and quash the same in respect of the petitioner alone.

For Petitioner	:	Mr.V.Raghavachari, Senior Counsel for Mr.M.Narayanaswamy
For Respondents	:	Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases

ORDER

The petitioner/A2, who is facing trial in C.C.No.11 of 2008 for offence under Section 120-B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Correction Act, 1988 before the learned XI Additional Special Court for CBI Cases at Chennai, has filed this Quash Petition primarily on the ground of due amount settled to the 2nd respondent Bank.

2.The submissions of the learned Senior Counsel appearing for the petitioner are as follows:

(i)The learned Senior Counsel for the petitioner submitted that the case projected against the petitioner is that the petitioner along with other accused entered into a criminal conspiracy in the year 2002 to cheat the 2nd respondent Bank, opened current account, got discounted 59 bills enclosing false invoices and receipts for various amounts under Secured Demand Bills (SDB) during the period from 18.12.2002 to 14.12.2003, out of which, 44 bills became outstanding to the tune of Rs.28.58 lakhs as on 28.02.2005. The petitioner, Proprietor of M/s.Sriram Trading

Company discounted the bills presented and caused loss to the 2nd respondent Bank. A1, the then Chief Manager of the 2nd respondent Bank purchased the Secured Demand Bills by reducing initial margin of 25% on 18.12.2002 and 19.12.2002 and later further reduced it to 10% by exceeding his limit of purchase. In this case, the approver Mr.S.Narasimha Ragavan prepared antedated note on the basis of the papers submitted by M/s.Sriram Trading Company requesting for Secured Demand Bills (SDB) limit for Rs.30 lakhs. A1 approved the same on the same day knowing fully well that there is no collateral securities for the bills already purchased. The petitioner's brother Mr.Gnaneswaran/A3 arranged for guarantor Mr.T.R.Krishnamoorthy (Since deceased) with a property worth of Rs.1 lakh as collateral security. Mr.Balasubramanian/A6, a private valuer inflated the value of the property to Rs.13.50 lakhs. The petitioner along with A3 arranged to fill up the cheques through Mr.A.R.Madan Rao/A5 and Ms.Kasthuri Rao and obtained signatures from Mr.Mathan Rao/A5, Mr.B.K.Senthil, Mr.H.S.Kanna and Mr.V.S.Kannan on the reverse side of the cheque and encashed the same. Further, in the name of Mr.B.V.K.Kumar, some cheques signed by A3 and withdrew the proceeds of the discounted amounts.

(ii)The further case is that the petitioner knowing fully well that the addressee mentioned in the invoices not ordered the goods and furnished the names and addresses of Mr.Jayaraman, Proprietor of M/s.Alankar Jawli Stores, Sholinghur, Mr.Syed Hassan, Proprietor of M/s.Jailani Jawli Stores, Sholinghur to Ms.S.S.Kasthuri Rao and used their addresses in the invoices for discounting the secured demand bills and thereby caused wrongful loss. In this case, the property which was given as security sold as early as on 18.07.2011 for a sum of Rs.15,60,000/- and the same was given to the petitioner's account would clearly prove that the property was not undervalued. The 2nd respondent Bank filed full satisfaction memo before the Debt Recovery Tribunal on 03.09.2020 and also issued a letter dated 13.12.2020 informing that under One Time Settlement scheme, the entire amount was settled to the 2nd respondent Bank.

(iii)The learned Senior Counsel further submitted that the Hon'ble Apex Court held that in criminal cases having predominantly civil character, especially where a settlement is arrived at after the alleged commission of offence, the Courts may be liberal in accepting the settlement and quashing the criminal proceedings. To substantiate the same, the learned Senior Counsel relied on the decision of the Hon'ble Apex Court in the cases of "***CBI v. Narendra Lal*** reported in ***(2014) 5 SCC 364***" and "***Kothari Polymers Ltd., and others v. SIU(X)/SPE/CBI)*** reported in ***2022 SCC OnLine SC 2078***" which is followed in "***K.Barathi Devi and another v. State of Telungana and another*** reported in ***2024 SCC OnLine SC 2695*** and ***Tarina Sen v. Union of India and another*** reported in ***2024 SCC OnLine SC 2696***". Thus, the dispute between the petitioner and the 2nd respondent Bank is predominantly civil in nature with some criminal facets and now admittedly the entire amount settled and there is no monetary loss to the Bank. In view of the settlement, the possibility of conviction is remote and bleak and continuation of criminal case would put the accused to great oppression and prejudice.

(iv)In support of his submissions, the learned Senior Counsel filed typed set of documents containing (i)Copy of FIR, dated 25.08.2005, (ii)Copy of charge sheet dated 31.12.2007, (iii)Order of confirmation of sale of immovable property selling for Rs.15,60,000/- in R.P.No.109 of 2007 in D.R.C.No.80 of 2005, dated 18.07.2011, (iv)Letter of the Chief Manager, Canara Bank, Kellys Corner, Chennai, dated 30.06.2020 addressing to the Head of Branch, Anti-Corruption Branch, 3rd Floor, Shastri Bhavan, Chennai stating that the Head Office of the Bank has permitted the compromise settlement to M/s.Sriram Trading Company for an amount of Rs.13,50,000/- in full settlement, (v)A full satisfaction memo, dated 03.09.2020 filed before the Debt Recovery Tribunal-III at Chennai confirming the one time settlement offer of Rs.13,50,000/- towards the full and final settlement permitted and satisfied, (vi)A closure letter, dated 24.12.2021 given by the Chief Manager, Canara Bank, Kellys Corner Branch, Chennai to Head of the Branch, Anti-Corruption Branch, 3rd Floor, Shastri Bhavan, Chennai requesting the case in C.C.No.11 of 2008 against the borrower can be withdrawn and closed and (vii)Copy of the Closure Report, dated 30.09.2022 wherein recording the full satisfaction memo and closure report, DRT closed the case.

(v)Making the above submissions and replying upon the above decisions, the learned Senior Counsel for the petitioner prays for quashing of the charge sheet against the petitioner.

3.The learned Special Public Prosecutor appearing for the respondent Bank filed counter and submitted that the petitioner, Proprietor of M/s.Sriram Trading Company is charged and facing trail along with six others for offence under Sections 120-B r/w 420 IPC and Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. A1, the then Chief Manager, Canara Bank, Kellys Bracnh, Chennai in collusion with the petitioner sanctioned Secured Demand Bills to the extent of Rs.30 lakhs fraudulently by abusing the official position without any collateral security allowed indiscriminately and dishonestly to discount unsecured bills and thereby caused wrongful loss of Rs.28.58 lakhs as on 28.02.2005 and interest thereupon. In this case, on the complaint of the Deputy General Manager, Canara Bank, Disciplinary Action Cell, Circle Office, Chennai, FIR.No.R.C MA1 2005-A-0042 registered on 25.08.2005. After completion of investigation, charge sheet filed before the Trial Court on 31.12.2007 listing LW1 to LW72 and LD1 to LD637 documents. The trial of the case commenced on 21.02.2008 and in the last fifteen years, the hearing of the case held for 287 days and 44 witnesses so far examined. The trial is almost in the state of completion. The petitioner repaid the loan amount not under normal course. The property given as security was sold on 18.07.2011 for a sum of Rs.15,60,000/- and Rs.13,50,000/- paid under One Time Settlement scheme during 2020. The petitioner not repaid the unapplied interest which was due since 2005. Mere recovery of funds will not absolve the accused from the criminal proceedings.

4.He further submitted that the loan obtained by the Firm was not repaid in normal course but under One Time Settlement scheme. The petitioner claims that the Chief Manager of the 2nd respondent bank had already written to the CBI on 24.12.2021 to withdraw the case cannot be considered, for the reason that the case registered on the basis of the complaint received from the Deputy General Manager, Canara Bank, Disciplinary Action Cell, Circle Office, Chennai. Hence, the Chief Manager, Canara Bank, Kellys Branch is not the competent person to withdraw the case. Further, the CBI had written to Canara Bank, Kelly Branch, Chennai seeking clarification on 31.01.2022 but no reply received in this regard. He further submitted that the petitioner not paid the entire amount and he has paid only Rs.28.58 lakhs an outstanding as on 2005, however One Time Settlement agreed during 2020. The unapplied interest not paid by the petitioner and this portion of the amount is the loss of public money of the bank. The 2nd respondent Bank filed the Original Application before the Debt Recovery Tribunal-III, Chennai for recovery of a sum of Rs.40,56,293.56/- together with interest from the petitioner and the petitioner came forward for One Time Settlement offer for an amount of Rs.13,50,000/- giving credit to the liquidation of the attached property for Rs.15,60,000/-, in total the petitioner paid Rs.28.58 lakhs as One Time Settlement and not the entire amount as claimed in the Debt Recovery Tribunal.

5.In support of his submissions, the learned Special Public Prosecutor relied on the decision in the case of "***Gian Singh v. State of Punjab*** reported in ***2012 10 SCC 303***" wherein the Hon'ble Apex Court held that any compromise between the victim and offender in relation to the offence under special statues like Prevention of Corruption Act or the offences committed by the public servants who are working in that capacity etc., cannot provide for any basis for quashing the criminal proceedings involving such offences. Further held that the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing particularly the offences arising from the commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc., or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In such cases alone, the High Court may quash the criminal proceedings. Further, the Hon'ble Apex Court issued a caveat that the special statute cases under the Prevention of Corruption Act or the offences committed by the public servant cannot provide for any basis for quashing of the criminal proceedings.

6.He placed reliance on the decision of the Hon'ble Apex Court in the case of "***State of Maharashtra through Central Bureau of Investigation v. Vikram Anantrai Doshi and others*** reported in ***(2014) 15 SCC 29***" wherein it had held that "*It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominantingly of civil character.* " Further held that "*availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. It is not such a case, where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal proceeding on the* *hypostasis that nothing more remains to be done*."

7.The learned Senior Counsel/Special Public Prosecutor distinguished the decisions relied upon by the learned Senior Counsel submitting that "***Kothari Polymers Ltd., and Others v. SIU(X)/SPE/CBI*** reported in ***2022 SCC OnLine SC 2078*** and ***K.Barathi Devi and another v. State of Telungana and another*** reported in ***2024 SCC OnLine SC 2695*** and ***Tarina Sen v. Union of India and another*** reported in ***2024 SCC OnLine SC 2696***" would not be applicable to the facts and circumstances of the case. In the case of ***Kothari Polymers*** case, though FIR registered under Sections 120-B r/w 420 of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and the Bank Manager of the Public Sector Bank was arrayed as accused, since sanction for prosecution to prosecute the Bank Manager did not succeed, the offence under the Prevention of Corruption Act deleted and the petitioner therein was proceeded under Sections 120-B and 420 IPC and the loss to the bank was Rs.5.5 Crores and charge sheet filed. During trial in ***Kothari Polymers*** case, it was found that the petitioners therein arrived at a settlement and paid a sum of Rs.5.75 Crores over and above the due amount, thereafter considering no prosecution under the

Prevention of Corruption Act and due amount to the bank over and above settled, the Hon'ble Apex Court quashed the proceedings individuals imposing cost for wastage of time for investigation and trial and imposing conditions. The ***Kothari Polymers*** case has been followed in the subsequent cases by the Apex Court. In ***K.Barathi Devi*** case, the Apex Court clearly observed that the contention of the petitioner therein considered and quashing of the case was weighed primarily on the gender since they have been roped in as wives of A1 and A2. In ***Tarina Sen*** case, again it was on the same ground wherein the petitioners were A4 and A5 who are wives of A2 and A3. Hence, he prays for dismissal of the quash petition.

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

9.Admittedly, the discounting of bills was during the period between 18.12.2002 to 14.01.2003. 59 bills with false invoices and lorry receipts under the Secured Demand Bills (SDB) without secured collateral security to cover the facility, were discounted by A1, the then Chief Manager of the 2nd respondent Bank. The petitioner, Proprietor of

M/s.Sriram Trading Company utilized the service of his brother/A3 and withdrew the amount with the help of A3 who enlisted the service of the other accused. Out of 59 bills, 44 bills were outstanding to the tune of Rs.28.58 lakhs as on 28.02.2005. During the internal enquiry, the 2nd respondent Bank found diversion of funds, other than for what purpose it was granted, by creating documents and also withdrawing the amounts using fictitious persons, hence a complaint lodged to the 1st respondent and FIR registered on 25.08.2005 against the accused. Thereafter, investigation commenced, on conclusion of investigation, charge sheet filed before the Trial Court. As of now, out of 72 witnesses, 44 witnesses examined and only few more witnesses to be examined and the trial is at penultimate stage.

10.In this case, admittedly, A1 is a public servant and sanction under Section 19 of Prevention of Corruption Act, 1988 granted. The petitioner along with other accused are facing charges of conspiracy, cheating along with Prevention of Corruption Act, 1988.

11.The contention of the learned Senior Counsel for the petitioner is primarily on the ground that in criminal cases having a predominantly civil character, especially where a settlement is arrived at after the alleged commission of offence, the Courts may be liberal in accepting the settlement and quashing the criminal proceedings. The Hon'ble Apex Court in ***Gian Singh*** case held in cases which is predominatingly with civil flavour can be quashed but restrained cases involving special statutes like the Prevention of Corruption Act cannot be entertained. Further, the issue in the decisions relied upon by the learned Senior Counsel for the petitioner pertains to the wife of the main accused, who happened to be Directors of the Company, considering the gender and matrimonial relationship, the Hon'ble Apex Court quashed the proceedings against them, hence the decisions are not applicable to the facts and circumstances of the present case.

12.Now, the trial is at the penultimate stage. It would be appropriate that the case proceeds further and takes to its logical end. It is for the Trial Court to decide the case on its own merits and in accordance with law.

13.The Trial Court is reminded that the Bank has arrived at One Time Settlement and filed a full satisfaction memo which has been acted upon and the Debt Recovery Tribunal-III, Chennai closed the claim petition in O.A.No.38 of 2004. The bank on two occasions one on 30.06.2020 and another on 24.12.2020 had written to the CBI favouring the petitioner. The same may be considered appropriately.

14.In the result, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

15.04.2025

Index: Yes/No
Neutral Citation: Yes/No
Speaking Order/Non-Speaking Order

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To

1.The XI Additional Special Court for CBI Cases,
Chennai.

2.The Inspector of Police,
SPE CBI ACB,
Chennai.

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

M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
Crl.O.P.No.25855 of 2024

15.04.2025