Sunil and Another Vs. the State of Maharashtra and Others

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Court : Mumbai Aurangabad

Decided On : May-06-2014

Judge : A.I.S. Cheema

Appeal No. : Criminal Writ Petition No. 252 of 2014 With Criminal Application Nos. 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186 of 2014 With Criminal Application Nos. 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350 & 2351 of 2014

Appellant : Sunil and Another

Respondent : The State of Maharashtra and Others

Judgement :

1. Present Criminal Writ Petition has been filed by the petitioner, whose application Exh. 306 in R.C.C. No.398/2002 pending before Chief Judicial Magistrate, Osmanabad, for discharge, was rejected on 7.8.2013 and Criminal Revision No. 82/2013 filed before Adhoc Additional Sessions Judge, Osmanabad also came to be rejected on 14.2.2014.

2. Notice only to respondent No.1/ State. Learned A.P.P. waives service for respondent No.1/ State. Heard finally at admission stage with the consent of learned counsel for the petitioner and learned A.P.P.

3. R.C.C. No.398/2002 has been filed against the petitioner and other 9 accused under Sections 218, 406, 409, 420, 468, 471, 120(B) read with Section 34 of the Indian Penal Code.

4. The case of prosecution is that, accused No.1 (as arrayed in the charge sheet) was Chairman of the Osmanabad District Central Cooperative Bank ("ODCC Bank" for short) and accused Nos.2 to 6 were officials of the Bank and accused Nos.1 to 10 entered into conspiracy to cheat the Bank. Present petitioner is accused No.10 in the charge sheet. It is claimed that, accused Nos.7 to 9 established Company M/s Home Trade Ltd., Washi, New Mumbai, which was unauthorised, for purchase of Government securities. Accused No.10 was Chairman of the Nagpur District Central Cooperative Bank Ltd, Nagpur ("NDCC Bank" for short). While being such Chairperson and while knowing that Home Trade Ltd., Washi was unauthorised to purchase Government securities, still he induced accused No.1 to part with money to purchase Government securities. That accused Nos.1 to 10, in collusion, misappropriated Rs.30 Crores on pretext of purchase of Government Securities.

Case is that, NDCC Bank got credited their 30 Crores of Rupees as deposit in the Account of ODCC Bank maintained with Maharashtra State Cooperative Bank Ltd., Mumbai. On 1.2.2002, accused No.4, at the instance of accused Nos.1 and 3, unauthorisedly got credited the amount of Rs.30 Crores in the Account of Home Trade Ltd. for purchase of Government Securities and on the same day, Home Trade Ltd. got the amount credited of more than Rs.29 Crores in the Account of NDCC Bank. ODCC Bank accepted such huge amount without prior permission of Commissioner, Co-operative Societies and in violation of Reserve Bank of India directions and the amount of more than Rs.29 Crores was paid to Home Trade Ltd. for Government securities. It appears that, Home trade Ltd. deposited the money with NDCC Bank and Government securities were not supplied to ODCC Bank and later, a cheque issued by Home trade Ltd. bounced. When the amount credited with NDCC Bank was tried to be attached, NDCC Bank resisted claiming the same to be from sale proceeds of Government securities.

5. Detailed particulars are matter of record in the charge sheet.

6. Learned counsel for the petitioner has argued that, accused No.1 was Chairperson of the NDCC Bank and his role was only of a depositor of the money with ODCC Bank and the fraud or misappropriation has been committed by the ODCC Bank and the petitioner- accused No.10 has nothing to do with the same and there is no material against him. Learned A.P.P. has opposed the petition for discharge and claimed that the charge sheet was filed in the matter as far back as in 2002 and the discharge application was moved by the petitioner only in 2006. The orders passed by the Chief Judicial Magistrate as well as Sessions Court are reasoned orders having considered all relevant material which is appearing from the record and there is no reason to disturb the orders. Learned A.P.P. submitted that the present petitioner was acting in conspiracy with the officials of the ODCC Bank and the officials of the Home Trade Ltd. and in the process, huge amount of almost Rs.30 Crores has been misappropriated. It was claimed that documents available in the charge sheet clearly show that the accused persons were acting in collusion with each other and there was a conspiracy to defraud public money. Without there being any resolution of the Board of Directors and in spite of knowing that Home Trade Ltd. was unauthorised Company for purchase of Government securities, still the petitioner joined in siphoning of such huge amount. The learned A.P.P. submitted that, the present petition deserves to be rejected.

7. Having considered the record and arguments of counsel for both sides, it can be seen that the learned Chief Judicial Magistrate has, in his order, referred in details to the acts of various accused. The statements of various witnesses prima facie show that the accused were acting in tandem. It appears that, on 31.1.2002, NDCC Bank transferred Rs.30 Crores to the Account of ODCC Bank. Investigation shows that the amount was transferred with the permission of petitioner-accused No.10. Case of prosecution is that, as per procedure, resolution was not passed in respect of transaction about depositing such huge amount by NDCC Bank. No prior permission of Reserve Bank of India, Rajya Shikhar Bank or Sahakar Ayukta was obtained. According to the charge sheet, the accused persons were knowing that Home Trade Ltd. was not authorised to deal in Government securities, but still the accused persons colluded and the money was siphoned.

8. I have gone through the detailed orders passed by the Chief Judicial Magistrate as well as Adhoc additional sessions Judge, Osmanabad and I find the orders to be well reasoned. In arguments before me, counsel for petitioner has not shown that any of the observations of the Trial Court or Sessions Court regarding contents from record are wrong. Reasonings on the basis of record are thus well founded. Going through the present petition, and the submissions made, I do not find that it could be held that the charge against the petitioneraccused No.10 is groundless. The present Criminal Writ Petition is rejected.

9. As the petition is rejected at the stage of admission, the Criminal Applications for intervention with various reliefs sought do not survive and are disposed of as not surviving. The intervener may file appropriate proceedings for appropriate reliefs in appropriate forum as may be advised.