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**Sandhya Varma Vs. Union of India, Rep by Inspector of Police, CBI, SCB, Chennai**

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**Court** : Chennai

**Decided On :** Jan-25-2017

**Judge** : P. Velmurugan

**Appeal No.** : Crl. R.C. No. 501 of 2016 & Crl. MP. No. 3361 of 2016

**Appellant** : Sandhya Varma

**Respondent** : Union of India, Rep by Inspector of Police, CBI, SCB, Chennai

**Judgement** :

(Prayer: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records in Crl.MP.No.24 of 2016 in CC.No.4066 of 2015, pending on the file of the Additional Chief Metropolitan Magistrate, Allikulam, Chennai and set aside the same and in effect discharge the petitioner from the case.)

1. This Criminal Revision is directed against the order passed by the learned Additional Chief Metropolitan Magistrate, Allikulam, Chennai made in Crl.MP.No.24 of 2016 in CC.No.4066 of 2015 dated 15.02.2016.

2. The case of the revision petitioner is that the complaint was filed by Indian Bank Ltd., and upon culmination of investigation, a final report was filed against M/s.Eventus Integrated Management Pvt. Ltd., (herein after referred to as A1), its

Directors and Bank Officials for the offences under Section 120B r/w.420 IPC, 13(2) r/w.13(1)(d) of Prevention of Corruption Act.

3. The contents of the allegation is that A1 entered into criminal conspiracy during 2006 with bank officials and cheated the complainant by submitting glossy, unsigned, fudged and inflated balance sheet to avail over draft facilities of Rs.250Lakhs which resulted in a wrongful loss to the Bank. The prosecution witnesses LW3, LW19 and LW21 have given statements that M/s.Fountainhead communication and the A1 are two separate registered entities having distinct and different line of business namely events management and advertising respectively and working from the same address. The petitioner though was a director rested herself with the advertisement writing and did not involve in the general company affairs.

4. Insofar as the documents are concerned the prosecution has filed two sets of documents one set has furnished to the Registrar of Companies during different years to prove the admitted document and another set of documents contains the alleged inflated and fudged, unsigned documents produced before the bank for the purpose of obtaining loans. As per, 161 Cr.PC statement, the petitioner was a Director of M/s.Fountainhead limited taking care of its day today activities and not in-charge and responsible for the conduct of M/s.Eventus Integrated Management Pvt Ltd, the signatures of the petitioner found in different documents are those signatures which have been filed before the Registrar of Companies. The version of the witnesses show that the petitioner has been in charge of M/s.Fountainhead communication and not directly responsible for the conduct and running of the A1 firm. The petitioner filed an application for discharge before the XI Additional Sessions Judge cum Special Court for CBI cases in Crl.MP.No.442 of 2014 in CC.No.42 of 2014, the same is dismissed on 15.12.2015. Against the said order of dismissal, the petitioner filed Crl.RC.No.971 of 2015, before this Court. This Court by an order dated 06.10.2015, partly allowed the revision and remitted back the matter before the trial Court for reconsideration. Though, the Special Court did not have jurisdiction and accordingly by an Order dated 16.10.2015, the case has been transferred to this Court, the petitioner was summoned by the trial Court to appear on 12.12.2015. Under Such Circumstances, the petitioner filed discharge

petition under Section 239 Cr.PC in Crl.MP.No.24 of 2016 raising various grounds. After hearing both sides, the trial Court dismissed the application filed for discharge on 15.02.2016. Aggrieved against the said order, the petitioner has preferred the present revision to set aside the order dated 15.02.2016 made in Crl.MP.No.24 of 2016 in CC.No.4066 of 2016 passed by the Additional Chief Metropolitan Magistrate, Chennai.

5. The respondent has filed counter stating that the petitioner/A3 filed the present revision against the order dated 15.02.2016 made in Crl.MP.No.24 of 2016 in CC.No.4066 of 2015 on the file of the Additional Chief Metropolitan Magistrate, Chennai. The case in RC.4/S/2012/CBI/SCB/Chennai was registered by the respondent on 30.04.2012, based on the complaint given by the General Manager, Indian Bank, Zonal Office, Chennai North. M/s.Eventus Integrated Management Pvt., Ltd,/A1; Aarthi Chambers represented by its Managing Director, Suresh Pillai/A2 and the petitioner/Sandhya Varma/A3 was sanctioned with a limit of Rs.250lakhs under over draft facilities against book debts on 28.10.2006 by Indian Bank against hypothecation of book debts and the personal guarantee of above said Board of Directors and the Corporate Guarantee of M/s.Fountainhead Communications Pvt. Ltd. During the year 2010, the Branch Manager, Indian Bank observed that the turnover was not in tune with the limits sanctioned. M/s.Eventus Integrated Management Pvt Ltd/A1 did not keep its promise to regularize the over dues and became NPA on 30.06.2010. The Directors of A1 company cheated Indian Bank by submitting fudged balance sheet and bogus statement, resulting in loss to the Bank to the tune of Rs.236.98lakhs.

6. The respondent/CBI, SCB conducted thorough enquiry and filed charge sheet under Section 173 Cr.PC againt M/s.Eventus Integrated Management Pvt Ltd./A1, Suresh Pillai/A2, the petitioner/A3 and T.R.Narayanan/A4, the then Branch Manager for the offences punishable under Section 120B r/w.420, 468, 471 and Section 13(2) r/w.13(1)(d) of Prevention of Corruption Ac, 1988. During the course of investigation the accused 1 to 4, in pursuance of the criminal conspiracy, the accused submitted fabricated glossy, fudged and unsigned balance sheet for the years 2003 to 2005. The A4 working as a public servant abused his official capacity by showing undue favour without verifying the genuineness of the

documents, which was submitted by A2 and A3/petitioner, simply forwarded without application of mind thereby caused a loss to the tune of Rs.239lakhs to the Indian Bank.

7. Before filing charge sheet by the respondent, the petitioner herein filed petition under Section 239 Cr.PC for discharge in Crl.MP.No.442 of 2014, the same was dismissed by the learned Special Judge on 15.12.2014. Against the order of dismissal, criminal revision in Crl.RC.No.971 of 2015 was filed before this Court. This Court by an order dated 06.10.2015 remitted back the matter to the trial Court for passing necessary orders against A1 to A3. In the meanwhile, A4 filed Crl.OP.No.8851 of 2014 before this Court for discharge, this Court discharged the A4/T.R.Narayanan, the then Branch Manager. Thereafter, the petitioner filed another discharge petition under Section 239 Cr.PC in Crl.MP.No.24 of 2016, the trial Court dismissed the claim of the petitioner on 15.02.2016. Aggrieved with the said order the petitioner is before this Court. Hence, the learned counsel prays for dismissal of the revision.

8. Heard the rival submissions made on both sides and perused the available records.

9. The contention of the revision petitioner is that she was only a Director in name and not in-charge and responsible for the business of A1 company and she has not played any role in administrative or management affairs of A1 company. There is no allegation of misrepresentation by the petitioner, at any point of time, no offence under Section 420 IPC can be made out. LW19/Atul Mathur has also signed the documents in the capacity of Director, but he was not implicated as accused. The petitioner is the wife of A2 has been falsely implicated in this case, further, the bank official/A4 filed quash petition before this Court, this Court let out A4 from the case. The basis of conspiracy due to exoneration of bank official does not exist today. The petitioner has not signed the balance sheet and she cannot be roped under Sections 468 and 471 of IPC, the petitioner used to work as a creative director for advertisements and not connected with any financial matters of A1 company. The petitioner has not personally gained and the offence alleged by the prosecution is not clearly made out against the petitioner/A3. It is well

settled that there is no vicarious liability in criminal law.

10. The Bank had also initiated proceedings before DRT and also enforced SARFEASI Act on the properties of the petitioner and other accused, the entire money was recovered from the A1/company, there is no loss to the Bank. The LW19/Atul Mathur one of the Director was not implicated, though he also signed as Director, on the same footing the petitioner may be discharged. The prosecution has adopted pick and choose method, not impleading one of the Directors who had signed as Director and the petitioner who had not signed has been implicated as one of the accused. The bank official/A4 who allegedly conspired in the alleged offence has already been discharged by this Court, therefore, the theory of conspiracy also goes out. Viewing from any angle, the petitioner is liable to be discharged from this case.

11. The contention of the prosecution is that A1/company availed overdraft facility of Rs.250lakhs by submitting glossy, unsigned, fudged and inflated balance sheet which resulted in a wrongful loss to bank and corresponding wrongful gain to the accused persons. It is not in dispute that the petitioner/A3 is a Director of A1 company. The documents and the statement of witnesses would clearly show that the petitioner signed several documents in the capacity of Directors of A1 company.

12. The case of the petitioner is that one of the Director Atul Mathur was signed and he was exonerated, on the same footing the petitioner may be discharged is not acceptable one. The petitioner along with her husband/A2 have signed as Directors of A1 Company, hence, A3 was charge sheeted. The petitioner had signed several documents, the statement of witnesses also clearly shows that she was one of the Director of A1 Company and she actively participated in the affairs of A1 Company.

13. Further the respondent has stated that there are sufficient prima facie materials are available against the petitioner for framing charges. LW14/Diwakar and LW15/Panneer Selvam have clearly stated about the fabrication of forged documents. On perusal of Document No.10, Memorandum of Association and Articles of Associations would clearly shows that A2 and A3 are the only Directors

of A1/Company. The trial Court after considering the arguments of both sides and the documents available before it, rightly dismissed the discharge application filed by the petitioner and there is no reason to interfere with the order of the trial Court and prays for dismissal of the revision.

14. The learned counsel for the petitioner would submit that from the statement of the prosecution witnesses LW3, LW19 and LW21, the petitioner had not participated in the day to day affairs of the A1 Company. The petitioner is the Director of M/s.Fountain Head Communication Pvt Ltd and taking care of its day today activities and not parse incharge and responsible for the conduct of M/s.Eventus Integrated management Pvt Ltd, all the signatures of the petitioner found in different documents are those signatures which have been filed with the Registrar of Companies. The witnesses would say that the petitioner is only in-charge of M/s.Fountainhead Communication and not directly responsible for the conduct and running of A1 Company. There is no vicarious liability in criminal law and prima facie materials are available to proceed against the petitioner. The LW19/Atul Mathur had signed as one of the Director, but he has not been implicated in this case. The prosecution has adopted pick and chose method, the Bank Official/A4 has been relieved from the charges by an order of this Court, in separate quash petition. No material is available against this petitioner and there is no loss to the Bank, the Bank has already initiated proceedings before DRT and also enforced SARFEASI Act on the properties of the petitioner and other accused. This is only a loan transaction and the dispute involved is civil in nature and no criminal liability can be attributed against the petitioner. As per, the final report and statement of witnesses, the Court can decide that there is no prima facie materials available for framing of charges against the petitioner and there is no vicarious liability in Criminal law and standing before the trial would be futile exercise.

15. The learned counsel for the prosecution would submit that petitioner/A3 is one of the Director of A1 Company i.e, M/s.Eventus Integrated Management Pvt Ltd., the petitioner along with her husband A2/Suresh Pillai another Director of A1 Company signed in most of the vital documents including that of various forms submitted for obtaining loan from the Indian Bank and availed credit facility from

Indian Bank, George Town branch by submitting glossy, fudged, inflated and unsigned balance sheets. The petitioner had knowledge regarding the process of application and obtaining overdraft facilities of Rs.250lakhs would show the intention of the petitioner and other accused to cheat the Bank, there are ample documents available to show that the petitioner had the knowledge of submitting inflated value in the Book debts, thereby persuaded the Bank authorities and managed to get the required amount of loan. Hence, the trial Court has comes to the conclusion that there are sufficient evidence available on record to show that the petitioner is the first Director of A1 Company and responsible for its day to day operation along with her husband A2/Suresh Pillai. Anil Mathur/LW19 does not figure on anywhere in the capacity of the Director. Therefore, the contention raised by the counsel for the petitioner, that the prosecution has adopted pick and choose method is not acceptable one. Further, this Court discharged A4/Naryanan from the charges, for the reason that he has no connivance with the petitioner and her husband, discharging A4 from the charges will not in anyway helpful to the petitioner's case. On any angle, the petitioner cannot be relieved from the case, the prosecution has sufficient materials from the complaint to the charge sheet and other material evidences about the active involvement of the accused, hence the revision is liable to be dismissed.

16. On perusal of records, the admitted facts are that A2 and A3 are shown as Directors of A1 Company. According to the revision petitioner she has been shown has name lender of the Company, she has not been actively participating in the day to day affairs of the A1 company and she is looking after the affairs of M/s.Fountainhead Communication Pvt Ltd and her husband A2 only is looking after the day to day affairs of A1 Company. The petitioner cannot be vicariously liable for the action done by her husband. The statement of the witnesses also do not reveal anything about the involvement of the petitioner in the A1 Company. On the other hand, the prosecution has stated that she has been shown as first Director in the A1 Company and the prosecution has ample evidence to show that the petitioner had actively participated in the affairs of the Company, with the knowledge and connivance of the A2/husband cheated the A4/bank official by filing glossy, unsigned, fudged and inflated balance sheet in the Bank, for the best reasons known to her, she is facing trial to prove her innocence. At this stage, this

Court cannot go into the root of the defence taken by the accused, therefore, the revision is liable to be dismissed.

17. Considering the rival submissions made by both the Counsel and perused the entire records, even in the charge sheet there are specific allegations raised against this petitioner also. Further, the investigation reveals that from the statement of witnesses and material documents containing the memorandum of association of the Company, wherein the petitioner and her husband has been shown as Directors of the Company. The petitioner had requisite knowledge regarding process of application to obtain overdraft facility of Rs.250lakhs from the Indian Bank. The petitioner had the knowledge of submitting inflated value in the book debts, thereby persuaded the Bank authorities and manged to get the required amount of loan, there are ample evidence available on record to show that the petitioner is one of the Director of A1 Company and she has been actively participated its day to day activities along with her husband. When there is specific allegations raised against the petitioner at the stage of framing of charges, this Court has to look into as to whether the prima facie materials are available to proceed the case against the petitioner. At this stage, if there is a strong suspicion is available against the accused, the Court cannot conduct roving enquiry and the Court can only look into the materials available on records.

18. Upon hearing the arguments of both sides and on perusal of the materials placed before it, the trial Court comes to a conclusion that the prosecution has shown that there are prima facie materials are available to proceed the case against the petitioner and hence, the trial Court rightly dismissed the discharge petition filed by the petitioner. Considering the entire facts and circumstances of the case, this Court has also comes to the conclusion that prima facie materials are available. The allegations shown in the charge sheet and from other documents produced with police report under Section 173 Cr.PC there are materials available to proceed the case against this petitioner. This Court finds there is no illegality, infirmity or perversity in the order passed by the learned Additional Chief Metropolitan Magistrate, Chennai, in dismissing the discharge petition filed by the petitioner and the same does not warrant any interference by this Court.

19. In the result, the criminal revision stands dismissed, by confirming the order dated 15.02.2016 made in Crl.MP.No.24 of 2016 in CC.No.4066 of 2015 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai. Consequently, connected miscellaneous petition is closed.

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