D. Vijayakumar Vs. State represented by Inspector of Police

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Court : Chennai

Decided On : Dec-16-2016

Judge : P. Velmurugan

Appeal No. : CRL.RC.No. 1437 of 2012 & M.P.Nos. 1 & 2 of 2012

Appellant : D. Vijayakumar

Respondent : State represented by Inspector of Police

Judgement :

(Prayer: Criminal Revision Case is filed under Sections 308 and 401 of Cr.P.C., against the order dated 24.09.2012 in M.P.No.90 of 2012 in C.C.No.5024 of 2011 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai.)

1. The Criminal Revision Case is filed under Sections 308 and 401 of Cr.P.C., against the order dated 24.09.2012 in M.P.No.90 of 2012 in C.C.No.5024 of 2011 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The case of the revision petitioner as averred in the revision petition is that he has been arrayed as A4 in Cr.No.RC-4(E/2010-CBI/EOW/Chennai) registered by the respondent for the alleged offences u/s. 120 B r/w. 420 r/w. 468 and 468 and 471 IPC. The complaint was lodged by one D.N .Routry Deputy General Manager, (UCO Bank), Zonal Office, Thambuchetty street, Chennai. After receiving the complaint, the respondent police had investigated the matter and during the investigation examined about 20 witnesses, collected about 163 documents

completed their investigation and filed the chargesheet before the Special Court against four persons including this petitioner and the same was taken on file by the Special Court in C.C.No.5024 of 2011. During the pendency of the above said case, the revision petitioner herein had filed a petition in Crl.MP.No.90/2012 in C.C.No.5024/2011 before the Special Court for discharging the petitioner from the charges levelled against him. After enquiry, the said petition was dismissed by the trial court by its order dated 24.09.2012. Aggrieved with the said order, the petitioner has filed this present criminal revision case.

3. The main ground taken in the revision petition is that there is no allegation as against the petitioner being instrumental for the purpose of availing loan from the defacto complainant/Bank; there is no allegation against the revision petitioner with regard to creation of equitable mortgage, furnished title deeds and other relevant documents; there is no allegation against the petitioner as to creation of false documents or using the false documents, knowing to be a false document, there is no allegation against the petitioner for any conspiracy; there is no material to prosecute the petitioner, the first accused being the Company, only persons, who are actually involved in commission of the offences can be prosecuted and no vicarious liability can be caused upon the petitioner merely because he was a Director in the A1 Company. The Company has independent legal entity and the petitioner, being a Director of the Company cannot be prosecuted for the offences, if any, committed by the Company, which was represented by some other Directors in the transaction. The learned Magistrate has not considered the discharge petition filed by the petitioner and has mechanically dismissed the same. Therefore, the said order is liable to be set aside and this petitioner has to be discharged from the cases by allowing this revision petition.

4. The case of the prosecution is that the case was registered by the Superintendent of police CBI/EOW, Chennai in crime No.RC-4(E) /2010 CBI /EOW /Chennai on 23.02.2011, on the basis of the complaint dated 22.02.2011, lodged by the Deputy General Manager United Commercial Bank, Zonal Office, Chennai against M/s. Seaglade Pharmaceticals Pvt Ltd, Chennai and others are its Directors including this petitioner for the offences punishable u/s. 120 B r/w. 420 r/w. 468 and 471 IPC.

5. The facts of the case is that A1 Company was engaged in Drugs manufacturing at their factory at No.27, 5th street, Sundar Nagar, Alapakkam Main Road, Porur, Chennai. A2 was the Managing Director of the A1 Company. A1 Company sought sanction of credit facilities from UCO Bank, Chennai Main Branch for the development of the pharmaceuticals business. Sri.H.Sankaranarayanan, the then Chief Manger of the Bank, sanctioned cash credit limit of Rs.60 lakhs on 18.03.2002 on the recommendations of Sri.A.Ravichandran, the then Assistant Manager and Sri.R.Prabakaran, the Senior Manager. Sri. Sankaranarayana also sanctioned an adhoc cash credit limit of Rs.10 lakhs on 16.05.2012 on the specific request of A2. The advances was secured by hypothecation stock of raw materials, chemicals used for tablets, finished goods, book debts, and proposed machinery worth of Rs.40,00,000/- and also collateral security of 50 cents vacant land of 21,780 sq.ft at Survey No.211/1A, 1st Seaward Road, Valmiki Nagar, Thiruvanmiyur, Chennai, by way of deposit of title deed owned by K. Sukumaran, S/o. Late. Kulasekaran. The advance was also guaranteed by this revision petitioner and also other Directors of the Company. The account was irregular since April, 2003 and was declared NPA by Statutory Auditors on 30.09.2003 with an outstanding amount of Rs.76.00 Lakhs. The account was prudentially written off on 14.06.2005 and the branch had filed a Civil Suit for Rs.104.83 Lakhs before Debt Recovery Tribunal on 17.03.2005 as the mortgaged property was actually owned by the Government of Tamil Nadu. The borrowers defrauded the Bank as the property was already acquired by Tamil Nadu Housing Board. Taking advantage of the fact that the said acquisition did not appear in the Encumbrance Certificate, A2 and A3 fraudulently cheated the Bank. Sri. B. Mukundan, Panel Advocate of the said Bank, in his legal opinion, dated 14.03.2002, did not mention anything about the acquisition of the property of Tamil Nadu Housing Board and also did not verify the Registry of High Court, Chennai. A1 Company and his Directors indulged in fraudulent activities, which ultimately caused wrongful loss to the tune of Rs.104.83 lakhs as on 06.03.2005 to the bank and corresponding wrongful gain to the accused persons.

6. After the investigation, chargesheet was filed on 23.11.2011 against A1, M/s.Seaglade Pharmaceticals Pvt Ltd, Chennai, A2 and A3 and this petitioner for the offences punishable u/s. 120 B r/w. 420 r/w. 468 and 471 IPC and substantive

offences thereof before the Additional Chief Metropolitan Magistrate, Egmore, Chennai and the same was taken on file in C.C.No.5024 of 2011. During the pendency of the case, the revision petitioner herein filed a petition in Crl.M.P.No.90/2012 to discharge him from the case. After the enquiry, the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, dismissed the said discharge petition filed by the petitioner.

7. Learned counsel for the revision petitioner would submit that there is no material or any statement pointing out the petitioner being instrumental in availing the loan. In General Banking practise in India, it is necessary that any person or firm or Company availing the loan first, will have to submit their profile consisting of proprietor/partner/Director/Shareholder along with nature of business projected turn over, the balance sheet of the previous years, profitability, capital, liability as on date of applying for loan, etc., At the best, the only recent biodata of the revision petitioner would have been given for the purpose of completing the profile and nothing more. By no stretch of imagination, it can be said that the presence of the biodata of the revision petitioner alone was the point for inducement, instigation or was instrumental in sanctioning the loan is a farfetched idea, unimaginable besides improbability for the purpose of said sanction and hence, it would not be proper for the petitioner being prosecuted. Since he is one of the Directors of A1 Company, vicarious liability cannot be fastened upon the petitioner. There is no materials to show that he has been actively participated in the day-to-day affairs of the Company. He is not the Managing Director of the Company all the directors of the Company has not been implicated in this case the respondent has adopted pick and choose method and falsely registered a case against this petitioner . He is not aware of the documents which has been given collateral security for the loan obtained by the A1 Company form the UCO Bank the learned Magistrate has failed to see the materials and mechanically has dismissed the discharge petition. Therefore, the same is liable to be set aside and this revision petitioner is entitled to get the relief of discharge from the case in C.C.No.5024/2011 on the file of learned Additional Chief Metropolitan Magistrate, Egmore.

8. Learned Special Public Prosecutor would submit that this revision petitioner associated with A2/Managing Director of A1 Company and continue to run the forum business till December, 2010. Further, the petitioner joined the A1 Company from its commencement in the year 2001 and all along involved in the day-to-day affairs of the Company in the sanction of loan and subsequently release of the loan were done by the Bank purely on the basis of the credit report submitted by Directors, hypothetication of the pharmaceuticals production of A1 Company and mortgaging of the property. Though on the date of EM, the property belongs to the Tamil Nadu Housing Board, it was taken as collateral security by the fraudulent projection by the accused in furtherance of conspiracy. Availing of loan facility from the UCO Bank was within the knowledge of the petitioner and he had also acknowledged the same in the sanction letter issued by the Bank. As per the relevant documents, the requisition for working capital facilities and term loan by M/s.Seaglade Pharmaceticals Pvt Ltd, Chennai,contains the profile of this revision petitioner and the projected profile reveals the name of the revision petitioner and age and educational qualification is in charge of despatch of finished goods from the factory to the super stockists and stockists. The petitioner had more than 9 years of experience of pharmaceuticals industry and trade and as per the letter of sanction of credit facility dated 18.03.2002, the petitioner had signed as he has accepted the sanction. Further, he would submit that the petitioner was involved in the day-to-day affairs of the Company as a Director of Marketing and Distribution and availed the credit facility to A1 Company from the Bank through forged documents. As per the documents and records, the petitioner had accompanied with Sri.Swaminathan, Manager of the Bank on 19.07.2003 for the inception of the factory and office premises of the A1 Company and Sri Swaminathan, the Manager of the Bank had mentioned that the factory was not functioning for which the petitioner had stated that the stocks available were worth about Rs.20 lakhs. But, on verification, it was found that stocks were manufactured between February 2002 and August, 2002 and export of pharmaceuticals goods were between November 2004 and August, 2004. Therefore, the role of the petitioner in the misrepresentation of fact with dishonest intention is established. The petitioner voluntarily disclosed the relevant personal details in the capacity of the one of the Directors of A1 Company along with other Directors. The petitioner in connivance

with other Directors, get advances sanctioned by the Bank with an ulterior motive to defraud the Bank. The petitioner is responsible for falsification of document, which are vital documents, based on which, the loan was sanctioned. Moreover, during the course of investigation, he was deliberately absconding from the given address and hiding to avoid legal action against him. Hence, his role in the conspiracy along with other Directors of the Company is very much evident. The Bank has lodged a complaint with CBI in February, 2011 based on the advice of the Reserve Bank India. Hence, the contention of the petitioner has no merits and the revision petition is liable to be dismissed.

9. Further he would submit that there are umpteen number of citations of the Hon'ble Apex Court as well as different High Courts, which clearly states that at this stage, charge can be framed on the strength of police report, list of witnesses and list of documents. The court need not look into the defence documents or the defence of the accused. At this stage, prima facie evidence is sufficient to frame charges cited in the caseof Nirmaljit Singh Hoon Vs. State of West Bengal reported in AIR 1972 SC 2639 Hon'ble Supreme Court of India had held that test is whether there was sufficient ground for proceeding and not whether there is sufficient ground for conviction and where there was a prima facie evidence, even though the person charged of offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage. This stand was upheld by the Honble Supreme Court in the Rulings State of Bihar Vs. Ramesh Singh reported in AIR 1977 SC 2018 and also subsequently, in various decisions, the same was upheld by the Hon'ble Supreme Court and various High Courts. Further, he would submit that there are enough materials to frame the charge against this accused. Therefore, the revision petition is liable to be dismissed and the leaned Additional Chief Metropolitan Magistrate, Egmore, Chennai,has rightly dismissed the discharge application filed by the petitioner. There is no merit in the revision petition. Hence, he prayed for dismissal of the revision petition.

10. Heard both sides and perused the records carefully.

11. On perusal of the records placed before this court, the revision petition filed by the petitioner and the counter filed on behalf of the respondent, charge sheet and other statements of witnesses recorded under 161 of Cr.P.C., it is seen that the case of the prosecution is that A1 Company for its pharmaceuticals business, availing loan facilities from the UCO Bank, Main Branch, Chennai, for which A1 Company and one of the Directors have given collateral security by mortgaging immovable property. But, actually at the time of mortgaging the property, the property was owned by Tamil Nadu Housing Board. Suppressing this material, they have created a mortgage fraudulently in favour of a Bank and cheated the Bank. Then the Branch Manager gave the complaint against A1 Company and some of the Directors including this petitioner based on the complaint the respondent lodged the FIR. After investigation, CBI filed chargesheet before the Additional Chief Metropolitan Magistrate, Egmore, Chennaiand the same was taken on file in C.C.No.5024 of 2011. During the pendency, this present petitioner filed discharge application before the Additional Chief Metropolitan Magistrate, Egmore, Chennai. After enquiry, the same was dismissed. Aggrieved with the order passed by the Crl.MP.No.90 of 2012 in C.C.No.5024/2011 dated 24.09.2012, the revision petitioner has preferred this present revision petition.

12. Considering the facts and circumstances of the case, and on perusal of the FIR, statements recorded from the witnesses u/s.161 Cr.P.C, there is a specific allegations against this petitioner in the charge sheet and the documents produced in the police report u/s. 173 of Cr.P.C., there are enough materials available to proceed against this petitioner. Since this petitioner has involved in the day-to-day affairs of the A1 Company and also he has acknowledged the sanction of the loan and also he has accompanied with the Manager/UCO Bank to the factory premises during the inspection and also he has given a statement with him regarding stocks maintained in the godown. One of the contentions of the petitioner is that the respondent has filed the case against only this petitioner and some of the Directors by adopting pick and choose method. But the investigation reveals involvement of the accused in this case. Therefore, the contention raised by the learned counsel for the petitioner is not acceptable and as stated by the learned Special Public Prosecutor, at this stage of framing of charges, on the strength of police report, list of documents, the court can look into to materials in

the police report or the list of documents, the court need not look into the defence documents or the defence of the accused. When there is a prima facie materials to proceed against the petitioner, it is sufficient to frame the charge.

13. Further on perusal of the order passed by the trial court in Crl.MP.No.90 of 2012 in C.C.No.5024/2011, he has elaborately discussed about the involvement of the accused in this case and he has also satisfied with the materials placed before it. There are enough materials to proceed with the case against this petitioner. Therefore, under such circumstance, on perusal of the order of the trial court, this court do not find any improperity or illegality in the order passed by the trial court. There is no reason to interfere with the order passed by the trial court and since there is no merit in this Criminal Revision Case, this case is liable to be dismissed. If the petitioner feels that he has got valuable defence in this case, he can agitate before the trial court during the trial but not at this stage. As stated by the learned Additional Public Prosecutor, at this stage the court will look into only prosecution documents but not the defence of the accused.

In fine, this Criminal Revision Case is dismissed and the order passed by the trial court is hereby confirmed. Consequently, connected miscellaneous petitions are closed.