R. Marimuthu Vs. State rep. by The Additional Superintendent of Police, SPE/CBI/ACB/Chennai

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Court : Chennai

Decided On : Sep-16-2016

Judge : R. Subbiah

Appeal No. : Crl.O.P.No. 9051 of 2016 & Crl.M.P.No. 4691 of 2016

Appellant : R. Marimuthu

Respondent : State rep. by The Additional Superintendent of Police, SPE/CBI/ACB/Chennai

Judgement :

(Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.8 of 2002 on the file of XI Additional Special Court, CBI cases Court, Chennai and quash the same.)

The petitioner is A8 in C.C.No.8 of 2002 on the file of XI Additional Special Court, CBI cases Court, Chennai and he has filed this petition to call for the records in the said case and quash the same.

2. Based on the complaints received and also on the basis of the source information, case was registered against the petitioner/A8 and others for the alleged commission of the offences punishable under Sections 120-B read with 420 and 420, 467, 468, 467 read with 471, 468 read with 471, 477-A IPC and

Sections 7, 12 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act. The petitioner herein / A8 is facing trial along with the other accused persons for the above said offences. It is the case of the prosecution that the petitioner herein is the promoter and Managing Director of M/s.India Housing Finance and Development Limited (for short, 'IHFD'). The National Housing Bank (for short, 'NHB') was formed by the National Housing Bank Act and it is a wholly owned subsidiary of Reserve Bank of India (RBI), completely under its supervision and superintendence. It finances companies by giving loans towards purchase/construction of dwelling houses and to mobilise household finances and provide housing finance to middle and higher income groups through recognised Housing Finance Companies. NHB would give approval/recognition to a public limited company as Housing Finance Company, if it satisfies the guidelines provided by NHB. Approval should be given to a public limited company formed with the main object of carrying on the business providing long term finance for construction or purchase of houses in India for residential purpose. The public limited company to be approved as Housing Finance Company, should engage only in finance activity. The grant of approval is considered on the basis of the recommendations of the Regulatory Inspection Committee in the Inspection Report and subsequent discussions/clarifications and analysis, if any, required in the process. If a public limited company satisfies the statutory requirements, NHB will approve such companies as Housing Finance Companies (HFC). There are various guidelines for the HFC provided by NHB. If a public limited company is approved by the NHB as HFC, it will be eligible to claim re-finance from NHB in lieu of the loans already given to various customers for construction/purchase of a flat/house. The purpose behind the giving of re-finance is to encourage construction of new houses/flats and extension/upgradation of existing housing stock by persons belonging to low income category by extending need-based housing loans to them. There are various procedures for claiming re-finance, the terms and conditions, funds, release, scrutiny and repayment. The petitioner/A8, who is a Chartered Accountant, is the Managing Director of IHFD and A9, who is a close friend of A8, is the Chartered Accountant of IHFD. A8 and others took over a construction firm M/s.Saccraman Engineering Associates Private Limited in 1986 and on 03.12.1986, the name was changed as IHFD Constructions Limited.

Though this sister concern was formed by A8 and others, the actual construction of flats/houses was carried out by IHFD Ltd. The RBI, while classifying IHFD as a Housing Finance Company, imposed a condition that IHFD should not indulge in construction activities and it should only be a Finance Company. Therefore, IHFD stopped construction activities and the same was carried out by IHFD Constructions Limited. A8 was the Managing Director for both IHFD and Chairman of IHFD Constructions Limited. The petitioner/A8, in his capacity as Managing Director, applied for approval/recognition of IHFD as Housing Finance Company for claiming re-finance to NHB, Mumbai. When the application for approval of re-finance was pending with NHB, complaints were received in the office of the NHB, Mumbai. The complaints were given by the customers of IHFD with regard to the non-payment of deposits on due dates, delay in handing over possession of flats, delay in sanction and release of loans, unauthorised collection of portion of the proposed loan as deposit, etc. by A8. The complaints establish that everything was not normal in the matter of finance and functioning of IHFD of A8 and that they were not financially sound as projected by them on the basis of manipulated books of accounts. The investigation further revealed that the officials of NHB ignored the adverse factors against M/s.IHFD before the recognition of the said company as Financial Company. The petitioner/A8, along with other accused persons/officials and employees of M/s.IHFD Limited, Chennai, in the matter of recognition of M/s.IHFD as a Finance Company, to cheat the NHB, by fabricating the records and to use the same as genuine and to commit criminal misconduct and in pursuance of the conspiracy, fraudulently and dishonestly prepared forged loan applications, deed of guarantees, loan agreements, sanction letters, loan documents and salary/income certificates and submitted false claims for re-finance to NHB for the loans that were not disbursed at all by IHFD. They have claimed re-finance on 22 occasions to the tune of Rs.32.43 crores including the ad-hoc loans of Rs.1.50 crores each, which otherwise they are not eligible. Hence, based on the above allegations, the respondent-authority registered case and after investigation, they filed charge-sheet before the Court below, which was taken on file in C.C.No.8 of 2002 and the petitioner/A8 has filed this Crl.O.P. to quash the said criminal proceedings in the said C.C.No.8 of 2002.

3. Learned counsel appearing for the petitioner/A8 submitted that the purpose of constituting NHB is to provide re-finance under the guidelines and the minimum capital of Rs.1 crore is required and 51% from the promoters which was contributed by the promoters of IHFD, to qualify as Housing Finance Company, for promotion of house building among the economically weaker sections of the public at large and it is only after a thorough scrutiny, a company is accorded the seal and approval by the RBI as Housing Finance Bank and IHFD Limited was the third institution in India which was accorded such recognition by the RBI and the Government of India through Ministry of Finance. He further contended that IHFD would give loans for house buildings to weaker and middle class sections of society, either directly or through a recognised builder, if the borrower purchases a flat. As per the regulations of NHB, IHFD Limited can give a maximum loan of Rs.1 lakh only and for repairs - Rs.30,000/- only. He further submitted that NHB employees will be conducting inspection in respect of the Housing Finance Companies under the Act for giving re-finance approval and they will be conducting annual inspections, wherein, they will be inspecting the borrowers at random. The particulars of loan given by the Financial Company should be submitted every month by the Housing Finance Company under HFC-3 Form for scrutiny and checking and only then, re-finance will be given to the companies by the NHB.

4. Learned counsel for the petitioner/A8 further contended that it is main allegation of the respondent against IHFD that by re-finance given by the NHB, the IHFD siphoned-off the amounts through its Director. In this regard, it is stated that the CBI has cited and examined only 41 loanees, out of about 7500 borrowers and out of 41 loanees, two are dead and only through 39 loanees, the CBI is sustaining the charges in this case. Learned counsel invited the attention of this Court to the evidence adduced by one K.R.Padmanabhan (P.W.12), who has stated in his evidence that he got a loan of Rs.30,000/- from IHFD for the construction of first floor of his residential house. He has further stated in his evidence that a cheque for a sum of Rs.30,000/- was issued by IHFD in favour of him on 20.11.1990 and thereafter, the Company has sanctioned loan for the construction of the first floor in the residential house. He further stated in his evidence that he has settled the amount to IHFD and got back the documents executed by him from IHFD, and

therefore, no amount is due to IHFD. Thus, by relying upon the above said evidence of P.W.12 K.R.Padmanabhan, learned counsel for the petitioner submitted that except the evidence of P.W.12, no other evidence is available as against the petitioner/A8 and no other witness has made a reference about the IHFD. Even P.W.12 has stated that he has repaid the loan amount as noticed above in his evidence.

5. By relying upon the decision of the Supreme Court of India, reported in 1992 SCC (Cri) 426 = CDJ 1990 SC 684 (State of Haryana and others Vs. Bhajan Lal and others), learned counsel for the petitioner/A8 submitted that the charge framed as against the petitioner is liable to be quashed if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings. Learned counsel for the petitioner submitted that as there is no legal evidence as against the petitioner/A8, the charge framed against the petitioner may be quashed.

6. Learned Special Public Prosecutor appearing for the respondent/CBI submitted that the petitioner/A8 was the Managing Director of IHFD Ltd. and the IHFD is sought to be enlisted as HFC and this enlistment has been done by NHB, which is subsidiary of the RBI. For getting the enlistment, certain restrictions and qualifications are there. One of the restriction is that the Chairman or the Managing Director or any whole-time Director of HFC should not hold any office under construction Company or vice-versa. Further, the financing Company should not carry out the construction activities by itself. The petitioner herein was a whole-time Director of M/s.Southern Housing Corporation Limited, but by suppressing the said fact, the petitioner has indulged in subsidiary company, which is involved in construction activities relating to IFHD and got enlisted with NHB by fabricating the documents. The charge sheet has also been filed as against the officials of the NHB. After getting enlisted as HFC, the petitioner/A8 has fabricated the loan documents as though the loan was given to customers. Therefore, it is incorrect to state that there is no legal evidence as against the petitioner/A8. Furthermore, now almost all the witnesses had been examined and the case is under the stage of questioning the accused persons under Section 313 Cr.P.C., and hence, learned Special Public Prosecutor submitted that at this stage, the present Crl.O.P may not

be entertained. In this regard, learned Special Public Prosecutor appearing for the respondent/CBI relied on a decision of this Court reported in 2007 (1) LW (Crl) 493 (A.Govindarajan and six others Vs. The Inspector General of Police, W-5 All Women Police Station), in which, a learned single Judge of this Court relied on a decision of the Supreme Court reported in AIR 1973 SC 799 = 1974 L.W. (Crl) 40 S.N. (Amar Chand Vs. Shanti Bose) and submitted that when the trial is in progress, the quash-petition under Section 482 Cr.P.C. could not be entertained. Hence, learned Special Public Prosecutor prayed for dismissal of the Crl.O.P.

7. By way of reply, learned counsel for the petitioner submitted that it is incorrect to state that the petitioner is a whole-time Director of M/s.Southern Housing Corporation Limited and the fact remains that one Mr.Joseph Alphonse was the whole-time Director and the petitioner was only one of the Director in the said Southern Housing Corporation Limited. Therefore, absolutely, there is no violation of any conditions issued by NHB. Learned counsel further submitted that there is no legal evidence as against the petitioner/A8 relatable to any offence and the charge against the petitioner is liable to be quashed. He further submitted that the houses constructed were verified and found to be in existence, by CBI, which got it valued by CPWD and by the Receiver appointed by the Bombay High Court in O.S.No.3337 of 1995 filed by NHB against IHFD in the Bombay High Court and the Court Receiver has taken over the flats that were not taken by the borrowers in lieu of the loans and the property documents were handed over to Court Receiver as security for the loans. Hence, learned counsel for the petitioner submitted that, absolutely, there is no legal evidence as against the petitioner and it is not necessary to undergo the ordeal of trial, and when there is no legal evidence, the charge sheet can be quashed.

8. Keeping in mind the above submissions made by learned counsel for both parties, I have anxiously considered the same and perused the materials available on record.

9. Though very many contentions have been raised in this petition, this Court cannot embark upon the pros and cons of the evidence adduced before the trial Court, since the trial is yet to be completed. It is the main submission of the

learned counsel for the petitioner that when there is no legal evidence, this Court, by exercising the power under Section 482 Cr.P.C., can quash the charge framed against the petitioner. According to the learned counsel, even P.W.12 has stated in his evidence that he got a loan of Rs.30,000/- from IHFD for construction of First Floor in the house where he was residing and the said loan was also repaid, and hence, there is absolutely no evidence against the petitioner/A8. But, it is the case of the prosecution that the charge against the petitioner is that IHFD got enlisted in NHB by fabricating the documents and violated the rules. Since the matter is pending trial, I am of the opinion that this Court, at this stage, cannot conduct any discussion over the submissions and counter submissions made by the learned counsel for the parties. Similarly, this Court is also of the opinion that when already the trial has commenced, this Court cannot quash the charge based on the evidence available before the Court, by picking up some portion of the evidence available on the file of the trial Court. As to whether there is any legal evidence or not, can be decided only after going through the entire documents marked on either side, which has to be done only before the trial Court.

10. In the above context, the decision relied on by the learned Special Public Prosecutor, reported in 2007 (1) LW (Crl) 493 (cited supra), is worthwhile to be noticed, wherein, this Court relied on the decision of the Apex Court reported in AIR 1973 SC 799 = 1974 L.W. (Crl) 40 S.N (cited supra), and in paragraph 6, this Court held as follows:

"6. The Hon'ble Supreme Court of India has held in Amar Chand Vs. Shanti Bose reported in AIR 1973 SC 799 = 1974 L.W. (Crl). 40 S.N., that,

"Where the accused moved the High Court at the time when the trial was almost coming to a close and what remained to be done was the examination of two prosecution and one Court witnesses and the High Court quashed the charge and the entire proceedings on the grounds that the complainant suppressed material facts and that the evidence on record did not establish the alleged offence, the order was liable to be set aside. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other, and decline to interfere with those proceedings.

The questions whether there was suppression and whether the evidence established the alleged offence were matters to be considered by the trial Court after an appraisal of the entire evidence."

11. The dictum laid down in the above judgment of the Supreme Court is squarely applicable to the facts of the present case. Since the trial in the case is under progress, at this stage, this Court cannot quash the charge sheet. Hence, I am not inclined to entertain this petition.

12. In the above view taken by this Court, it is not necessary to dwell into the decisions relied on by the learned counsel for the petitioner, as they are distinguishable on facts.

13. For the reasons stated above, this Crl.O.P. is dismissed. However, the petitioner is at liberty to put forth all his submissions during the course of trial and arguments before the trial Court. Crl.M.P.No.4691 of 2016 is closed.