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Court : Delhi

Decided On : May-18-2012

Judge : M.L. Mehta

Appeal No. : CRL.M.C.795 OF 2008

Appellant : C.V. Madan

Respondent : Cbi

Judgement :

M.L. MEHTA, J.

(Oral)

1. Proceedings in R.C. No.2/87, C.C. No. 6/99 pending in the Court of Special Judge CBI.

2. The facts of the case in brief are that an FIR No. R C 2/87/CBI/SIU X / NEW Delhi dated 26.05.1987 was registered on the complaint of Shri S.M. Mehra, Regional Manager-I, State Bank of Patiala against the petitioner who worked as Branch Manager in State Bank of Patiala, Janakpuri Branch from May 1985 to Jan 1987 alleging that the petitioner entered into a criminal conspiracy with M/s. Keming Tools Co. Pvt. Ltd. and other co-accused persons and committed a fraud of Rs.3.75 crores by disbursing the said amount fraudulently and dishonestly. It has been alleged that in pursuance of the said criminal conspiracy M/s. Keming

Tools opened a credit account No.254 with the bank on 11.12.1986 and an amount of Rs.3.75 crores was released by the petitioner in the form of term loan to the said company without any appraisal and sanction of the competent authority. The investigation into the case revealed that the petitioner had committed this fraud along with four other co-accused persons, namely, Sunil Chandra Kant Khatau, H.S. Nageshwaran, Satish Kumar Chopra and Pradyuman Kumar Khanna. After investigation charge sheet was filed on 23.12.1989 against the above mentioned accused persons under Section 120-B r/w 420 IPC and Section 5 (2) r/w 5(1)(d) of the Prevention of Corruption Act in the court of Special Judge-CBI, Tis Hazari Courts. The Special Judge passed an order for framing of charges against all the accused persons vide his order dated 7.2.2007.

3. The learned counsel for the petitioner has prayed for quashing of the criminal proceedings against him submitting that the entire amount of loan has been repaid to the bank by the accused no.6 M/s Keming Tools Co. Pvt. Ltd. and there being no loss caused to the complainant bank no case was made out against the petitioner and thus the proceedings against the petitioner is an abuse of process of law and so liable to be quashed. It is further submitted that no sanction has been granted by the bank to the prosecuting agency to proceed against the petitioner and hence the prosecution is bad in law. It is further submitted that otherwise also no offence under Section 420 IPC is made out against the petitioner and also the criminal proceedings ought to be dropped against the petitioner since he has not received any pecuniary gain by disbursing the loan amount to accused company.

4. On the other hand, the learned counsel for CBI has opposed the quashing of criminal proceedings against the petitioner by submitting that mere payment of the loan amount by the accused company to the bank is not a valid ground for dropping the criminal proceedings against the petitioner as it has been revealed through investigation that the loan amount was disbursed by the petitioner without any sanction from the competent authority in pursuance of criminal conspiracy with the co-accused persons. It has been further submitted that the petitioner was terminated by the bank before the start of criminal proceedings and hence the proceedings do not suffer from any lack of sanction or illegality.

5. I have heard the rival submissions and perused the record.

6. It is settled legal proposition that when the charge sheet or FIR prima facie discloses a commission of offence by the accused persons then the courts should loathe to quash the criminal proceedings that have been initiated. In **Ashabai Machindra Adhagale Vs. State of Maharashtra**, 2009(1) Crimes 304(SC) the Hon'ble Supreme Court has held that the inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and more so when the evidence has not been collected and produced before the Court and the issue involved, whether factual or legal are of magnitude and cannot be seen in their true perspective without sufficient materials.

7. On a similar issue under consideration in **Jeffrey J. Diermeier and Anr. v. State of West Bengal and Anr.** (2010) 6 SCC 243, while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the code, it has been observed as follows:

“20... The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, 9i) to give effect to an order under the Code; (ii) to prevent abuse of the process of Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.”

8. Bearing in mind the aforesaid legal position with regard to scope of the power of the High Court under Section 482 Cr.P.C. let us now revert to the factual position of the case in order to determine whether the present case warrants the exercise of inherent power by this Court.

9. The learned counsel for the petitioner has contended that as the loan amount has been repaid by the accused company to the bank, the criminal proceedings against the petitioner deserves to be quashed. However, from the perusal of records it is evident that only a payment of Rs.50,00,000/- has been made to the bank in full settlement of the account. Prima facie, a loss of Rs.359.42 lacs had to be borne by the bank due to the acts of the petitioner. Hence it cannot be said that no loss has been caused to the bank pursuant to the alleged acts of the petitioner. As a result, this plea of the learned counsel for the petitioner stands demolished.

10. Moving on, the contention of the learned counsel for the petitioner that the prosecution is bad due to want of sanction by the bank to the prosecuting agency, is untenable as it has been submitted by the learned counsel for the CBI that the petitioner was terminated by the complainant bank before the initiation of criminal proceedings and as such there was no requirement of sanction to be given by the bank to the prosecuting agency. This was not controverted by the petitioner. Be that as it may, the question of sanction would be determined by the Trial Court at the appropriate time.

11. Further it has been alleged by the complainant bank that the petitioner in addition to disbursing of a loan to the accused company has also sanctioned a housing loan in his own name and the debt outstanding in the bank's books in this respect is at Rs.12,00,23.67 besides interest. Also the fact that whether the petitioner has made any pecuniary gain during the course of the alleged conspiracy and fraud or not is a triable issue and at the outset the plea of the learned counsel for the petitioner that the petitioner is not liable to be prosecuted as he has not received any monetary benefit for himself cannot be accepted.

12. The proceedings in the case are at the stage of examination of prosecution witnesses and it has been submitted by the learned counsel for CBI that as many as 27 prosecution witnesses have already been examined by the Court.

13. In the light of incriminating factors weighing against the petitioner and the entire factual matrix of the case, I am of the opinion that it would be a great travesty of justice if the proceedings against the petitioner are quashed at this stage. There is prima facie disclosure of commission of the alleged offences by the

petitioner along with other co-accused persons and in these circumstances, it would be improper to bring the prosecution case to a sudden death.

14. Consequently, in view of above discussion the petition being without any merit is hereby dismissed.

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