(2014) 09 MAD CK 0033

Madras High Court

Case No: Criminal Original Petition No. 19191 of 2014

S. Arivarasu — APPELLANT

Vs

State and Others — RESPONDENT

Date of Decision: Sept. 5, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 239, 482
- Penal Code, 1860 (IPC) - Section 120-B, 406, 420, 467, 468
- Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2), 2(c)

Citation: (2015) 1 Crimes 247

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: L. Mouli, Advocates for the Appellant; N. Chandrasekaran, Special Public Prosecutor, Advocates for the Respondent

Judgement

M. Venugopal, J.

The Petitioner/A5 has preferred the present Criminal Original Petition praying for passing of an order by this Court to call for the entire records relating to Charge Sheet in C.C. No. 8 of 2011 on the file of the Learned II Additional District Judge (CBI Cases), Coimbatore and to quash the same. According to the Learned Counsel for the Petitioner/A5, the Second Respondent/De facto Complainant lodged a complaint dated 09.06.2010 before the First Respondent and the same was registered on 12.06.2010 in Crime No. RC6(S)/2010/CBI/SCB/Chn against the Petitioner and others in respect of purported offences under Sections 120-B read with 420, 406, 467, 468 and 471 of Indian Penal Code and under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The Learned Counsel for the Petitioner urges before this Court that the First Respondent, after due investigation, filed a Final Report on the file of the Learned II Additional District Judge (CBI Cases), Coimbatore, against the Petitioner and others.

3. The prime contention advanced on behalf of the Petitioner/A5 is that the case of the Prosecution is that SBI Global Factors was a Private Firm by name M/s. Global Trade Finance Limited till 27.03.2008 and became a subsidiary of State Bank of India on 28.03.2008. Further the said M/s. Global Trade Finance Limited merged with SBI Global Factors on 11.02.2010 and consequently, the name of the Global Trade Finance Limited was changed as SBI Global Factors Limited on 16.03.2010.

4. The Learned Counsel for the Petitioner/A5 submits that M/s. Global Trade Finance Limited was providing factoring facilities and trade finance solutions to companies, who are in the field of manufacturing and trading and further factoring is a trade finance facility given to clients against sale made by the clients to its Buyers/Debtors. Finance facility is provided to the clients on producing the trade documents evidencing sale made to the Buyers such as invoices, dispatch Challans etc.

5. The Learned Counsel for the Petitioner/A5 brings it to the notice of this Court that the Prosecution case is that the SBI Global Factors Limited involved in International and Domestic factoring had sanctioned trade finance facilities to a tune of Rs. 2.55 Crores to M/s. Maruvur Arani Textiles India Private Limited, Udumalpet (Al), Karthikeyan (A2), N. Raghupathy (A3) and N. Venkataraman (A4) in active connivance with the Petitioner/A5, who was then Business Development Manager of SBI Global Factors Limited cheated SBI Global Factors Limited by submitting Debtor Introducing Letter (DIL) in the names of non-existing Debtors/Buyers and made SBI Global Factors to release the amount of 3.53 Crores to the accounts of A1/Accused Company and thereby, caused a loss of Rs. 3.53 Crores to SBI Global Factors Limited.

6. The Learned Counsel for the Petitioner contends that the First Respondent/Complainant filed Charge Sheet against the Petitioner and others in respect of the alleged offences under Sections 120-B read with 420, 467, 468, 471 and 472 of Indian Penal Code and under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Further the trial Court took cognizance of the offences under Sections 120-B read with 420, 467, 468, 471 and 472 of Indian Penal Code and under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, against the Petitioner/A5 and others in C.C. No. 8 of 2011.

7. At the outset, the Learned Counsel for the Petitioner vehemently projects an argument that the Petitioner/A5 was not a Public Servant when the alleged criminal act took place and also that even assuming the entire allegations were true, no offence is made out against the Petitioner/A5 and therefore, the Petitioner is approaching this Court invoking the ingredients of Section 482 of the Criminal Procedure Code.

8. Expatiating his submission, the Learned Counsel for the Petitioner submits that the Petitioner was not a Public Servant in terms of the definition of Section 2(c) of the Prevention of Corruption Act, 1988, at the time of alleged occurrence and as

such, the ingredients of Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, would not attract insofar as the Petitioner is concerned.

9. Advancing his arguments, Learned Counsel for the Petitioner contends that the allegations in the First Information Report, Charge Sheet and Statement of witnesses reveal that the alleged occurrence took place before 27.03.2008 before the private firm by name M/s. Global Trade Finance Limited became a subsidiary of State Bank of India and therefore, the Petitioner was not a Public Servant at the relevant point of time and as such, he cannot be charged in respect of offences under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

10. Yet another submission of the Learned Counsel for the Petitioner is that under Section 472 of IPC, there is no allegation in the Charge Sheet that the Petitioner made fake rubber stamps in the name of fictitious Debtor Firms and therefore, the offence under Section 472 of I.P.C. is not made out.

11. Likewise, the Learned Counsel for the Petitioner/A5 further submits that in respect of offence under Section 467 of IPC, there is no allegation in the Charge Sheet that the Petitioner has forged a document, which purports to be a valuable security and therefore, the offence under Section 467 of I.P.C. is not made out.

12. Apart from the above, the Learned Counsel for the Petitioner/A5 proceeds to contend that in respect of offence under Section 420 of IPC, there is no allegation in the Charge Sheet, First Information Report and Statement of witnesses that the Petitioner has dishonestly induced the de facto complainant to transfer money to other accused and therefore, the offence under Section 420 of I.P.C. is not made out.

13. Similarly, the Learned Counsel for the Petitioner/A5 submits that in respect of offence under Section 120-B of IPC, there is no allegation in the Charge Sheet that the Petitioner has agreed to do an illegal act with other Accused and in the absence of agreement to commit an offence, the same would not amount to criminal conspiracy.

14. Coming to the aspect of charges under Sections 471 and 472 of IPC, according to the Learned Counsel for the Petitioner/A5, there is no allegation in the Charge Sheet that the Petitioner has used forged documents or in pursuance of the forged documents to be used as genuine documents for the purpose of processing the application and as such, the ingredients of Sections 471 and 472 of I.P.C. are not made out.

15. In response, the Learned Counsel for the First Respondent contends that at the time of committing the crime, SBI Global Factors was a subsidiary of State Bank of India and as such, the Petitioner/A5 was a Public Servant. Furthermore, the Petitioner/A5 while serving as a Public Servant in the capacity of Business Development Manager of M/s. Global Trade Finance Limited, Coimbatore,

dishonestly processed the proposal of M/s. Maruvur Arasi Textiles India Private Limited (A1 Company) and showed undue favour by abusing his official position knowing full well that the Debtor Firms were non existent. That apart, the Petitioner/A5 was in the habit of obtaining pecuniary benefit from the clients of M/s. SBI Global Trade Finance Limited, and as such it is not correct to state that the Prevention of Corruption Act, 1988, does not apply insofar as the Petitioner is concerned.

16. The Learned Counsel for the Respondent brings it to the notice of this Court that the Petitioner/A5 submitted Plant Visit Report in his capacity as Business Development Manager knowing full well that all the five Debtor Firms were neither existing nor having business transactions with A1 Company during 2008. Later the field visit conducted by Surveyor Deepa Rajkumar (L.W. 9), who pointed out the discrepancy mentioned supra and in fact, the Global Trade Finance Limited sanctioned the factoring facility to M/s. Maruvur Arasi Textiles India Private Limited on 11.02.2008. But the trade finance facility was provided to the party against the production of invoices and related documents with effect from 04.03.2008.

17. Continuing further, the Learned Counsel for the Respondent went on to add that in terms of documents (D 21 to D 33), the payments made to the party against invoices dated 01.05.2008 to 15.07.2008 were due against M/s. Maruvur Arasi Textiles India Private Limited, though Global Trade Finance Limited was a Private Firm upto 27.03.2008, it became the subsidiary of State Bank of India from 28.03.2008. Also that, at the time of taking over by the State Bank of India, all the dues were also taken over by State Bank of India (D3) and the Petitioner/A5 (then Business Development Manager), who submitted Plant Visit Report and forwarded the proposals for sanction to the Head Office at Mumbai, took voluntary retirement from service only on 30.06.2009.

18. The Learned Counsel for the Respondent submits that the outstanding payment of Rs. 3,53,01,425/- were due from A1 Company in respect of the period from May 2008 to July 2008. Also on 10.06.2008, the Petitioner/A5 (in his capacity as Business Development Manager) knowing full well that the performance of the Accused Company M/s. Maruvur Arasi Textiles India Private Limited was not satisfactory, had forwarded (D48) an enhancement proposal for inclusion of 17 Debtors and increased funds in use limit in order to show undue favour to A1 Company.

19. The Learned Counsel for the Respondent also brings it to the notice of this Court that L.W. 9 - Deepa Rajkumar, who conducted the field survey, submitted a Report to the Petitioner/A5, wherein certain discrepancies were listed out (D. No. 5) as such:

(i) A1 Company had provided the documents relating to the factorable debtors only from April to November 2007, whereas it should be for 12 months as per the norms of Global Trade Finance Limited.

(ii) The Debtors/Buyers had given neither purchase orders nor remittance advise and the report was based only on the ledger provided by A1 Company.

(iii) A1 Company started transaction with M/s. Shri. Selvanayagi Amman Textiles, Meridian Integrated Fibres, just two months before the Field Survey.

(iv) The Directors of A1 Company claimed that the authorised paid capital of A1 Company was Rs. 3,00,00,000/- (Rupees three crores only), but it is only Rs. 1,00,00,000 (Rupees one crore only) as per the documents.

(v) The Employees of A1 Company were only contractor/casual labourers and they were not covered under the ESI scheme.

(vi) A1 Company had exceeded its drawing power of Rs. 1.7 Crores of cash credit limit with Canara Bank.

(vii) No filing of IT returns for 2006-07 for A1 Company.

(viii) That the sale of the Company was effected only through telephonic orders and there were no written invoices in support of orders.

20. Besides the above, the Learned Counsel for the Respondent contends that the Petitioner/A5 (as Business Development Manager), in order to show undue favour to A1 Company, concealed these facts stating that no adverse comments were noticed in field survey report and exaggerated the actual things and forwarded the credit proposal to Head Office, Mumbai, recommending factoring facility to M/s. Maruvur Arasi Textiles India Private Limited (A1 Company). Based on the recommendation of the Petitioner/A5, an amount of Rs. 2.55 Crores was sanctioned. After the funds were sanctioned, the Petitioner/A5 also sent a Plant Visit Report to Head Office, Mumbai, stating that over all purpose of A1 Company was good.

21. During the last leg of his argument, the Learned Counsel for the Respondent submits that the trial Court, after taking into consideration the oral and documentary evidence submitted along with the Charge Sheet, framed necessary charges against all the Accused (including the Petitioner/A5) on 01.07.2014 and the trial of the main case in C.C. No. 8 of 2011 is in Part Heard stage.

22. It is not in dispute that in C.C. No. 8 of 2011, the trial Court had framed necessary charges against all the Accused including the Petitioner/A5. Till date, P.W. 1 to P.W. 3 were examined on the side of the Respondent/Complainant and the next date of hearing is 25.09.2014.

23. It is also brought to the notice of this Court that the Petitioner/A5 has not filed any discharge petition before the trial Court in main case in C.C. No. 8 of 2011. Also that A4, A6, A7, A8, A9 and A10 filed discharge petitions before the trial Court in C.C. No. 8 of 2011 on numerous grounds and on additional ground that the Petitioner/A5 was not a Public Servant, which was dismissed by the trial Court.

24. It is to be noted that the term discharge ought to be read with reference to the specific offence for which an Accused has been charged. In this connection, this Court very relevantly points out that the term ''discharge'' does not mean necessarily that an Accused cannot be proceeded against for some other offence, if there was an ex facie/prima facie evidence to prove such a charge. As a matter of fact, even a strong suspicion against an Accused, which leads a Court of Law to think that there is enough ground for presumption that an Accused had committed an offence, it is not open to the Court to say that there is no sufficient ground for proceeding against the Accused. No wonder ''groundless'' means without any foundation or basis. At the time of framing of the charge, it is not for a Court of Law to way the pros and cons of all the requisite implications of materials not for shifting the materials presented/relied on by the Prosecution. At this stage, the exercise to be done by a Court of Law is that it should confine itself to consider the police report and other accompaniment to find out whether the allegation against the Accused concerned are groundless or frivolous or whether there is necessary ground for presuming that the Accused concerned have committed the offence. Of course, the said presumption is always a rebuttable one, for which an opportunity ought to be provided to the concerned Accused at the time of trial of the main case.
25. As far as the present case is concerned, the Petitioner/A5 had not projected any ''discharge petition'' before the trial Court till date. Only other Accused A4, A6, A7, A8, A9 and A10 reportedly filed necessary discharge petition raising so many grounds and additional ground, but they were dismissed by the trial Court.

26. In the instant case, the Petitioner has projected this case under Section 482 of Cr.P.C., seeking the inherent powers of the Court to call for the entire records relating to the Charge Sheet in C.C. No. 8 of 2011 on the file of the trial Court. One cannot brush aside an important fact that when this Court exercises its inherent power/jurisdiction under Section 482 of Cr.P.C., it should not embark upon an enquiry whether the evidence produced by the Prosecution in question is a reliable one. In this regard, this Court aptly points out that it is not the function of the trial Court to do that also. Whether the allegations mentioned in the First Information Report and the Charge Sheet are reliable, acceptable or otherwise, this Court under Section 482 of Cr.P.C., is not supposed to render definite finding about the veracity or credibility or truthfulness of the allegations. It cannot be gainsaid that these are all matters, which are examined by the trial Court after the entire materials are produced before it on a thorough investigation and evidence adduced.

27. Be that as it may, as far as the present case is concerned, the main grievance of the Petitioner/A5 is that he was not a ''Public Servant'' at the relevant point of time and as such, the ingredients of Section 2(c) of the Prevention of Corruption Act, 1988, would not apply to him. Also that the allegations in First Information Report do not make out a case in respect of other offences like Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, Section 472 of IPC, Section 467 of

I.P.C. and Section 420 of I.P.C. etc. Since the trial of the main case in C.C. No. 8 of 2011 had commenced before the trial Court and as on date nearly P.W. 1 to P.W. 3 were examined on behalf of the Respondent/Complainant and the next date of hearing is scheduled on 25.09.2014, this Court is of the considered view that the trial of the main case should see its logical end and the process of trial cannot be derailed in any manner inasmuch as the Petitioner invoking the powers under Section 482 of Cr.P.C., before this Court in regard to the filing of the present petition.

28. That apart, whether the Petitioner/A5 was a ''Public Servant'' at the relevant point of time can very well be a matter to be agitated by the Petitioner/A5 before the trial Court in the main case and it is latently and patently quite clear that the Petitioner/A5 till date has not availed an effective and efficacious, available alternative remedy of filing a discharge petition before the trial Court under Section 239 of Cr.P.C. Moreover the fact that M/s. Global Trade Finance Limited was a Private Firm upto 27.03.2008 and later on it became the subsidiary of State Bank of India from 28.03.2008 and at the time of taking over by the State Bank of India, all the dues of the said Private Firm were taken over by the State Bank of India by Document No. 3, are all matters to be decided by the trial Court by means of necessary, oral and documentary evidence to be adduced by the respective parties. To put it succinctly, whether the Petitioner/A5 was a ''Public Servant'' or not at the relevant point of time is a matter which can be looked into by the trial Court. That apart, when the Respondent/Prosecution had laid the charge sheet in the present case together with accompanying documents and later when the necessary charges were framed against the Accused (including the Petitioner/A5) and when the trial of the main case is in part heard stage and the next stage of hearing is scheduled on 25.09.2014, this Court is of the considered view that the only option available to the Petitioner/A5 is to take part in the main proceedings and to agitate all factual and legal pleas in the manner known to law and in accordance with law. At this stage, this Court aptly points out that although the power of this Court is wider under Section 482 of Cr.P.C. yet the said inherent power is to be exercised by this Court with great care and circumspection and it has to be sparingly used to prevent an aberration of justice. Looking at any point of view, the present Criminal Original Petition filed by the Petitioner/A5 sans merits. In the result, the Criminal Original Petition is dismissed. Since the occurrence is of the year 2007 and nearly seven years have been elapsed and as on date, the main case in C.C. No. 8 of 2011 is in part heard stage on the file of the trial Court, this Court on the basis of Equity, Fair play, Good conscience and even as a matter of prudence directs the trial Court to dispose of the main case in a just, fair and dispassionate manner uninfluenced with any of the observations made by this Court in this Criminal Original Petition, by conducting the trial by means of examination of witnesses, preferably on day-to-day basis keeping in tune with the tenor and spirit of the ingredients of Criminal Procedure Code as expeditiously as possible. Liberty is granted to the Petitioner/A5

to raise all factual and legal pleas before the trial Court during the trial of main case in C.C. No. 8 of 2011 in the manner known to law and in accordance with law. In this regard, the trial Court is directed to provide adequate opportunities to the respective parties. Also the respective parties are directed to render their unstinted cooperation and assistance in regard to the completion of the main case in a comprehensive manner.