(2008) 02 KAR CK 0084

In the Karnataka High Court

Case No : Criminal Revision Petition No''s. 269 and 355 of 2000

K. Shivaram Shetty APPELLANT

Vs

State
 Smt. Veena Sabharwal and Sabsom Freight Containers Pvt. Ltd. Vs The Delhi Establishment Police CBI/ ACB RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 120 B, 420
Prevention of Corruption Act, 1988 — Section 13 (1) (d), 13 (2)

Citation : (2009) 1 ALT(Cri) 123 : (2008) CriLJ 3307 : (2008) ILR (Kar) 2876 : (2008) 3 KCCR 1364

Hon'ble Judges : R.B. Naik, J

Bench : Single Bench

Advocate : P.S. Rajagopal, in Criminal Revision Petition No. 355/2000 and M.T. Nanaiah and Shankarappa, in Criminal No. 269/2000, for the Appellant; Ashok Haranahalli, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Naik, J.—Since these two Revision Petitions arise out of the same order, they are taken up together, heard and disposed of by common order.

2. Crl. R.P. 355/2000 is filed by Mr. K. Shivaram Shetty-A. 1, and Crl. R.P. 269/2000 is filed by Smt. Veena Sabharwal-A. 2 and M/s. Sabson Freight Containers Pvt. Ltd., which is arrayed as A. 3 of which A. 2 is the Managing Director.

3. The brief facts of the prosecution case are that A. 1-K. Shivarama Shatty, while working as Executive Director and as then chairman & MD of Vijaya Bank during the period 1989-90, entered into a criminal conspiracy to cheat Vijaya Bank in securing various credit facilities to A. 3 - M/s. Sabsom Freight containers Pvt. Ltd., and in furtherance of the said conspiracy, A. 1-K. Shivarama Shetty committed criminal misconduct and by corrupt, illegal means and by abuse of his

official position got sanctioned various credit facilities, such as packing credit, clear cash credit, DPG facility, import letter of credit etc., to A.3-company without actually processing or looking into the merits of the proposal of the company and thereby caused wrongful loss to Vijaya Bank to a tuna of Rs. 466 lakhs and caused corresponding wrongful gain to A.2 and A.3. It is the further casa of the prosecution that M/s. Sabsom Freight containers Pvt. Ltd.,-A. 3 was a company incorporated in 1983 for the manufacture of 20 feet containers, that A. 1 was closely associated with A. 2-Smt. Veena Sabharwal who was a business partner of M/s. Anupam Silk where Smt. Mamata Shatty, W/o A. 1 was the other partner as par the partnership deed, that A. 1 was instrumental in getting sanctioned various facilities to A.3 from Vijaya Bank since 1985, that A. 3, which was manufacturing 20 feet containers, approached Vijaya Bank for further funds during 1990 on the strength of orders received from M/s. ACTL London, at the appropriate levels, A.1 - K. Shivaram Shetty, got approved various facilities and funds so sanctioned and were released to the company without properly ensuring the utilisation, that A. 1 by using his official position as Executive Director of Vijaya Bank, and subsequently as C & MD, shoved undue interest and fraudulently and dishonestly with ulterior motives provided the sanction of various facilities to A. 3. A. 1 in violation of the norms of the Bank participated in the meeting held for the purpose of recommendation of various credit facilities to A. 3 and had managed to get various facilities to A. 3 company, that the order placed by M/s. ACTL, London with A. 3 Company was cancelled as the company failed to manufacture the prototype of the containers ordered and thereby vijaya bank has been exposed to a wrongful loss to the tuna of Rs. 466 lakhs. Because of the aforesaid acts of A.1, a complaint has been lodged against the three accused for the offences punishable u/s 120B road with Section 420 of the IPC, and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

4. The investigating agency, after completion of the investigation, after securing the documents pertaining to the transactions and after examining about 13 witnesses, filed a charge-sheet against the petitioners herein for the offences stated above. The Trial court, on being satisfied that there is prima facie material issued process against the petitioners herein for the offences stated supra. After service of process, the petitioners put in appearance and when the matter reached the stage of arguments before charge, the petitioners since had chosen to address the arguments, the learned trial Judge heard the arguments of the petitioners and by his order dated 01.04.2000 in C.C. No.69/1997, refused to discharge the petitioners of the charges levelled against them and rejected the claim of the petitioners for discharge and as such, these two revision petitions have been filed challenging the order of the Trial court and seeking for discharge of the charges levelled against the petitioners herein.

5. The main grounds urged by the petitioners in support of their contention are:

(1) That the documents produced by the petitioners should have been looked in

to by the Trial court while appreciating the fact whether there are sufficient grounds to proceed against the petitioners for framing of charge and since the Trial Court has failed to look in to the documents produced by the petitioners meticulously, there is an error committed by the Trial Court and as such, it requires interference.

(2) That the material produced by the prosecution does not reveal that the petitioners are guilty of the offences for which they are charged and without there being sufficient material to proceed against the petitioners, the Trial court has erroneously rejected the claim of the petitioners for discharge and as such, erroneously directed framing of charge against the petitioners herein.

(3) That the first petitioner since a public servant, there is a requirement of sanction order and without sanction order, the Trial court could not have taken cognizance of the offence in question.

6. It is not in dispute that the 1st accused petitioner was working as a General Manager, Vijaya Bank till 1907 and that there was no allegation against him during the said period, on 3.7.1987 he became the Executive Director and worked as such till 22.9.1990. He was also incharge Chairman and M.D till 22.6.1992 and ha took charge as Chairman and M.D on 22.6.1992 and retired from service on 30.6.1992.

7. The allegation of the prosecution is that A1, who was closely associated with A2, who was a partner of another firm in which, the wife of it was also a Partner, evinced interest in sanctioning various loans to A3 Company and hurriedly allowed A3 to withdraw the money sanctioned in quick succession, though there vas no requirement of the utilisation of the money for which they were sanctioned and that A1 did not ensure to take necessary precautions to recover the money so disbursed. It is also not in dispute that on 11.3.1983 A3 company coma into existence and in the year 1985 it opened an account with Vijaya Bank and one Surendra Chowdry introduced A3 to Vijaya Bank of which A1 was the Chairman and M.O. That on 10.7.1965 a credit loan was sanctioned to A3. By the tine of sanction of the credit loan to A3, A3 had already availed Tern Loans from KSFC and KSSIDC and without taking concurrence from the said Financing institutions, it is alleged that credit loan was sanctioned and disbursed to A3 Company.

8. it is submitted by the counsel for A1 that various credit facilities so sanctioned to A3 was not by Al, but it vas by 14 Board of Directors and none of the Directors, who participated in the meeting while sanctioning various credit facilities, had raised any objection for extending the loan facilities to A3 company, it is also submitted that none of these Directors have been made as accused in the instant case and that after retirement of A1 the Banking Institution, with an intention to humiliate and harass, has filed a false case against At making false allegations that the various credit facilities were sanctioned to A3 individually lay A1 during the tenure of his service, though they

war sanctioned long prior to he taking charge as Chairman and M.D. on 22.6.1992 and the sanction of credit facility was by the Board of Directors. It is further submitted by A1 that ha only participated in the Consortium Keating and the sanction of the credit facilities to A3 was not on the basis of the resolution passed in the Consortium Meeting, but they were sanctioned long prior to the holding of the Consortium Meeting. It is submitted that the approach of the prosecuting agency in targeting A1 is not bona fide and the same is perverse.

9. The new incumbent, who had taken charge, to tarnish the image of Al, had embroidered a false case against the petitioner to falsely implicate him the vary allegation of the prosecution that the sanction of loans to A3 by itself would not tantamount to A1 having conspired and caused loss to the Bank of which he vas the Chairman & M.S. It is also submitted that not even a single loan or credit facility vas extended by A1 to A3 and as such, he cannot be held responsible for the loans, which nova been sanctioned to A3.

10. The learned Counsel for A1 relied upon a judgment in the case of the Bongaigaon Refinery a Bongaigaon Refinery and P.C. Ltd. and Others Vs. Girish Chandra Sarmah, and contended that the extension of the credit facility to A3 was a collective decision of the Board of Directors and as such, the petitioner-A1, who is an individual, cannot be targeted without the Directors being held responsible for the sanction of such loans.

11. He also relied upon a judgment in the case of Maharashtra State Mining Corporation Vs. Sunil Pathak, in support of the said contention and argued that the acceptance by the Board would lead to a ratification and even at the tine of extension of the credit facility if there was any error, that would amount to ratification and would establish that the Board has ratified all the errors, if any, found at the time of extension extending the credit facilities to A3 Company and as ouch, A1 cannot be held to be guilty of any offence.

12. He relied upon the judgment in the case of State of Orissa v. Debendra Nath Padhi reported in 2005(1) SCC 968 and contended that the material produced by the defence which would establish that the accused is innocent parson also be looked in to at the time of framing of charge and while ascertaining whether there are sufficient grounds to frame charge.

13. A2 and A3, who have separately filed a Revision Petition, which is referred to above, adopting the arguments addressed by A1 submitted that the Company, A3 was established in the year 1983 and it was a bonafide establishment and the fact of KSFC and KSSIDC having extended Term Loan after due verification of the bona fides of A3 company would establish that with all good intention the Company was found and they intended to manufacture 20 feet containers, which ware in demand during the said duration and the correspondence with a London Company, which was supposed to place orders, would all reveal the good intention of A3 Company to manufacture and supply containers to the said London company. But, however, at the initial stag of manufacturing the samples

of five containers, as there was difficulty in procuring the raw material, the Company could not commence production within the scheduled time and because of the said fact the accused company sustained loss and it cannot be held that A3 has committed the offence alleged and cheated the bank, merely because A2 was a partner of another firm of which the wife of A1 was also a partner, the same would not necessarily lead to an interfere net that A1 has favoured A3 to avail the credit facilities. The Board of the Bank granted credit facilities on due verification of the bonafides of A3, after spot inspection, after ascertaining the financial health of A3 company, the project that it had taken up and the feasibility of the project and prospects of it coming out with the manufacturing of a product which was in great demand, which would all go to establish that it was a bona fide company. Merely because of the fact that there was a loss in running of the company, it cannot be held that A3 or A2 are guilty of an offence, in addition, it is also submitted that the husband of A2, who was managing A3 company, since died, A2 had taken the great responsibility of running the Company. She with the assistance of experts in. the field had put in all efforts to commence the production, but because of the contingencies, which were beyond the control of A2, the manufacturing process could not commence and as such, ultimately it lead the Company running into huge monetary loss and mere loss caused to the company would not establish that the company is guilty of having committed the offence of cheating the financiers.

14. On the other hand, the learned Counsel for the prosecution submitted that till 1989 the transactions were found to be bona fide and 1990 onwards in quick succession Al, who vas the Chairman of the Bank, vent on extending credit facilities to A3 Company, which ultimately vas to the tune of more than 5.17 lakhs. When A3 Company applied for the credit facilities it vas already found to have availed credit facilities of Rs. 120 lakhs from KSSIDC, KSFC, Indian Bank and other Bankers. This aspect of the matter was not taken into account while extending additional credit facilities by the Vijaya Bank. A sum of As.21.61 lakhs was found to be outstanding as on the date on which A3 Company approached the Vijaya Bank for sanction of the loan. Despite the same, a sum of Rs. 6 lakhs ware disbursed to A2. A Consortium Meeting was held on 13.3.1989 and on 20.3.1990 A1 being the Chairman of the Bank participated in the said meeting. It was noticed that A3 Company had availed more than 4 crores 17 lakhs of credit facilities under different heads of accounts. An inspection of A3 company was ordered for. A Special Officer was deputed to inspect the functioning of A3 Company. A2 being the Managing Director of the said Company did not cooperate with the said inspector and as there was no cooperation by A2, he had to resign the job and submitted a report to the bank. This was brought to the notice of Al, who was the then Chairman of the Bank. Despite the same, ha did not take any action to ascertain the financial health and functioning of A3 company, but he went on permitting A3 to withdraw the sanctioned loan amount in quick succession and from time to time.

15. Though the loan and credit facilities were not sanctioned by A1 individually

and such sanction was by the Board, A1 being a responsible officer of the Bank having come to know that the condition of A3 company was deteriorating and it was a sinking establishment should not have allowed further withdrawal of money from the bank. A1 has not taken any action to stop extension of the said facilities though the inspecting Authority had put a report to the effect that the facilities sanctioned to A3 Company should not be extended further. Overruling the objections raised by the Inspecting Authority, the facility was further extended to A3 and A3 was permitted to withdraw the money from time to time, it is also noticed from the records that the purpose for which the loan vas sanctioned was not utilised for the said purpose. On the contrary, A2 being the Director of A3 Company has purchased a new Contessa Car out of the loan amount given for the purpose of establishing the factory.

16. The learned Counsel for the respondent relied upon a judgment in the case of Hardao Singh v. State of Bihar reported in 2000 SC 2245 and submitted that mere prosecuting an accused for the offence u/s 120B r/w 420 IPC and 13(2) r/w 13(1)(d) of Prevention of Corruption Act by itself does not amount to harassment and on the ground that it causes harassment the accused cannot seek a discharge.

17. He also relied upon a judgment in the casa of Esher Singh v. State of Andhra Pradesh reported in 2004 SC 3030 and submitted that conspiracy will have to be presumed because conspiracies are hatched in secrecy and not in public.

18. The fact in the instant casa that the bank having sustained a loss of more than Rs. 4.66 lakhs and the company A3 having been found to be a Company without credit would establish that A1 being the Chairman of the Bank had hatched conspiracy with A2, Director of A3 company and had extended various credit facilities, ultimately resulting in huge financial loss to the complainant bank. It is also noticed that credit facilities ware enlarged to A3 company without taking sufficient security, though securities ware supposed to be taken as par the conditions indicated by the sanctioning authority, the sane were ordered to be waived by A1.

19. In support of the case of the prosecution, during the course of investigation, the investigating Agency has examined one Devadas as CW. 1 and he in his statement he has stated, he was working as an Officer in succession in Bangalore Zonal Office. He has spoken to regarding the credit facilities sanctioned to A3 company and the role played by At. He has stated that A1 was taking a lead role as and when the issue of disbursement of various credit facilities to A3 Company was being taken up and at the instance of A1 a relief vas given to A3 to open 1/C to an extent of about 6.00 lakhs to enable the company to import five numbers of kits initially and the margin money vas waived without even ascertaining the technical viability of providing facility of opening LC. He has further stated that when a Consortium Matting dated 20.2.1990 took placer the loan proposal of A3 Company received by the Zonal Office was yet to be processed. Even then in violation of the norms of the bank, A1 made a request to the participating

institutions to give cooperation and render necessary assistance to the project and as lead A2 Smt. Veena Sabharval to take over the Company as a Managing Director and as such, he has shorn keen interest in A3 Company. He is also responsible far sanction of the working capital with nil margin to be provided by A3 Company.

20. Another witness Vasanth Shetty-CW. 2 has stated that the Mayo Hall Branch of Vijaya Bank released import LCs to an extent of Rs. 1,72,07,600/- without creating second charge on the fixed assets as stipulated in the sanction order. That the records verified revealed that a Memorandum for Board of Directors was straight away put upon on 6.8.1990 by the DGM recommending the enhancement of the limit by Rs. 30 lakhs and though CW.2 Vasanth Shetty vas supposed to sign the same, his Big nature was not taken and the enhanced credit facilities from tine to tine were given to A3 at the instance of A1.

21. CW. 4 ACB Nair has given statement to the effect that he retired as a Divisional Manager, Vijaya Bank in the year 1982. After retirement, he acted as a Monitor on a couple of occasions and he had issued the report dated 22.7.199Q in which ha had clearly brought out the withdrawals of the funds from the OD account of A3 Company, which vas found to be not prudent and that he had also made a note that Smt. Veena Sabharval-A2, Managing Director of the company, vas not competent technically and managerially to run the company. The advice rendered by him to the company to maintain proper accounts was ignored. That he had highlighted the observations in his report, even then no action was taken by the Bank and as such, he had to tender resignation as a Monitor on 9.9.1990.

22. C.W O.S. Rama Murthy has stated that he was promoted as a Deputy General Manager during 1987 to 1992. His statement also makes references to various transactions of A3 company with regard to the credit facilities availed from the Bank. He has stated that in respect of one credit facility extended to A3 company the margin money was kept at bare minimum of 51 i.e., a sum of Rs. 22 lakhs from Rs. 50 lakhs as a special case and finally at the instance of A1 limit was extended with nil margin as a special case, though it vas veil within the knowledge of the Bankers that A3 company had no ability to bring the margin money. In the meeting a commitment was made to extend the credit facilities i.e., Letter of Credit, packing credit, clean cash credit, DPS facility etc., which exceeded more than Rs. 370 lakhs and such extension, vas at the instance of A1 and the same would indicate extraordinary interest shown by A1 in extending facilities to A3.

23. The other witnesses examined by the Investigating Officer also speak about various credit facilities availed by A3.

24. As in the instant case, since it is not obligatory at the stage of the trail to consider in detail and hold that the defence if proved would be incompatible with the offence of the accused or not and standard of test is to be finally applied at the time of judgment while deciding, whether the accused is guilty or not, at this

stage I have to only ascertain whether there are sufficient grounds made out by the prosecution to proceed to frame charge against the accused parsons and to proceed with the case. With the material referred to above, I am satisfied that the grounds made out are sufficient to frame charge against the accused persons and to proceed with the trail.

25. The other two points raised by the learned Counsel for the accused need not detain ma for long, since as regards the documents produced by the accused, which axe to be relied upon, at the time of considering the application for discharge or framing the issue of discharge, the Hon''ble SC in the case State of Orissa v. Dabendra Nath Padhi reported in 2005(1) SCC 968 has held that at the stage of dealing with the case under Sections 227, 228, 239 and 340, the Court cannot look into the material produced by the defence and as such, in view of the judgment referred to above the material produced by the accused in the present case is not looked in to at the time of consideration of the application by the Trial Court and as well in this Revision Petition.

26. As regards sanction order to prosecute A1, the said issue is also decided by the Hon''ble Supreme Court that in respect of an official, who is retired from service, no sanction order is required. Accordingly, in view of the different views taken by different Courts at different points of time with regard to the question of sanction, the validity of sanction, absence of sanction, omission or irregularity of sanction, since are to be considered at the time of final decision of the case, leaving the said question open for determination at the time of final decision of the case, I pass the following:

ORDER

The Revision Petitions are dismissed. The order passed by the Trial Court dated 1.4.2000 in Special CC.69/1997 is affirmed.

