(2015) 02 MAD CK 0150

In the Madras High Court

Case No : Criminal O.P. No. 27000 of 2014, M.P. No. 1 of 2014 and Crl. R.C. No. 886 of 2014

R. Chandran and Others APPELLANT

Vs

State RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 167, 409, 420, 467
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(2)

Citation : (2015) 1 LW(Cri) 500 : (2015) 2 MLJ(Cri) 33

Hon'ble Judges : R.S. Ramanathan, J.

Bench : Single Bench

Advocate : A.R.L. Sundaresan, Senior Counsel for N. Suresh, for the Appellant; A.N. Thambidurai, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—Criminal O.P.No. 27000 of 2014 was filed by A.1 in Special Case No. 2 of 2007 on the file of the Chief Judicial Magistrate, Villupuram, to quash the charge sheet filed against A.1 in that case.

Criminal Revision Case No. 886 of 2014 was filed by A.4 in Special Case No. 60 of 2014 on the file of the Special Judge, Anti- Corruption Cases, Villupuram, to set aside the order dated 13.8.2014 in Criminal M.P.No. 2157 of 2007 passed by the said Special Judge.

2. It is seen from the documents filed in both the cases that Special Case No. 2 of 2007 on the file of the Chief Judicial Magistrate, Villupuram and the Special Case No. 60 of 2014 on the file of the Special Court Anti-Corruption Cases, Villupuram are one and the same case and initially, it was pending before the Chief Judicial Magistrate and was numbered as Special Case No. 2 of 2007 and subsequently, it was transferred to Special Judge and numbered as Special Case No. 60 of 2014. In Criminal O.P.No. 27000 of 2014, the petitioner/A.1 challenges charge sheet in Crime No. 11/2003 whereas in Criminal R.C.No. 866 of 2014, the

petitioner/A.4 in the same case, challenges the order of dismissal passed by the Special Judge, Anti-Corruption Cases in Villupuram in Criminal M.P.No. 2157 of 2007 dated 13.8.2014 in respect of Special Case No. 60 of 2014, Crime No. 11 of 2007 on the file of the Special Judge, Anti-Corruption Cases, in the discharge petition filed by A.4.

3. A.1 Chandran is the former Secretary and A.4 Murugan is the former Dy.Registrar of Valavanur Co-Operative Housing Society at Valavanur and along with 4 others, A.1 and A.4 were also prosecuted for various offences under section 120B r/w 167, 420, 409, 467, 468, 471, 477-A, of the IPC and under section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

4. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner in Crl.O.P.No. 27000 of 2014 submitted that A.1 is the former Secretary of Valavanur Co-operative Housing Society and even according to the prosecution, he has not followed the directions issued by the higher authorities and he had violated certain rules in granting permission to enter into agreement of sale and to pay consideration for the sale property in the name of the society and a prosecution cannot be launched for violation of certain rules or regulations or acting contrary to the instruction given by the higher authorities and therefore, filing of charge sheet against the petitioner in Crl.O.P.No. 27000 of 2014 is liable to be quashed. He also submitted that admittedly, a departmental proceeding was initiated against A.1 and after conducting a detailed enquiry, charges levelled against the petitioner A.1 was dropped on the basis of recommendation of investigation conducted by an appropriate authority and therefore, the charge sheet is liable to be quashed. He relied upon the judgment reported in P.S. Rajya Vs. State of Bihar, , in support of his contention.

5. Mr.R.Rajarajan, learned counsel appearing for the revision petitioner in Crl.R.C.No. 886 of 2014 also submitted that he is adopting the arguments of the learned Senior Counsel and also relied upon the judgment reported in A.R. Saravanan Vs. State, and Abdulla Mohammed Pagarkar etc. Vs. State (Union Territory of Goa, Daman and Diu), in support of his contention.

6. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner brought to my notice various statements of the higher authorities wherein they have only spoken about the violation of certain rules in sanctioning of loan and no allegation has been made against the petitioner that he had indulged in corruption practice or he had committed forgery or conspired to commit the offence of forgery and mere omission to follow the directions or rules will not lead to offence and at the most, it may amount to dereliction of duty for which disciplinary proceeding may be initiated and in this case, departmental proceeding was initiated against A.1. Therefore, the prosecution is liable to be quashed.

7. I am unable to accept the contention of the learned Senior Counsel for the petitioner and learned counsel for the revision petitioner in the respective

petitions.

8. To appreciate the contention of the learned Senior Counsel for the petitioner, we will have to see the charges.

9. The charge sheet was issued against six persons and it is stated in the charge sheet that all the six accused entered into criminal conspiracy with one Palani, the deceased, who was none other than the brother of A.1 and committed various offences. In Paragraph 3(i) of the charge sheet, it has been stated as follows:-

3(i) During the year of 1995-1996 the above named accused and one Tr.R.Palani, who expired on 12.2.2002 entered into a criminal conspiracy to commit and to abet one another to commit the offences of cheating, misappropriation of the funds of the society, using the false records as genuine, falsification of accounts etc., by way of obtaining the huge amounts from the funds of the society after practicing deception and creating false records to make it to appear that the society purchased lands through power agents of the land owners for a price higher than that of the actual price paid to the owners and by way of getting exemption from the payment of stamp duty for the registration of sale deeds after creating false records to the effect that the said power agents A5, A6 and Tr.Palani were the members of the society for more than two years.

10. Therefore, specific charge was framed against the petitioners that they have entered into criminal conspiracy and by way of getting exemption from payment of stamp duty for the registered sale deeds after creating false records with power of attorney. A.5 and A.6 were members of the society for more than 2 years. It is seen from the statement of LW 42, 43 namely, Kaliyamurthy, Dy.Registrar (Housing) and J. Pavadai, Special Officer, Valavanur Co-operative Housing Society, Valavanur, that documents were registered in favour of persons who were not members of the society and by creating documents that they were members of the society, stamp duty exemption was availed and that was done at the instance of the accused. Though the other witnesses have also spoken about the same, the statement of LW 42, and 43 are very specific about the evasion of stamp duty in the manner of execution of sale deeds by forging the documents as if the purchasers were the members of the society and in fact, they were not members of the society. Further, the witnesses have also stated that fixed deposits were created in the name of vendors though they did not deposit any money and they were paid interest on the bogus fixed deposits and in that manner, the interest loss was caused to the society by the accused. Further, the case of the prosecution is that without getting permission from the Registrar for payment of consideration to the vendors, amount was paid to the vendors and vendors were forced to execute the power of attorney in favour of A.5 and A.6 and Palani, the deceased, and agreements were entered into with the vendors. Palani is none other than the brother of the first accused and consideration was paid without getting approval by borrowing the amount from the other society and thereby caused loss of Rs. 4,25,767 to the society by way of interest paid to

the other society for the amount received as loan. Therefore, the even though the prosecution cannot be launched on the basis of violation of certain rules as contended by the learned Senior Counsel and also the judgment relied upon by him, namely, P.S. Rajya Vs. State of Bihar, , having regard to the statement of LW 42 and 43 and their conduct by creating false records that the sale was executed in favour of the non-members of the society and thereby caused revenue loss to the government and also to the society, a prima facie case has been made against the petitioner and the revision petitioner. Hence, the trial Court rightly considered the same and dismissed the Application filed by the revision petitioner to discharge him from the charges.

11. For the reasons stated above, both the petitions are dismissed. The connected Miscellaneous Petition is also dismissed.

