

(2011) 02 KAR CK 0063

In the Karnataka High Court

Case No : Criminal Petition No's. 4778 and 5016 of 2007

Sri B. Mruthunjaya

APPELLANT

Vs

The Central Bureau of Investigation

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197

Penal Code, 1860 (IPC) — Section 120 B, 409, 419, 420, 467

Prevention of Corruption Act, 1988 — Section 13 (1) (c), 13 (2), 19 (1) (c)

Citation : (2011) 02 KAR CK 0063

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : S. Prakash Shetty, for the Appellant; C.H. Jadhav, for R1 and S.N. Murthy, Associates for R2, for the Respondent

Judgement

V. Jagannathan, J.—These two petitions are by accused No. 11 in Spl.C.C. No. 122/2007 and accused No. 13 in Spl.C.C. No. 121/2007 and both refers to the same Petitioner viz., B. Mruthunjaya. The Petitioner among other accused persons against whom the case is registered u/s 120-B r/w 409, 419, 420, 467, 468, 4/1 IPC and substantive offences u/s 409 IPC and Section 13(2) r/w 13(1) (c) and (d) of the Prevention of Corruption Act and following the charge sheet submitted by the Respondent - CBI, the case is now at the stage of framing of charge.

2. These petitions therefore are filed praying for quashing of the respective proceedings which are pending in Spl.C.C. Nos. 121 and 122 of 2007 on the file of the Additional City Civil and Sessions Judge, Bangalore City. The main contention put forward by the learned Counsel for the Petitioner Sri S. Prakash Shetty is that, there is no sanction order obtained as required u/s 19(1)(c) of the Prevention of Corruption Act or u/s 197 of Code of Criminal Procedure and therefore, the proceedings initiated against the Petitioner becomes invalid. The next contention put forward is that this Petitioner had only forwarded the papers relating to sanction of loan to the two societies viz., Nava-Karnataka and Konark

Credit Co-operative Societies and being a clerk, all that the Petitioner did was to forward the applications of respective societies to his higher authorities and the sanction was not accorded by the Petitioner. On the other hand, the proceedings itself indicate that, the Petitioner had even mentioned about the difficulty of recovering the loans from the respective societies as the two societies in question had come into being very recently and therefore, it would be difficult to recover the loan. Therefore, with the said observation, the Petitioner has forwarded the file to his higher authority. Under the above circumstances, the question of the Petitioner recommending the respective loans to the aforementioned societies, does not arise. Next submission put forward is that, the loan in respect of the above societies was actually sanctioned by the higher authorities i.e., Board of Directors and not by the Petitioner and for a strange reason, the Investigating Agency viz., C.B.I. has left out the persons who have sanctioned the loan. But the Petitioner who is only a case worker has been accused of having committed the above mentioned offences. Under these circumstances, learned Counsel for the Petitioner referring to the proceedings and to other documents argued that, the Trial Court cannot proceed against the Petitioner. The above submission was sought to be supported by relying on several decisions of the Apex Court relating to the effect that proceedings with the case of aforementioned offences without proper sanction order and also in respect of the power of this Court to quash the proceedings by exercising inherent powers under 482 Code of Criminal Procedure The decisions referred by the learned Counsel for the Petitioner are the following:

Priya Vrat Singh and Others Vs. Shyam Ji Sahai, .

3. On the other hand, learned Counsel Sri C.H Jadhav for the Respondent - CBI submitted that the noting made by the Petitioner does not indicate that the Petitioner had recommended refusal of the loan to the aforementioned societies. But on the other hand, the noting of the Petitioner gives an indication that the cases of the respective societies could be considered and sanction could be accorded having regard to the conditions of sanction. In other words, there is no noting of the Petitioner to the effect that the two societies do not deserve the loan being sanctioned to them.

4. Apart from this, learned Counsel Shri C.H. Jadhav placed for my perusal a chart showing the statement of several witnesses and referring to the said statement, submission made is that, the witnesses have spoken about the Petitioner not taking into account all the factors before processing the loan applications and in the two cases under consideration the Petitioner did not even examine the financial status of the two societies for 3 years which was required to be considered before processing the applications. Therefore, submission made is that, the question of considering the prayer of the Petitioner for quashing of the proceedings against him does not arise at this stage.

5. One other submission made by Sri C.H. Jadhav is that the report of the departmental committee holding that the Petitioner cannot be made liable,

cannot have any impact as the nature of the proceedings before the departmental committee is different from the one that is before the Court and therefore, exoneration of the Petitioner by departmental committee cannot have any bearing insofar as the charge sheet that is filed by the CBI before the Court is concerned and it is not a case where there is an order of acquittal passed by the Court in favour of the Petitioner so as to ignore the departmental recommendations.

6. Further submission made by the learned Counsel for CBI is that, the loan that was sanctioned to the respective societies are not small sum of amount but are to the tune of Rs. 425 lakhs in each of the two cases and under these circumstances, the question of interfering at this stage by this Court does not arise.

7. In the light of the aforementioned submissions put forward by the learned Counsel for the parties, I am of the view that the Petitioner can urge all these contentions before the Trial Court at the time of seeking discharge from the cases and the Trial Court will have to consider all these contentions and the contentions urged in particular regarding there being no valid sanction obtained before the proceedings against the Petitioner.

8. With the aforementioned observations, these petitions are disposed of with a direction to the Trial Court to consider the applications, if any, to be filed by the Petitioner for seeking discharge from the cases and the said applications shall also be disposed of at the earliest in accordance with law. It is also made clear that the Trial Court shall not be prejudiced in any manner from any of the observations made herein above, but the Trial Court shall decide the applications to be filed by the Petitioner independently of the aforementioned observations.