



Crl.O.P.(MD).No.12182 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.12.2022

DELIVERED ON : 31.03.2023

CORAM

THE HON'BLE MR. JUSTICE G.ILANGO VAN

Crl.O.P.(MD).No.12182 of 2022

and Crl.M.P.(MD).No.7701 of 2022

Mr.Surendra Singh

... Petitioner/Accused No.5

Vs.

**The State Rep. by the Inspector of Police,
CBI: ACB: Madurai.**

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.6 of 2022 from the file of the learned II Additional District Court for CBI Cases, Madurai and quash the same as against the petitioner concerned.

For Petitioner : Mr.ARL.Sunderesan, Senior Counsel

**For Respondents : Mr.C.Muthu Saravanan
Special Public Prosecutor for CBI Cases**

ORDER

This Criminal Original Petition has been filed to quash the Charge Sheet in C.C.No.6 of 2022 from the file of the learned II Additional District Court for CBI Cases, Madurai, in respect of the petitioner is



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concerned.

2.The case of the prosecution in brief:

Originally the case in crime RC 229 2020 A 0006 was registered by CBI:ACB: Madurai against A1, unknown officials of National Highways Authority of India. The second accused was the Proprietor of M/s.Rakshi Constructions. The offence alleged are 120 (b), r/w 420 IPC and Section 13(2) r/w 13(1)(b) of Prevention of Corruption Act. The allegations are that during the period of 2017-2019, the unknown public officials of National Highways Authority of India entered into criminal conspiracy with the above said Karmegam, the second accused herein allowed the excess claim under the head of contingency expenses. Thereby, they caused loss Rs.25,00,000/- to the National Highways Authority of India. They also received illegal gratification to the tune of Rs.35,00,000/- from the second accused.

3.During the time, the first accused namely V.Saravanan, was working as DGM cum Project Director National Highway Authority of India, Project Implementation Unit (PIU), Madurai, from 16.09.2016 to



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17.02.2021. He was also holding the additional charge of the NHAI, PIU in Karaikudi Division from 07.04.2017 to 05.08.2017 and 26.09.2017 to 14.03.2018. Now, he is working as Divisional Engineer Highways Department, Tamilnadu.

4.The second accused was working as DGM in the above said unit from 12.03.2018 to 29.09.2020 and holding the additional charge of Project Director, NHAI, PIU, Karaikudi Division from 30.09.2020 to 21.02.2021. The third accused also working as a Manager, Technical Division. The fourth accused was working as Accountant cum Drawing and Disbursing Officer, Karaikudi Division. Srinivasa Rao Adireddy, the fifth accused was working as Authority Engineer of M/s. Aarvee Associates and Consultancy India Private Limited. The sixth accused was working in the very same cadre from 03.12.2019 to till date. The accused No.7 was the Authorised Signatory and Managing Director of Shri.V.Manoharan. The 8th accused is the Proprietor of M/s.Rakshi Constructions, Chennai. The 9th accused is V.Manoharan is the Director of the M/s.DRA–SP–VM (JV). All the accused namely 7 to 9 are private persons.



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5. During the course of investigation, it was revealed that accused Nos.1 to 4 abused their official position and made excess payment in favour of 8th accused Karmegam through the 7th accused, which was represented by 9th accused. It was in respect of contingency expenses in violation of the circular issued by the authority, dated 07.11.2017. As per the guideline and circular, 15%, was the admitted, the Labour and Transportation Charges. But, they are sanctioned 30% without properly following the above said circular and thereby they caused loss.

6. Now, the details of the project, as mentioned in the final report, will be dealt in the later portion of the order.

7. Another malpractice was made in violation of the guidelines issued by the TANGEDCO. As per the guidelines, the Contractor will be allowed to claim 5% of the contingency amount for shifting the utilities. But, the above said fund need not be released in all. But, excess amount was claimed by the 8th accused, knowing fully well that no such expenses are incurred and no documents are also submitted to justify the claim. The details of the RA Bills, in which, the above said malpractice



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committed are detailed in the final report, which, we need not go in detail. Out of the above said 17 bills 14 were claimed by 8th accused without any supporting document, those were sanctioned by accused Nos.1 to 4, without properly verifying the records. The details of the RA Bill released by accused 1 to 3 are also detailed in the final report.

8.Against the 5th accused, it is alleged that RA bills 6 to 14 were claimed without following the guidelines, dated 07.11.2017, for claiming the 5% contingent amount. He recommended the RA Bills 6 to 14 for releasing the amount in favour of 8th accused. Similarly, 5th accused also approved RA Bill 16 & 17 without proper justification.

9.RA Bills 1 and 2 were released by accused 1 to 4. RA bill 3 to 14 were processed by second, third and fourth accused including the contingent amount of 5%. Similarly accused Nos.1 to 4 also released the payment for 17 RA Bills without properly verifying the same.

10.Malpractice that was found that TANGEDCO reduced the Labour and Transportation charges from 30% to 15% as per notification



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dated 06.08.2014. But, in pursuance to the above said conspiracy, the accused No.1 brought the estimate with 30% Labour and Transportation Charges knowing that it was fixed at 15%. The second accused dishonestly adopted the same and got the approved estimate.

11. Similarly 17 RA Bills have been dishonestly released for Labour and Transportation Charges by accused Nos.1 to 4 as detailed in the final report.

12. By this, accused Nos.1 to 4 have made excess payment of Rs.2,25,11,423/- to the 8th accused.

13. Similarly, accused Nos.1 to 4 made payment for GST, EPF and ESI to the 8th accused without complying the guidelines, dated 01.05.2018 and 16.05.2018, knowing fully well that the above said amount will be separately paid by the authority on reinvestment basis on submission of proof of documents by the concerned Contractors. The details of which are mentioned in the final report.



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14. Without shifting the mini towers and not installing the mini towers, claimed the excess payment was Rs.62,43,000/- in 17 RA Bills, which are detailed in the final report.

15. It is further alleged that the signature and bills were affixed on the certificate of contingency and detailed bill estimate are pasted in the measurement book and forged the document. Accused Nos.7 to 9 created the above said fake document. They also put the signature of the TANGEDCO official by way of submitted the above said documents. They claimed Rs.20,03,34,338/- during the period 15.12.2018 to 30.10.2010 in 17 RA Bills. The main contractor did not sign the measurement book. But it was signed by Sub Contractor, which is not permissible. Accused Nos.1 to 3 received gratification of Rs.75,00,000/- from the 8th accused. Out of the above said amount, Rs.35,00,000/- was paid by the 8th accused to the accused Nos.2 and 3. They have accepted the illegal gratification.

16. The total amount that has been misappropriated in respect of several RA Bills are separately mentioned in the final report. So the final



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report has been filed charging accused Nos.1 to 9 as follows:

Sl.No.	Name of the Accused	Charges
1.	V.Saravanan (A1)	U/s.120B r/w 420 of IPC and Section 7 of PC Act 1988 (as amended in 2018) and Substantive Offences thereof.
2.	S.S.Baskaran (A2)	U/s.120B r/w 420 of IPC and Section 7 of PC Act 1988 (as amended in 2018) and Substantive Offences thereof.
3.	K.Yogesh (A3)	U/s.120B r/w 420 of IPC and Section 7 of PC Act 1988 (as amended in 2018) and Substantive Offences thereof.
4.	Vaithiyanathan Subramanian (A4)	U/s.120B r/w 420 of IPC and Section 7 of PC Act 1988 (as amended in 2018) and Substantive Offences thereof.
5.	Srinivas Rao Adireddy (A5)	U/s.120B r/w 420 of IPC and Section 7 of PC Act 1988 (as amended in 2018) and Substantive Offences thereof.
6.	Surendra Singh (A6)	U/s.120B r/w 420 of IPC and Section 7 of PC Act 1988 (as amended in 2018) and Substantive Offences thereof.
7.	M/s.DRA-SP-VM(JV).rep. By its Authorised Signatory and Managing Director Shri V.Manoharan (A7)	U/s.120B r/w 420, 468 r/w 471 of IPC and Section 7 of PC Act, 1988 (as amended in 2018) and Substantive IPC Offences thereof.



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8.	K.Karmegam, Proprietor of M/s.Rakshi Construction	U/s.120B r/w 420, 468 r/w 471 of IPC and Section 7 of PC Act, 1988 (as amended in 2018) and Substantive IPC Offences thereof.
9.	V.Manoharan, Authorised Signatory and Managing Director of M/s.DRA-SP-VM(JV), (A9)	U/s.120B r/w 420, 468 r/w 471 of IPC and Section 7 of PC Act, 1988 (as amended in 2018) and Substantive IPC Offences thereof.

17.On the basis of the above said final report, the case was taken cognizance by the learned II Additional District Judge, Special Court for CBI Cases, Madurai, in C.C.No.6 of 2022. Now seeking quashment of the same, the accused No.6 has filed this petition.

18.Now the grounds of quashment, this petitioner was working as Authority Engineer of M/s. Aarvee Associates and Consultancy India Private Limited from 03.12.2019 and till date. As per the case of the prosecution, he sanctioned RA Bills 16 & 17. The officers namely A2 to A4 dealt with the above said RA Bills. As per the final report, as per the RA Bills 14 and 17 the contingency expenses released. The Contractor is M/s.DRA_SP_BM(JV). In respect of RA Bills 16 and 17 no contingent



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expenditure is needed or sanctioned by the petitioner. The criminal proceedings itself is illegal.

19.In respect of RA Bills 1 to 14 is not related to him and those bills have been sanctioned prior to he joining the duty.

20.The main Contract was for the purpose of widening and strengthening the road between kilometers from 94 to 174. But, the work of ability and shifting the utilities are not part and parcel of the above said original Contract. The work namely utility shifting work was under the direct supervision of the TANGEDCO and the above said Department reported by their Officers and also received the Supervision Charges at 2.5% at the total cost of estimate. It was spoken by the witnesses during the course of investigation. So the above said shifting of utility was not under the direct control or supervision by this petitioner. But the shifting of utility was not covered in the above said project was also spoken by witnesses Nos.4, 5, 7, 16, 18 & 52. Even though, the amount, which was paid in excess has been recovered, no material has been collected to show that he also conspired with the other accused persons. So, merely



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because of he was working as Authority Engineer, as representative of M/s. Aarvee Consultancy India Private Limited, he cannot be compelled to face the criminal prosecution. On that ground the above said quashment petition is filed.

21.Heard both sides.

22.The background facts is that two laning project between Karaikudi and Ramanathapuram from kilometers 94 to 174 was undertaken by the National Highways Authority of India Limited in the year 2014. Originally, the above said work was awarded to M/s.Transtroy India Limited. Shifting of utilities was made to M/s. Aarvee Associates for the purpose of providing consulting services as Authority Engineer for the above said work. The M/s.Aarvee Associates also entered into the above said Contract. But, later the contract was not executed by M/s.Transtroy India Private Limited. So it was terminated in 2016. Thereafter, the above said contract was assigned to another Company called M/s.DRA-SP-VM(JV). But, however, the Contract agreement with M/s.Aarvee Associates and Consultancy Private Limited continued.



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As per the terms of the agreement, the above said M/s.Aarvee Consultancy noted the above, supervised and also rendered the services as noted above. Here comes the issue as noted, the case of the prosecution is that while recommending the contingency claim of 5%, M/s.Aarvee Associates and Consultancy Private Limited without obtaining the supporting document recommended the same, in respect of the RA Bill 6 to 14. The above said recommendation was made by the 5th accused, who was working in that post prior to this petitioner. Now the allegation against him is that he succeeded 5th accused. As representative of the company, he verified and approved the payment bill RA No.16 & 17 knowing fully well that there was no justification.

23.With regard to this allegation, the learned counsel for he petitioner would draw the attention of this Court to RA Bill Nos.16 & 17. It has been noted that no amount has been issued to the Contractor. So the charge against this petitioner that he succeeded the 5th accused and without properly verifying the documents, recommended and approved for the payment of 5% of contingency bill is not correct on record, even as per the case of the prosecution as detailed in the tabulation column.



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So, this charge will not stand against this petitioner and there was no contrary argument submitted by the respondent to dispute this point of argument. So the first leg of the argument on the side of the petitioner has to be approved so far as RA Bill Nos.16 & 17 are concerned with regard to the contingency bill.

24.Next allegation is that he brought the RA Bill No.17 for missing of RSA pole, the amount mentioned is Rs.25,200/-. Now the charge is that without verifying the above said installation of RSA pole the above said recommendation has been made by this petitioner in RA bill 17 for the RFA poles. As stated above, he purchased the A form on 03.12.2019. But RA Bill is dated 09.08.2019, which is much prior to his joining the duty. But reservation has been made by the respondent to the effect that this petitioner also made an inspection and recommended, as if the above said pole has been installed.

25.In the counter statement, it has been stated that only this petitioner signed the above said RA Bill. It appears that even though it was prepared on 09.08.2019, he signed, the document is also available to



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this Court in the typed set of papers as Ex.P2, which is cited Inspection Report. There is no denial on the part of the petitioner to signature in the above said report. The above said letter on behalf of the M/s.Aarvee Associates was addressed to the Project Director, Project Implementation Unit, stating that the contract bill, which was submitted by Contractor in RA 17 containing 21 numbers for shifting the electrical HT, LT lines, forwarded to the Authority Engineer for making his comments or for recommendation for sanctioning. The terms of the above said scrutiny has also been mentioned. It has been mentioned that a joint inspection was made and verification was also done. So recommendation has been made for further action to approve the estimate. This is dated 3rd October 2020 and this petitioner has also signed in the above said site Inspection report, as I mentioned earlier. So this petitioner cannot disown the responsibility for making the recommendation. During the investigation process, it was found that the above said RSA Pole was also missing. It is evident that without properly verifying the ground situation as to the availability of the above said poles, it was recommended.

26.With regard to the next charge, the learned Senior Counsel for



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the petitioner would submit that absolutely, no such work to verify the work undertaken was assigned; Even as per their contract, only supervision work was assigned. It is mentioned that the above said work was directly undertaken under the supervision of TANGEDCO and the Department deputed staff to supervise the work and claimed 2.5% as charges for the work. But at the time of entertaining the quash petition, this disputed fact cannot be gone into. But, *prima facie*, it is seen that the said Inspection Report was signed by this petitioner, which does not reflect or indicate the presence of the above said pole in that place. This is sufficient for deciding the issue against this petitioner.

27.Now, the other charge, is that there was circular by National Highways Authority of India, dated 07.11.2017. The charges that are payable under the Head of Labour and Transport is only 15%. But, further RA Bill No.17 was prepared claiming 30%, which according to the prosecution has been done in dishonest manner. This petitioner has signed RA Bill No.17 for Rs.26,40,145/- and in respect of Rs.13,20,073/-. That amount was claimed by 8th accused the Sub Contractor through the main contractor. Answered to this charge is that



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the recommendation has been made by this petitioner by the letter dated 03.10.2020 as referred supra only to award or approve the bill subject to the terms and conditions; It is for the competent authority or TANGEDCO as the case may be, to limit the above said claim amount to 15%; what was going on between Departments was not known to the petitioner. By making the above said recommendation, for that purpose the learned Senior Counsel for the petitioner would draw the attention of this Court to the statement made by C.Kamal Kumar Arora, who was working as General Manager, Technical NHAI, wherein, he has stated that frequent letter has been addressed by the Chairman project Director, NHAI to the Chairman TANGEDCO for increasing Labour and Transportation Charges from 15% to 30%, who was not competent person to make such a recommendation.

28.It is also further stated that at the request made by the Muthu Udayar, the Project Director, the amount was increased from 15% to 30% by TANGEDCO. In connivance with the above said letter only, accused Nos.1 and 2 made the payment to the contractor, in Bill No.17. There was Government notification, dated 06.08.2014 in this regard. By



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pointing out this statement, the learned counsel for the petitioner would submit that only because of the recommendation that was made by the Project Director, the above said bill was prepared and approved, in which, this petitioner has absolutely no role at all. No doubt that from the correspondents that were made at the Project Director level and the Chairman of the TANGEDCO, this petitioner's involvement in the above said preparation of the bill is limited. But whether there was any authority for him to make such a recommendation is a matter for consideration during the trial process. It is not the case of the petitioner that because of the letter that was made by the Project Director, he made the above said recommendation. Whether there was any criminal conspiracy between the private Contractors and the Officials attached to the Department is a matter for consideration in the trial process.

29.No doubt, that there are some disputed facts that got to be tried of the trial. Sitting under Section 482 Cr.P.C., the disputed facts cannot be discussed by this Court. So, I am of the considered view that though some of the charges are not maintainable, the remaining charges and sufficient materials are available, which must be proceeded to its logical



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conclusion.

30. Therefore, I find no reason to quash the entire criminal proceedings. Since the petitioner is now located in the State of Uttar Pradesh, his personal appearance before the trial Court alone is **dispensed with**. He must ensure that he must be properly represented by the Advocate without fail on every hearing.

31. With the above said directions, this criminal original petition is **dismissed**. Consequently, connected miscellaneous petition is closed.

31.03.2023

Index : Yes/No
Internet : Yes/No
TM

To

1. The II Additional District Court for CBI Cases, Madurai.
2. The State Rep. by the Inspector of Police,
CBI: ACB: Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

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