IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.12.2014

Date of decision: 10.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Criminal Revision Case No.1049 of 2014

G.Guruswamy ... Petitioner/Petitioner Accused No.1

vs.

State by Inspector of Police,
CBI/ACB, Chennai at
Sastri Bhavan
Haddows Road,
Chennai. ... Respondent/Respondent/Complainant

PRAYER : Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure praying to set aside the order dated 29.9.2014 passed in Crl.M.P.No.645 of 2013 in C.C.No.36 of 2013 by the IX Additional Special Judge for CBI Cases, Chennai.

For Petitioner : Mr.K.S.Mahadevan
For respondent: Mr.K.Srinivasan,
Special Public Prosecutor for CBI Cases

O R D E R

The revision petitioner was arrayed as A.1 in C.C.No.36 of 2013 on the file of the IX Additional Special Judge for CBI Cases, Cehnnai. He filed Crl.M.P.No.645 of 2013 seeking discharge from the case and the petition was dismissed. Aggrieved by the same, this revision is filed.

2. It is submitted by the learned counsel for the revision petitioner that the trial Court erred in dismissing the discharge Application filed by the petitioner without properly appreciating the case of the prosecution. He submitted that the overt-act attributed towards the petitioner is that he approved note given by A.2 found in Document No.D48 and facilitated the delivery of 30 kgs of gold to M/s. Surana Corporation Limited on 13.5.2008 when there was no credit on the account of M/s. Surana Corporation Limited. He submitted

that admittedly, in Document No.48, the signature of the petitioner was not found and it was only stated that A.2 had discussion with the petitioner and except the self-serving statement of A.2, there was no material to connect the petitioner that on his instruction, gold was supplied to M/s. Surana Corporation Limited. He also submitted that there was no mention of pecuniary loss to MMTC Limited on account of delivery of 30kgs of gold to M/s. Surana Corporation Limited. MMTC Limited received Rs.5.38 crores on 14.5.2008 for delivery of 30 kgs of gold on 13.5.2008. He also submitted that the trial Court erred in relying upon section 161 Cr.P.C statement recorded by the Investigating Officer during investigation and without properly appreciating that there was no material against the petitioner and on the basis of surmises and conjectures, the petitioner was charge sheeted and therefore, the case is liable to be quashed.

3. The learned Special Public Prosecutor for the respondent submitted that on 7.5.2008, A.4 made a request to supply 30 kgs of gold against the surplus amount available on the count of M/s. Surana Corporation Limited arrayed as A.3 and A.2 made a note stating, as discussed with CGM, 30 kgs of gold might be supplied to M/s. Surana Corporation Limited and the petitioner was the Head of the Office of MMTC Limited and A.2 was the Head of the Finance Department. Being a public servant, the petitioner willfully failed to protect the interest of the company and with dishonest intention allowed supply of 30 kgs of gold to M/s. Surana Corporation Limited without receiving the fund. He also submitted that the prosecution produced sufficient documents to prove the culpable role of the petitioner and LW 27 gave statement that after receiving a note from A.2, he contacted the petitioner and he instructed him to deliver gold as there was surplus fund available. Therefore, the evidence of LW 27 corroborates Document No.48 and it is also proved by the prosecution that on the date of delivery of 30kgs of gold, there was no surplus money available to the credit of M/s. Surana Corporation Limited. Considering all these aspects, the prosecution filed charge sheet and therefore, the same cannot be quashed.

4. It is seen from the charge sheet that the allegation made against the petitioner is that between 2007 and 2011, during the course of bullion trade, A.4, A.5 and A.6 conspired with A.2 along with A.7 and A.8 with dishonest and fraudulent intention to cheat MMTC Limited in the matter of bullion trade. Pursuant to the criminal conspiracy between A.1 and A.2, A.3, A.4, 30 kgs of gold was released without receiving matching fund from the accused company and pecuniary loss was caused to MMTC. It is further stated that on 7.5.2008, A.4 requested for supply of 30 kgs of gold against the surplus amount available on the account of M/s. Surana Corporation Limited and A.2 made a note stating that he discussed with A.1 and thereafter, 30 kgs of gold were supplied to M/s. Surana Corporation

Limited and at that time, there was no surplus fund to the credit of M/s. Surana Corporation Limited. It is not in dispute that on 7.5.2008, A.4 by his letter requested MMTC Limited to supply 30 kgs of gold stating that M/s. Surana Corporation Limited has got surplus amount to their credit. A.1 was employed as the Chief General Manager of MMTC Limited at the relevant point of time and as per the note of A.2, 30 kgs of gold was delivered on 13.5.2008 to A.4 without obtaining any amount. In the note put up by A.2, he has mentioned that he discussed with CGM, namely, the petitioner. Though the petitioner has not signed or acknowledged the note prepared by A.2, LW 27 has stated during investigation that when the note was signed by A.2 and marked to him, before approval, he contacted the petitioner and the petitioner told him to deliver 30 kgs of gold as there was surplus amount of Rs.4.30 crores on the account of A.3 M/s. Surana Corporation Limited and LW.27 signed the delivery on the instruction of A.1 as confirmed by A.2. Though in Document No.48, it is stated that the surplus amount of Rs.4.50 crores available, it was not available on that date. Therefore, as per the statement of LW 27, the note by A.2 was made with the concurrence and the knowledge of the petitioner and that would raise a strong suspicion in the role of the petitioner in the commission of the offence. As per the statement of LW.5, each bullion transaction has to be separate and excess payment from the party for the first transaction is to be squared up immediately before going for 2nd transaction.

5. As a matter of fact, the learned trial Judge elaborately discussed all these aspects in his order while dismissing the Application filed by the petitioner for discharge. I do no find any infirmity in the order of the learned trial Judge.

6. In the result, the petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asvm

To

1.The IX Additional Special Judge
for CBI Cases, Chennai.

2.The Inspector of Police,
CBI/ACB, Chennai at
Sastri Bhavan
Haddows Road,
Chennai.

3.The Special Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.K.S.Mahadevan, Advocate SR.13323

BVR(CO)
EU 21.03.2015

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