

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 09-12-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Crl.R.C.Nos.1011 and 1014 of 2015

Shri Dharmendra Kumar

Petitioner
in Crl.R.C.1011/2015

Sanjay Kumar Singh

Petitioner
in Crl.R.C.1014/2015

Vs.

The State
represented by
Addl. Superintendent of Police, SPE
CBI, ACB
Chennai
(FIR No.RC MAI 2014 A 0022)

Respondent

Criminal Revision Cases under Section 397 and 401 of Cr.P.C.,
to call for the records in C.C.Nos.15219 and 15220 of 2014 on
the file of the learned Additional Chief Metropolitan
Magistrate, Egmore, Chennai - 8 and set aside the orders dated
07-07-2015 in Crl.M.P.Nos.216 and 223 of 2015.

For petitioner :: Mr. V.Manohar

For respondent :: Mr. K. Srinivasan, Spl.P.P.
for CBI cases

COMMON ORDER

These Criminal Revision Cases have been directed
against the orders passed in Crl.M.P.Nos.216 and 223 of 2015
in Calendar Case Nos.15219 and 15220 of 2014 by the Additional
Chief Metropolitan Magistrate, Egmore, Chennai.

2. The revision petitioners herein as petitioners
have filed Crl.M.P.Nos.216 and 223 of 2015 in respective
calendar cases, under Section 239 of the Code of Criminal
Procedure, 1973 praying to discharge them from the proceedings
of C.C.Nos.15219 and 15220 of 2014, wherein the present
respondent has been shown as respondents.

3. It is averred in both the petitions that the
petitioners have sent goods through wagons and the same have
been inspected by the Railway Authorities and ultimately,
found overloading. On the basis of complaint, the respondent

has conducted investigation in both the cases and after completing the same, laid final reports and the same have been taken on file under Calendar Case Nos.15219 and 15220 of 2014. Further, it is averred in the petitions that the petitioners have not committed the offences mentioned in the final reports. Under the said circumstances, these petitions have been filed for getting the relief sought therein.

4. The Court-below after considering the elaborate contentions put forth on either side has dismissed both the petitions. Against the order passed in Crl.M.P.No.216 of 2015 in C.C.No.15219 of 2014, Crl.R.C.No.1011 of 2015 and against the order passed in Crl.M.P.No.223 of 2015 in C.C.No.15220 of 2014, Crl.R.C.No.1014 of 2015 have been filed on the file of this Court. Since common questions of law and facts are involved in both the proceedings, common order is pronounced.

5. The learned counsel appearing for the revision petitioners have raised the following points so as to set aside the impugned orders passed by the Court-below in Crl.M.P.Nos.216 and 223 of 2015 :

(a) In between the petitioners and Railway Authority, an agreement has come into existence wherein no clause is available so as to take penal action against the petitioners. Further, in the agreement, there is a clause of imposing charges in case of overloading;

(b) Since there is no specific clause which enables the Railway Authority to invoke any Section of Indian Penal Code in the agreement, the entire proceeding is ab initio void.

(c) The goods have been sent by the representatives of the petitioners from Delhi and therefore, question of mis-declaration of weight does not arise on the part of the petitioners. Under the said circumstances, the petitioners cannot be punished on the basis of vicarious liability.

6. In order to sustain the impugned orders passed by the Court-below, the learned Special Public Prosecutor has contended that on the side of the prosecution abundant documents have been submitted for the purpose of proving that the petitioners have done overloading and further, it has been specifically mentioned that the petitioners have committed an offence punishable under Section 420, IPC and there is no specific clause in the agreement so as to exclude operation of any penal law against the petitioners and the Court-below after considering all the rival contentions put-forth on either side has rightly dismissed the petitions and therefore,

the impugned orders passed by the Court-below do not warrant any interference.

7. It is an admitted fact that the petitioners have been shown as accused in C.C.No.15219 and 15220 of 2014. The main allegation made on the side of the respondent is that by way of mis-declaring the actual weight of wagons, the petitioners have made attempts to cheat the Railways.

8. In fact, this Court has perused certain documents filed on the side of the respondent wherein it has been clearly stated that in both the cases, overloading is detected. Further, it is not the contentions put forth on the side of the revision petitioners that no overloading has been done.

9. The main gravamen expressed on the side of the revision petitioners is that an agreement has come into existence between the revision petitioners and Railway Authority, wherein only penalty provision is available in cases of overloading and no clause is available with regard to initiation of penal provision and further, as per Section 73 of the Indian Railways Act, 1989, primitive charge can be imposed for overloading a wagon.

10. The short legal point involved in the present proceedings is as to whether the respondent can file final reports against the revision petitioners under Section 420, IPC.

11. The consistent case put forth on the side of the respondent is that the petitioners have loaded goods in the wagon, in question apart from the allowed weight. It has already been pointed out that the said aspect has been clearly established on the side of the respondent. Further, it is seen from the documents filed on the side of the respondent that in the declarations it has been clearly mentioned only the allowable weight. But, actually overweight has been detected in each case. It is true that an agreement has come into existence in between each revision petitioner and Railway Authority wherein a provision is available with regard to overloading. Likewise, Section 73 of the Indian Railways Act also deals with the remedy for overloading. Even in the agreement in question or in the Indian Railways Act, there is no provision for excluding the operation of Indian Penal Code.

12. The consistent case put forth on the side of the respondent is that by way of giving mis-declaration, the revision petitioners have cheated the Railways. Since the consistent case put forth on the side of the respondent is that the revision petitioners have cheated the Railways by way of producing documents wherein mis-declarations have been

given with regard to weight, this Court is of the considered view that the respondent can very well invoke Section 420 of the Indian Penal Code against the revision petitioners.

13. The learned counsel appearing for the revision petitioners has also vehemently contended to the effect that the declaration forms have not been given by the revision petitioners and the same have been given by their representatives and therefore, in criminal law question of vicarious liability is totally alien; Under the said circumstances, these proceedings cannot be taken against the revision petitioners.

14. In fact, this Court has perused the declaration forms and the same are standing in the name of the revision petitioners. Even the signatures of the revision petitioners are not found place, the Court cannot come to a conclusion that the revision petitioners are not at all liable and further the question of vicarious liability does not arise in this case. It has already been pointed out that the specific contention put forth on the side of the respondent is that by way of giving mis-declaration with regard to overloading, the revision petitioners have cheated the Railways. Under the said circumstances, the contentions put forth on the side of the revision petitioners are not factually and legally sustainable. The Court-below after considering the rival contentions put forth on either side has rightly dismissed the petitions. In view of the discussions made earlier, this Court do not find force in the contentions put forth on the side of the revision petitioners and altogether these criminal revision cases deserve to be dismissed.

In fine, these criminal revision cases are dismissed. The orders passed in Crl.M.P.Nos.216 and 223 of 2015 in Calendar Case Nos.15219 and 15220 of 2014 by the Additional Chief Metropolitan Magistrate, Egmore, Chennai are confirmed. The Trial Court need not look into the observations made in the present order.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

glp

To

1. The Addl.Chief Metropolitan Magistrate,
Egmore, Chennai 8.

2. Do-Thro'The Chief Metropolitan Magistrate,
Egmore, Chennai 8.

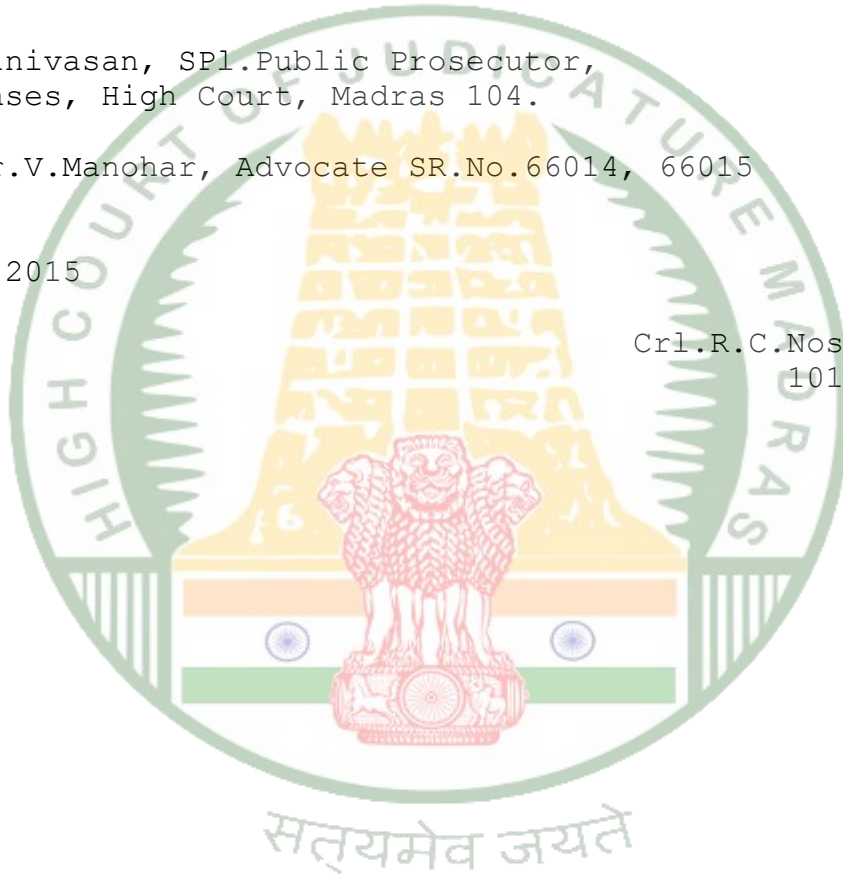
3.The Addl.Superintendent of Police, SPE
CBI, ACB
Chennai

4.Mr.K.Srinivasan, Spl.Public Prosecutor,
for CBI Cases, High Court, Madras 104.

2 CC to Mr.V.Manohar, Advocate SR.No.66014, 66015

kra 16.12.2015

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1014 of 2015



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