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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.R.C.No.93 of 2011

and

M.P.No.2 of 2011

M.Mohan

.. Petitioner

Vs.

1.State of Tamil Nadu,
rep.by Inspector of Police,
C.B.I./S.C.B.,
Chennai.

2.M.S.Gopalakrishnan

3.Express Clearing Agency (A3)
rep.by Mr.Shanmugam

4.Bombay Burma Metal Mart (A4)
rep.by Dinesh K.Joshi

5.K.L.Krishna Janarthan (A5)

6.L.Srinivasan (A6)

7.K.R.Rangachari (A7)

8.S.Venkatesan (A8)

9.T.R.Premanathan

10.T.S.Padmanabhan

.. Respondent

9th and 10th respondents impladed
as per the order of this Court dated
1.2.1011 in M.P.No.3 of 2011

Prayer:- Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to call for the records and set aside the order passed by the learned Additional Chief Metropolitan Magistrate at Egmore, Chennai, in Crl.M.P.No.54 of 2010 in C.C.No.8261 of 1996 and direct the Magistrate to add Mr.T.R.Premanathan (P.W.1) and Mr.T.S.Padmanabhan (P.W.2) as accused in the above case.



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For Petitioner : Mr.G.M.Ramasubramaniam
For Respondents : Mr.K.Srinivasan, Spl.P.P.for CBI
for R1
No appearance for R2 to R10

ORDER

This Criminal revision case has been directed against the dismissal order dated 11.11.2010 passed in Crl.M.P.No.54 of 2010 in C.C.No.8261 of 1996, by the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The revision petitioner herein, as petitioner, has filed the petition in Crl.M.P.No.54 of 2010 under Section 319 of the Code of Criminal Procedure, 1973, praying to implead the prosecution witness Nos.1 and 2 as accused in C.C.No.8261 of 1996. The Court below has dismissed the petition. Against the dismissal order, the present criminal revision case has been filed.

3. The learned counsel appearing for the revision petitioner has contended that the revision petitioner has been shown as second accused in C.C.No.8261 of 1996, wherein, on the side of the prosecution, P.Ws.1 and 2 have been examined and their specific evidence is that only on the basis of the oral instruction given by the fifth accused, they have not insisted to produce gate pass as well as delivery note. Under the said circumstances, they failed to perform their duty and thereby committed offences and since they have not been impleaded as accused, the present petition has been filed under Section 319 of the Code of Criminal Procedure, 1973, but the Court below has erroneously dismissed the same.

4. The learned Special Public Prosecutor has contended that only on the basis of oral instruction given by the fifth accused, the prosecution witness Nos.1 and 2 have not insisted to produce gate pass as well as delivery note and since the fifth accused is their superior, they are bound to obey his direction and therefore, they cannot be mulcted with liability.

5. The Court below has mentioned in its order that the prosecution witness Nos.1 and 2 have simply carried out the oral order given by their superior and therefore, they cannot be impleaded as accused.



6. It is an archaic principle of law that malfeasance, misfeasance and nonfeasance are also offences. It means, misconduct, misuse of power and the failure to perform duty are offences. In the instant case, the primordial duty casts upon witness No.1 is to insist production of gate pass. Likewise, the specific duty enjoins upon witness No.2 is to insist upon production of delivery note. But their specific evidence is that their superior, fifth accused, has orally instructed them not to insist production of gate pass as well as delivery note. Therefore, it goes without saying that P.Ws.1 and 2 have failed to perform their duty and that itself is an offence.

7. As per Section 319 of the Code of Criminal Procedure, 1973, the Court is having unfettered right of impleading a person as an accused, provided sufficient evidence or material is available. In the instant case, even as per the evidence given by P.Ws.1 and 2 it is easily discernible that they failed to perform their duty. Since they failed to perform their duty, they can also be brought under the penumbra of law and therefore, the view expressed by the Court below for not impleading P.Ws.1 and 2 is totally incorrect and the order passed by the Court below is liable to be set aside.

8. In fine, this criminal revision case is allowed. The order passed in CrI.M.P.No.54 of 2010 in C.C.No.8261 of 1996 by the Court below is set aside and the petition filed in CrI.M.P.No.54 of 2010 is allowed. Considering the long pendency of C.C.No.8261 of 1996, the Court below is directed to dispose of the same before the end of March 2016 and report the same to this Registry without fail. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

True Copy

Sub Assistant Registrar



To

1.The Additional Chief Metropolitan Magistrate
at Egmore, Chennai

2.The Inspector of Police,
C.B.I./S.C.B.,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer,
Criminal Section,
High Court Madras-104

+1cc to M/s.Ram& Ram, Advocate Sr.54351

+1cc to The Special Public Prosecutor,Sr.53919

Cr1.R.C.No.93 of 2011

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srg 5/11/2015