

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 10.08.2015
Pronounced on 14.08.2015

Coram

The Honourable Mr. Justice A.SELVAM

Crl. R.C.No.350 of 2015
& M.P.No.1 of 2015

Thota T.Sivakumar .. Petitioner/(Accused)

Vs.

The State
Rep.by
The Inspector of Police
CBI, ACB, Chennai .. Respondent (Complainant)

Revision under Sections 397 and 401 of Criminal Procedure Code to call for the entire records leading to the dismissal of Crl.M.P.No.4148 of 2014 in C.C.No.11 of 2014 dated 2.3.2015 on the file of the Principal Special Judge for CBI cases, (VIII Additional City Civil Court), Chennai and set aside the same and allow the above Crl.M.P.No.4148 of 2014 in C.C.No.11 of 2014.

For petitioner : Mr.K.Sridhar

For respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI cases

O R D E R

This Criminal Revision Case has been directed against the order dated 2.3.2015 passed in Crl.M.P.No.4148 of 2014 in C.C.No.11 of 2014 by the Principal Sessions Judge for CBI cases, (VIII Additional City Civil Court), Chennai.

2. The revision petitioner as petitioner has filed Crl.M.P.No.4148 of 2014 in C.C.No.11 of 2014 on the file of the Court below under section 239 of the Code of Criminal Procedure, 1973, praying to discharge him from the charges framed against him.

3. It is averred in the petition that the petitioner has been shown as sole accused in C.C.No.11 of 2014 and the petitioner has done all measurements and no measurement is left out so as to demand the alleged bribe from the defacto complainant. The petitioner has been

falsely implicated in the complaint given by the defacto complainant. The respondent, without conducting proper investigation, has laid a final report against the petitioner and under the said circumstances, the present petition has been filed for getting the relief sought for therein.

4. The court below after considering the rival contentions raised on either side has dismissed the petition. Against the dismissal order, the present Criminal Revision Case has been preferred at the instance of the petitioner as revision petitioner.

5. The learned counsel appearing for the petitioner has repeatedly contended that the defacto complainant is a Contractor and he executed certain works and since the petitioner is a Section Engineer, he has measured all the works done by the defacto complainant before the date of alleged occurrence and under the said circumstances, the petitioner has been falsely implicated and the respondent, without conducting proper investigation, has erroneously filed a final report on the file of the court below and the Court below has erroneously taken cognizance of the alleged offence and ultimately framed charges. Under the said circumstances, the petition in question has been filed under section 239 of the Code of Criminal Procedure, 1973 and the Court below without considering the contentions put forth on the side of the petitioner has dismissed the same and therefore the order passed by the Court below is liable to be set aside and the petition filed in CrI.M.P.No.4148 of 2014 is liable to be allowed.

6. Per contra, the learned Special Public Prosecutor appearing for the respondent has also equally contended that as per the complaint given by the defacto complainant, a trap has been conducted in the presence of A.Lakshmanasamy, Senior Manager, Inspection Section, Indian Overseas Bank, Central Office Building, Chennai and the petitioner/accused has received a sum of Rs.15,000/- from the defacto complainant and subsequently it was seized after conducting proper test and consequently investigation has been done and final report has been filed and the Court below after considering the gravity of offence alleged to have been committed by the petitioner/accused has rightly come to the conclusion that prima facie evidence is available so as to proceed further against the petitioner/accused and ultimately dismissed the petition in question and therefore the dismissal order passed by the Court below need not be set aside.

7. It is an admitted fact that during the relevant period, the petitioner/accused has served as Senior Section Engineer. The defacto complainant, viz., L.G.Ravi is a Contractor and he has been assigned certain works.

8. The specific contention put forth on the side of the prosecution is that the defacto complainant has executed certain works and the petitioner/accused has done measurements in respect of certain works and in respect of remaining work, he demanded bribe amount of Rs.15,000/- from the defacto complainant.

9. The learned counsel appearing for the petitioner, as pointed out earlier, has repeatedly contended that all the works done by the defacto complainant have been measured by the petitioner/accused and no work is left out without measuring.

10. The entire argument put forth on the side of the petitioner/accused is based upon the statement of one R.Selvaraj, wherein in one place, it is stated like thus: " On being shown the copy of letter dated 21.1.2014, I state that Shri L.G.Ravi vide his letter dated 21.1.2014 addressed to Dy.CE/CN/I/MAS with a copy to CE/CN/East/MS and XEN/Track/CN/MAS has submitted that he has got the measurement recorded for the works executed by him on 10.1.2014 with great difficulties. He has also stated that after the completion of 50 days of Non interlocked work, measurement worth Rs.2 Lakhs have been purposefully neither not recorded or payment restricted for the following works done by him..."

11. Even a mere reading of the statement given by the said Selvaraj, it is made clear that some of the works done by the defacto complainant have not been measured.

12. Further in the statement of the said R.Selvaraj, it is mentioned that on 18.03.2014, some works have been measured by him. Therefore, it is quite clear that some of the works done by the defacto complainant have been measured by the petitioner/accused and some works remained unmeasured.

13. The specific case of the prosecution is that for doing measurements, the petitioner/accused has demanded bribe from defacto complainant and therefore he has given a complaint dated 7.3.2014 and accordingly a trap has been conducted in the presence of an independent witness by name A.Lakshmanasamy and since the petitioner/accused has received Rs.15,000/- from the defacto complainant, further investigation has been done against him.

14. In fact, this Court has analyzed the statement alleged to have been given by the defacto complainant, wherein it has been clearly stated about the alleged demand of bribe by the petitioner/accused. Further he stated in his statement that he has given the complaint in question on 7.3.2014 and accordingly, a trap has been conducted in the presence of an independent witness and during that process, he has given Rs.15,000/- to the petitioner/accused by way of bribe.

15. The independent witness by name A.Lakshmanasamy has also given a statement like thus "I along with Shri L.G.Ravi at about 14.35 hrs entered into the office of the Senior Section Engineer. On entering the room, I along with Shri L.G.Ravi, saw a person wearing white colour checked shirt with orange and light black lines and pant and also wearing spectacles sitting on the armed S-type chair behind his table. I came to know that the said person was Shri Thota T.Sivakumar, SSE who asked Shri L.G.Ravi to sit on the chair in front of his table. Then Shri Thota T.Sivakumar pointed towards me and enquired Shri L.G.Ravi about me. Then Shri L.G.Ravi replied that I was his friend and doing contract works. Shri Thota T.Sivakumar asked me to wait outside for some time. Accordingly, I came out and was standing outside within a short distance and was standing in such a way that I was able to see both L.G.Ravi and Thota T.Sivakumar talking to each other. Then Shri Thota T.Sivakumar was seen tossing his right hand index finger with thumb finger so as to indicate demanding money. Then Shri L.G.Ravi took the tainted bribe amount of Rs.15,000/- from his left side shirt pocket by his right hand and extended the same towards Shri Thota T.Sivakumar. Then Shri Thota T.Sivakumar extended his right hand and received the bribe money of Rs.15,000/- counted with both his hands and kept the same in his left side shirt pocket. Then Shri L.G.Ravi at about 14.40 hrs came out of the room and gave the pre-arranged signal by wiping his face with hand kerchief. Then Shri K.Saravanan, Inspector alerted all his team members and entered into the office of the Senior Section Engineer. The other team members also followed him. Shri L.G.Ravi informed Shri K.Saravanan, Inspector that Shri Thota T.Sivakumar had demanded and accepted bribe amount of Rs.15,000/- from him."

16. From the cumulative reading of the statements given by the defacto complainant and independent witness by name Lakshmanasamy, the Court can easily come to the conclusion that on 7.3.2014 on the basis of the complaint given by the defacto complainant, trap proceedings have been initiated and accordingly the petitioner/accused has demanded Rs.15,000/- from the defacto complainant and the same has been given to him. Therefore, it is needless to state that prima facie materials are available to proceed against the petitioner/accused.

17. The learned counsel appearing for the petitioner/accused has also drawn the attention of the Court in respect of guidelines given to CBI, especially in Trap cases, wherein it is stated that "During the trap, it is essential that responsible and impartial person(s) witness the transaction and/or overhear the conversation of the suspect public servant. All public servants, particularly gazetted officers, should assist and witness a trap, whenever they are approached by the CBI to do so."

18. The learned counsel appearing for the petitioner/accused has also contended that in the statement alleged to have been given by the said Lakshmanasamy, no mention has been made with regard to demand of bribe alleged to have been made by the petitioner/accused from the defacto complainant and therefore the petitioner cannot be mulcted with liability.

19. In fact, this Court has perused the entire statement given by the said Lakshmanasamy, wherein it has been clinchingly stated that he and the defacto complainant have gone to the office of the petitioner/accused and he asked the defacto complainant to sit in front of him and simultaneously asked him (A.Lakshmanasamy) to go away from that place and accordingly he moved from that place and watched the dealings of the defacto complainant and petitioner/accused by way of standing in a short distance and the petitioner/accused has tossed his hand and immediately defacto complainant has given Rs.15,000/- to the petitioner/accused and he placed the same in his pocket.

20. From the close reading of the statement given by the said Lakshmanasamy, the Court can easily deduce that the petitioner/accused has made demand of bribe from the defacto complainant and accordingly defacto complainant has given Rs.15,000/- by way of bribe and the same has been accepted by the petitioner/accused.

21. Even by way of reading the trap proceedings, the Court can easily come to the conclusion that prima facie case is made out against the petitioner/accused.

22. As adverted earlier in many places, the main argument put forth on the side of the petitioner/accused is that he has measured all the works done by the defacto complainant, but the statement of R.Selvaraj is otherwise. Therefore, viewing from any angle, the contentions put forth on the side of the petitioner/accused cannot be believed in. The court below after analyzing the available evidence on record, as pointed out earlier, has rightly come to the conclusion that prima facie case is made out against the petitioner/accused. In view of the foregoing narration of factual aspects, this Court has not found any force in the contention put forth on the side of the petitioner/accused and therefore the present Criminal Revision Case deserves to be dismissed.

23. In fine, this Criminal Revision Case is dismissed. The order passed in CrI.M.P.No.4148 of 2014 in C.C.No.11 of 2014 by the Principal Special Judge for CBI Cases (VIII Additional City Civil

Court), Chennai is confirmed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ajr

To

- 1.The Principal Special Judge for CBI Cases (VIII Additional City Civil Court), Chennai
- 2.The Inspector of Police, CBI, ACB, Chennai
- 3.The Special Public Prosecutor, For CBI Cases, High Court, Madras.

+ 1 cc to M/s. K. K. Sridhar, Advocate Sr.43401

Cr1.R.C.No.350 of 2015

MP (CO)
Eu 28.08.15



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