IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16-09-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Original Petition No.7991 of 2013
and
Criminal Revision Case No.341 of 2013
and M.P.Nos.1 and 1 of 2013

K.A.A. Salam ... Petitioner in Crl.O.P.No.7991/13

1. G. Vinoth Kumar Gollapudi

2. Natha Venkata Vathsa VArdhan

3. S.M. Sadiq ... Petitioner in Crl.R.C.No.341/13

Vs.

Dy Superintendent of Police
CBI:ACB, Shastri Bhavan
Chennai
RC/11/A/2011 ... Respondent

Prayer in Crl.O.P.No.7991 of 2013:
Criminal Original Petitions under Section 482 of Cr.P.C., to call for the records in C.C.No.40 of 2012 from the file of the learned XII Additional Special Judge for CBI case, Chennai and quash the entire proceedings against the petitioner.

Prayer in Crl.R.C.No.341 of 2013:

Criminal Revision Case under Section 397, r/w Section 401 Cr.P.C., to call for the records and set aside the order made in Crl.M.P.No.680 of 2012 in C.C.No.40 of 2012 on the file of IX Additional Special Judge for CBI Cases, IX Additional City Civil Court, Chennai.

For petitioners :: Mr. A. Ganesh

For respondents :: Mr. N. Baskaran,Spl.PP for CBI

COMMON ORDER

This criminal original petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 praying to call for the records pertaining to Calendar Case No.40 of 2012, pending on the file of the IX Additional Special Judge for CBI Cases, Chennai - 600 104 and quash the same. Likewise, criminal revision case has been filed so as to set aside the order passed in Crl.M.P.No.680 of 2012 in Calendar Case No.40 of 2012 by the IX Additional Special Judge for CBI cases, Chennai.

2 The epitome of the averments made in the criminal original petition are that the petitioner has served as Deputy Superintendent of Police in Central Bureau of Investigation ('CBI' in short) in New Delhi; the persons, namely, G. Vinoth Kumar Gollapudi, accused No.2 and Natha Venkata Vathsa Vardhan, accused No.3 are cousins; the second accused is a distributor of BPL products and both of them have gone to United States of America; the fourth accused is the friend of the petitioner, second and third accused; the fifth accused is the driver of the fourth accused. The petitioner, fourth accused along with the fifth accused have proceeded to Airport to pick up accused Nos.2 and 3 and all of them have purchased visitors pass and waited in visitors area. The petitioner knows one Anburaj, Customs Superintendent. The petitioner has informed him in advance about his visit to Airport for receiving his friends and requested him to get entry pass from Bureau of Civil Aviation Security. On 12-02-2011, at about 00:00 hours, CBI Officials and Directorate of Revenue Intelligence ('DRI' in short) Officials have entered into Customs Arrival Hall of Chennai International Airport on the basis of specific intelligence to the effect that the petitioner has made a facilitation to the accused Nos.2 and 3, who are coming from abroad and they called Ramprasad Reddy, Victor Wilson and Mohanashanmughasundaram as witnesses to the proceedings. On 13-02-2011, at about 00:23 hours, the petitioner has called Ramprasad Reddy and the said Ramprasad Reddy has informed one Ganapathy and he brought the petitioner to the Arrival Hall. The second and third accused after landing have proceeded towards Green Channel and they have been intercepted by CBI and DRI Officials and examined their luggages and found some dutiable goods. Since the second and third accused have failed to write anything in the column of disembarkation/debarcation card, those goods have been seized under a cover of Mahazar. It is further averred in the petition that the fourth and fifth accused have waited in the visitors area and they have not known what has happened inside. The Investigating Officer has investigated the case, after registering the same under Sections 120-B, IPC read with Sections 13(2), 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioner has no connection whatsoever with the alleged criminal conspiracy. The Commissioner of Customs has refused to give sanction so as to proceed under Sections 132 and 135 of the Customs Act. The accused Nos.2 and 3 have not at all crossed customs barrier. Further, they have given statements under Section

108 of the Customs Act by way of saying that goods, in question have been gifted by their sister, who is residing in America. The petitioner has been falsely roped in. Further, it is a normal practice of passengers to call relatives or friends to Airport at the time of their arrival. Under the said circumstances, the present petition has been filed for getting the relief sought for therein.

3 In the counter as well as additional counter filed on the side of the respondent, it is averred that the first respondent being Deputy Superintendent of Police in CBI has utilised his powers so as to make successful entry upto visitors hall and in pursuance of the conspiracy hatched amongst all the accused, the accused Nos.2 and 3 have made an attempt to pass through Green Channel without declaring dutiable goods; under the said circumstances, a case has been registered under Section 120-B, IPC read with Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 and there is no merit in the petition and the same deserves to be dismissed.

4. The material averments made in the petition filed in Crl.M.P.No.680 of 2012 can be summarised as follows:

The first accused during the relevant period has served as DSP, CBI/ACB, Nagpur. The accused Nos.2 and 3 are close relatives and doing business in Chennai. The fourth accused is the proprietor of M/s. Elite Collections, an electronic goods showroom situates in Chennai Citi Centre. The case of the respondent is that all the accused are known to each other and all of them have hatched a criminal conspiracy prior to 12-02-2011 and thereby, agreed to perform illegal act namely to misdeclare dutiable goods in the customs disembarkation card. Further, it is averred in the petition that the accused Nos.2 and 3 have had no mala fide intention, so as to avoid payment of duty. The accused Nos.2 and 3 have landed from Jet Airways and they simply passed through green channel. The petitioners have not committed any one of the offences mentioned in the final report. Further, it is averred in the petition that the respondent has not produced any valid and acceptable materials so as to proceed further against petitioners and in such circumstances, the present petition has been filed for getting the relief sought for therein.

(ii) The Trial Court after hearing both sides and upon perusing the relevant records has dismissed the petition filed in Crl.M.P.No.680 of 2012. Against the dismissal order, the present criminal revision case has been preferred at the instance of the petitioners/accused Nos.2 to 4, as revision petitioners.

5. The only point that comes up for consideration in both the proceedings is as to whether the entire proceedings in C.C.No.40 of 2012 are liable to be quashed and the accused Nos.1 to 4 are entitled to get discharged ?

6. The learned counsel appearing for the petitioner as well as revision petitioners has repeatedly contended that during the relevant period, the first accused has served as DSP in CBI. The accused Nos.2 and 3 are close relatives and they have gone to USA. Since the first accused is a DSP and in order to receive the accused Nos.2 and 3 returning from USA, he, accused Nos.4 and 5 have gone to International Airport, Chennai on 12-02-2011 and after obtaining necessary pass, they entered to visitors area. The accused Nos.2 and 3 have landed from Jet Airways and passed through Green Channel. At that time, they have been intercepted and ultimately found some dutiable goods in their luggage. The main allegation made against the accused Nos.2 and 3 is that they failed to intimate all those articles in disembarkation card. Since the accused Nos.1 and 4 are friends of the accused Nos.2 and 3, simply they have gone to International Airport for the purpose of receiving them and amongst accused, no criminal conspiracy has occurred and further, the first accused has not misused his official position. But the respondent without considering the role alleged to have been played by accused Nos.1 to 4 has erroneously laid a final report under Section 120-B, IPC read with Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 and the accused Nos.2 to 4 has filed a petition in the Trial Court so as to discharge them. But the Trial Court has erroneously dismissed the same. Under the said circumstances, the entire proceedings of C.C.No.40 of 2012 pending on the file of the Trial Court are liable to be quashed.

7. In support of the contentions put forth on the side of the petitioner and the revision petitioners, the following decisions are relied upon:

(a) In 2002 (5) SCC 86 (Subash Parbat Sonvane Vs. State of Gujarat), it is held that statutory presumption available under Section 20 of Prevention of Corruption Act, 1988 is related to Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 and not for clause (d) of sub-section (1) of Section 13.

(b) In AIR 1997 SC 822 (Major S.K. Kale Vs. State of Maharashtra), in paragraph No.9, it is observed that, even on the prosecution allegation, the case of the appellant could fall only within the second part of Section 5(1)(d), namely, abusing his position as a public servant. The abuse of position as held by this Court must necessarily be dishonest so that it may be proved that the appellant caused deliberately wrongful loss to the Army by obtaining pecuniary benefit for P.W.2.

(c) In AIR 1979 SC 826 (S.P. Bhatnagar Vs. The State of Maharashtra), it is observed as follows:

"Following the decision in M. Narayanan Nambiar v. State of Kerala (1963 Supp.(2) SCR 724), it was held by this Court in Major S. K. Kale v. State of Maharashtra (AIR 1977 SC 822) that the abuse of a position in order to come within the mischief of the section must necessarily be dishonest so that it may be proved that the accused caused deliberate loss to the department. It was further held in this case that it is for the prosecution to prove affirmatively that the accused by corrupt or illegal means or by abusing his position obtained any pecuniary advantage for some other person."

(d) In 1971 Cri.L.J. 573 (V.77, C.N.168) (Public Prosecutor Vs. T.K.Viswanathan) in paragraph No.17, it is observed as follows:

"17. The first respondent is a public servant and he obtained a valuable thing, namely, money, either for himself or for the second respondent. But the question to be considered is whether he obtained money by abusing his position as public servant. It is made clear in Section 5 (1)(d) of the Act by introduction of words "by corrupt or illegal means or by otherwise abusing his position as public servant" that a dishonest element on the part of the public servant while obtaining a valuable thing should be established. The words "otherwise abusing his position as public servant" must be read in the same context and in the same degree of culpability as the words "corrupt or illegal means" convey. It must be read in juxtaposition with the word "corrupt or illegal means." The words "otherwise abusing his position as public servant" do not cofine merely to misuse of his position as public servant, but such misuse must be with a dishonest mind. A public servant may be in need of money. There is no prohibition for his taking a loan. But, if he takes loan from a person with whom he has got official dealings it may be improper. It may even amount to misuse of his position since it is likely to create an impression in the mind of the person from whom he obtains the loan that he (the public servant) is likely to do favour to him or withhold doing, a favour if loan is not given. Unless it is established that the public servant obtained such loan by corrupt or illegal means, or by dishonestly misusing his position as public servant, the offence under S.5(1)(d) of the Act will not be made out. The essential ingredient for the offence is obtaining valuable money by corrupt or illegal means or dishonestly misusing his position as a public servant."

and in Paragraph No.19, it is observed that, "Thus, it is clear that dishonest intention on the part of the public servant while obtaining a valuable thing is the essential requisite for punishment to be imposed on him for offence under S.5(1)(d) of the Act."

(e) In 2004 (2) SCC 731 (K.C. Builders Vs. Assistant Commissioner of Income Tax) in paragraph No.25, it is observed thus:

"In our opinion, the appellants cannot be made to suffer and face the rigours of criminal trial when the same cannot be sustained in the eyes of law because the entire prosecution in view of a conclusive finding of the Income Tax Tribunal that there is no concealment of income becomes devoid of jurisdiction and under Section 254 of the Act, a finding of the Appellate Tribunal supercedes the order of the Assessing Officer under Section 143(3) more so when the Assessing Officer cancelled the penalty levied."

(f) In 1995 Supp.(2) SCC 724 (G.L. Didwania Vs. Income Tax Officer) in paragraph No.4, it is stated that,

"4. In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the Tribunal. As noted above, the assessing authority held that the appellant-assessee made a false statement in respect of income of M/s.Young India and Transport Company and that finding has been set aside by the Income-tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained."

(g) In 2004 (170) ELT 402 (Karnataka) (S.G. Chandra (Dr.) V. Enforcement Officer, DTE, FERA) in paragraph No.12, it is stated that,

"12. Taking into consideration the facts and circumstances of the case and the settled law in this regard, this Court is of the opinion that continuance of the proceedings before the trial court would amount to abuse of process of law and this would be a fit case where this Court will have to exercise inherent powers to meet ends of justice."

(h) In 2001 Vol.247 ITR 465 (Thanjai Murasu Vs. Income-tax Officer), in paragraph No.7, it is observed that,

"7. In the result, the assessment is set aside."

Learned counsel for the petitioner would therefore contend that inasmuch as the assessment has been set aside, the entire basis for the prosecution is thus knocked down and, therefore, the complaint is not maintainable. On the other hand, learned counsel for the Department would contend that merely because the assessment has been set aside, the criminality involved in the action of the petitioner in submitting false returns is not wiped away and that action survives despite the order of the Commissioner.

11. It is also contended by learned counsel for the petitioners that any fresh assessment is barred by virtue of the provisions of the Income-tax Act and, therefore, as no assessment can be made at all, the question of filing false returns will not arise and, therefore, in that view of the matter as well, the prosecution cannot be sustained."

8. From a conjoint reading of the decisions mentioned supra, it is made clear that statutory presumption available under Section 20 of Prevention of Corruption Act, 1988 cannot be made applicable for the offence punishable under Clause 13(1)(d) of the said Act. Further, it is discernible that if any Government Servant is involved in any crime, the Court has to verify as to whether he has misused his official position and caused pecuniary loss. Further, it is made clear that if there is no material to proceed further, at any stage of the proceedings, the same may be quashed.

9. The learned Special Public Prosecutor has contended with great vehemence to the effect that during the relevant period, the first accused has served as Deputy Superintendent of Police in CBI, the accused Nos.2 and 3 have gone to U.S.A. The fourth accused is a business man doing his business in Chennai Citi Centre. The fifth accused is the driver of the fourth accused and all of them have contrived themselves so as to bring out dutiable goods from International Airport, Chennai without paying requisite duty. Under such circumstances, the accused Nos.1,4 and 5 have gone to International Airport and they have simply obtained visitors pass. But the first respondent has misused his official position and only to his aidance, the accused Nos.2 and 3 have made an inert attempt to bring dutiable goods without paying proper duties. Under the said circumstances, the respondent has conducted a deep investigation with regard to the involvement of all the accused punishable under Sections 120-B, IPC and accused Nos.2 to 4 have filed a petition in the Trial Court for getting discharged and the Trial Court has rightly dismissed the same, since a deep-rooted conspiracy has become emerged in the minds of the accused Nos.1 to 4 and since the first accused has exceeded his limit in the International Airport, a final report has been filed under Sections 120-B, IPC read with Sections 13 (2), 13(1)(d) of the Prevention of Corruption Act, 1988 and therefore, both the present criminal original petition as well as criminal revision case are liable to be dismissed.

10. The consistent case put forth on the side of the respondent is that all the accused have contrived themselves so as to smuggle dutiable goods without paying duty. The first and foremost allegation put forth upon all the accused on the side of the prosecution is that they hatched a conspiracy.

11. The main question to be decided is as to whether the first accused has misused his official position so as to assist accused Nos.2 and 3 in bringing out dutiable goods, without paying duty by using Green Channel ?

12. It is seen from the records that accused Nos.2 and 3 have come down from U.S.A., on the date of occurrence. It is also seen from the records that they proceeded to Green Channel by way of bringing out the luggage. During interception, it is found that both of them have brought dutiable goods. But they fail to intimate all

those things in their disembarkation card.

13. At this juncture, it would be apposite to look into some paragraphs found in the final report.

(a) In paragraph No.8, it is stated like this:

"Investigation further revealed that in pursuance of the aforesaid criminal conspiracy, Shri K.A.A. Salam(A-1) alongith Shri.S.M. Sadiq (A-4) and Shri Girish Kumar went to Anna International Airport, Chennai on the intervening night of 12/13 February,2011. Earlier, on 12.02.2011 evening, Shri K.A.A. Salam (A-1) had telephonically contacted one Shri Anburaj, Superintendent of Customs, who was then at his home and by abusing his official position as Deputy Superintendent of Police-CBI, requested him to arrange for an Entry pass for getting entry in to the arrival hall of the Airport representing that his friends were coming from abroad. As advised by Shri Anburaj, after reaching the airport, Shri K.A.A. Salam (A-1) contacted Shri Ramprasad Reddy, in turn requested Shri Ganapathy, Air Customs Officer who was also looking after the duties of Public Relations Officer at that time, to arrange for an entry pass of Shri K.A.A.Salam(A-1)."

(b) In paragraph No.9, it is stated that,

"Investigation further revealed that Shri Ganapathy arranged an entry pass accordingly in the name of Shri K.A.A. Salam(A-1). Prior to that Shri K.A.A. Salam(A-1), S.M. Sadiq (A-4) and his driver Shri Girish Kumar had purchased Rs.60/- visitors pass and entered into the visitors hall. Thereafter, leaving behind them in visitors hall, Shri K.A.A. Salam(A-1) entered into the arrival hall alongwith Shri Ganapathy by showing the Entry Pass arranged by Shri Ganapathy. Investigation also revealed that Shri K.A.A. Salam (A-1) gave a photocopy of his CBI Identity Card as the same was intended to be submitted to Airport Manager later."

(c) In paragraph No.10, it is stated that,

"Investigation further revealed that in pursuance of the aforesaid criminal conspiracy, A-1 Shri K.A.A. Salam entered into the arrival hall, went near the conveyor belt and met A2-Shri G. Vinodh Kumar Gollapudi and A3-Shri Natha Venkata Vathsa Vardhan, collected their baggage from the conveyor belt, all the three viz., A1-Shri K.A.A.Salam, A2-Shri G. Vinodh Kumar Gollapudi and A3-Shri Natha Venkata Vathsa Vardhan proceeded towards Green Channel where they were intercepted by a Joint Suprise Check (JSC) team which consisted of officials of CBI and DRI, Chennai."

14. The specific case of the first accused is that he, fourth respondent and fifth accused have obtained visitors pass. But in the final report, it is seen that the first accused has gone upto Conveyor belt and the accused Nos.1 to 3 have collected the luggage

and proceeded towards Green channel. If really the accused Nos.1 and 4 have simply gone to Airport for the purpose of receiving accused Nos.2 and 3, on the basis of their pass, definitely the first accused would not have gone upto conveyor belt and further, in the final report, it has been clearly stated that the first accused has shown a photo copy of his identity card. Therefore, it is quite clear that the accused Nos.1 to 4, are having some personal interest in bringing out dutiable goods without paying duty. It is an admitted fact that accused Nos.2 and 3 are passengers and they brought some dutiable goods, without mentioning those things in the disembarkation cards. Further, they made an abortive attempt to come out from Airport by using Green Channel. Therefore, it is pellucid that some clinching materials are available so as to proceed further against the accused Nos.1 to 4.

15. As adverted to earlier all the accused have hatched a conspiracy with regard to smuggling of the goods, in question. At this juncture, it has become indefeasible to look into the essential ingredients of Section 120B, IPC. The essential ingredients of Section 120-B are (a) there should be an agreement between the persons who are alleged to conspire; (b) the agreement should be (i) for doing any illegal act or (ii) for doing by illegal means, an act which may not itself be illegal.

16. From a close reading of Section 120-B and also standard of proof, the Court can easily discern that alleged conspiracy need not be open and the same can be proved and also decided at the time of trial.

17. The fatuous attempt made on the side of the petitioner as well as revision petitioners is that they are innocent persons. But in the final report, necessary materials are available for the purpose of knowing that the first accused has misused his official position so as to facilitate accused Nos.2 and 3 to bring out dutiable goods without paying duty. Unless a prior agreement/meeting of minds has happened, the first accused would not have gone upto conveyor belt and the accused Nos.2 and 3 would not have made such kind of attempt to bring out dutiable goods without paying duty and that too, by using Green Channel. Therefore, viewing from any angle, this Court is of the view that sufficient materials are available so as to proceed against the accused Nos.1 to 4.

18. The Trial court after considering the alleged involvement of the accused Nos.2 to 4 has rightly dismissed the petition filed by them. In view of the foregoing enounciation of both factual and legal aspects, this Court has not found any acceptable force in the contentions put forth on the side of the petitioner and revision petitioners and therefore, both the proceedings are liable to be dismissed.

In fine, this criminal original petition as well as criminal revision case are dismissed. The connected miscellaneous petitions are also dismissed.

-s/d-
Assistant Registrar(Records)
dt:29/09/2015

True Copy

Sub-Assistant Registrar

To

1. The learned XII Additional Special Judge for CBI case, Chennai
2. The Deputy Superintendent of Police,CBI:ACB,Chennai
3. The IX Additional Special Judge for CBI Cases,
   IX Additional City Civil Court, Chennai

+1 cc to Mr.N.Baskaran, Advocate sr.51058

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