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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21-01-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Revision Case Nos.28 and 29 of 2013
and Criminal Original Petition No.853 of 2013

In CrI.R.C.No.28 of 2013:

S. Rathinavelu
S/o.Dr.C.N. Satchidanandam
Old.No.18, Door No.3/291
Maharajapuram II St., (Ramar Street)
Santhosh puram, Chennai - 73

... Petitioner/ Respondent
/Accused 4

In CrI.R.C.No.29 of 2013:

1. M/s. Boss Infrastructure Pvt. Ltd.,
Rep. by its Managing Director
Mr. A.P.Oree(A2)

2. S. Seran

3. A.P. Oree

...Petitioners / Respondent/
Accused 1 to 3

In CrI.O.P.No.853 of 2013:

P. Ravi

... Petitioner / Petitioner/
Accused 5

Vs.

State rep.
by the Inspector of Police
SPE:CBI:ACB: Chennai
Crime No.RC.MA1.2008.A.0003

... Respondent
in all the cases

Criminal Revision Cases filed under Section 397 and 401, Cr.P.C., to call for the records and set aside the order passed in CrI.R.C.Nos.137 and 138 of 2011 dated 15-11-2012 on the file of the III Additional City Civil Court and Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973 to call for the records and set aside the order dated 15-11-2012 passed in CrI.R.C.No.69 of 2012 on the file of the III Additional City Civil Court in CrI.M.P.No.1515 of 2011 in C.C.No.1578 of 2009 on the file of the Additional Chief Metropolitan Magistrate at Egmore.



For petitioners

:: Mr. N. R. Elango, SC for
Mr. M. Krishnamoorthy

For respondent :: Mr. B. Mohan, Spl.P.P. for CBI cases

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COMMON ORDER

These criminal revision cases and criminal original petition have been preferred against the orders passed in Crl.R.C.Nos.137 and 138 of 2011 and 69 of 2012 by the Additional City Civil Court, Chennai.

2. The petitioner in Crl.O.P.No.853 of 2013, as petitioner has filed Crl.M.P.No.1515 of 2011; the revision petitioner in Crl.R.C.No.28 of 2013, as petitioner has filed Crl.M.P.No.1439 of 2009; the revision petitioner in Crl.R.C.No.29 of 2013, as petitioner has filed Crl.M.P.No.1625 of 2009, in C.C.No.1578 of 2009 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

3. In all the petitions it is averred that the respondent has filed a final report wherein the petitioners have been arrayed as accused Nos.1 to 5. Further, it is averred in the petition that a contract has come into existence between the first accused and Chennai Petroleum Corporation Limited, Manali('CPCL' in short), with regard to paving blocks for pavement and pathway in Refinery - III, Expansion Area in CPCL premises at Manali. The first and second accused by using required quantity of Cement have executed contractual work. There is no deviation on the part of the first and second accused. After completing the concerned work, final payment has been made. But the respondent, without any source has investigated to the effect that all the accused have fabricated so many documents, seals etc., and further, the first and second accused have not used the agreed Metric Tonnes of Cement and thereby, caused loss to the tune of Rs.4.75 lacs to CPCL. Further, it is averred in all the petitions that the first and second accused and the remaining accused have not done any illegal acts so as to get personal gain. Under the said circumstances, these petitions have been filed under Section 239 of the Code of Criminal Procedure, 1973 praying to discharge from the proceedings of Calendar Case No.1578 of 2009.

4. The Trial Court has dismissed Crl.M.P.No.1515 of 2011, Crl.M.P.No.1625 of 2009 and allowed Crl.M.P.No.1439 of 2009. Against the dismissal orders passed in Crl.M.P.No.1515 of 2011, Crl.R.C.No.69 of 2012 and against the dismissal order passed in Crl.M.P.No.1625 of 2009, Crl.R.C.No.138 of 2011 and against the order allowing Crl.M.P.No.1439 of 2009, Crl.R.C.No.139 of 2011 have been filed on the file of the III Additional City Civil Judge, Chennai.

5. The III Additional City Civil Judge, Chennai after hearing arguments of both sides and upon perusing the relevant records, has dismissed Crl.R.C.No.69 of 2012, Crl.R.C.No.138 of



2011 and thereby, confirmed the dismissal orders passed in Crl.M.P.Nos.1515 of 2011 and 1625 of 2009 by the Trial Court. The III Additional City Civil Judge, Chennai has allowed Crl.R.C.No.137 of 2011 and thereby, set aside the order passed in Crl.M.P.No.1439 of 2009 by the Trial Court and ultimately, dismissed Crl.M.P.No.1439 of 2009. Against the orders passed in Crl.R.C.No.69 of 2012, Crl.O.P.No.853 of 2013 has been preferred. Likewise, against the orders passed in Crl.R.C.Nos.137 and 138 of 2011, Crl.R.C.Nos.28 and 29 of 2013 have been filed.

6. Since common questions of law and facts are involved, common order is passed.

7. The case of the prosecution is that the first accused viz., M/s. Boss Infrastructure Private Limited situates at Plot No.16, 4th Floor, Harington Road, Chetpet, Chennai. The second accused viz., Seran and the third accused viz., Oree are the Directors of the first accused. The fourth accused viz., Rathinavelu has served as a Supervisor of the first accused. The fifth accused viz., E. Ravi has served as a Supervisor of M/s. P & C Constructions Private Limited. During the year 2004-2005, the accused Nos.1 to 5 and the approver by name Senthil Kumar, have hatched conspiracy at Chennai and other places, to cheat the CPCL, Manali, a Government of India Undertaking in the matter of providing paving blocks (interlock type) for pavement and pathways on the side of the roads at Refinery - III Expansions. In pursuance of their conspiracy, the second and third accused have used lesser quantity of Cement other than required quantity. The fourth and fifth accused and approver have fabricated letters of entry bearing forged CISF seals to show that 699.4 MTs of Cement has been brought into the premises of CPCL for execution of the above work. But, in fact, only 534.4 MTs of Cement has been brought in and used for work. Under the said circumstances, all the accused have caused a loss to the tune of Rs.4.75 lakhs to CPCL.

8. The learned Senior Counsel appearing for the petitioner as well as criminal revision petitioners has repeatedly contended that the first accused has entered into an agreement for the purpose of constructing pathway and pavements by using paving blocks. The second and third accused are its Directors and in pursuance of the said contract, the first accused has executed the same and after getting completion report, final payment has also been given to the first accused and after lapse of four years, samples have been taken and put to analysis by Indian Institute of Technology, Madras and further, the respondent has not received any source of information with regard to alleged conspiracy and also wrongful loss caused to CPCL. Under the said circumstances, the accused Nos.1 to 5 have filed discharge petitions and the Trial Court has erroneously dismissed the petitions filed by the first, third and fifth accused and rightly allowed the petition filed by the fourth accused. But the First Appellate Court has erroneously dismissed the revision cases filed by the first, third and fifth accused and also erroneously dismissed the petition filed by the fourth accused and therefore, the impugned orders



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clearly strengthened by the statements given by the witnesses mentioned supra. Therefore, it is quite clear that in order to substantiate the allegations mentioned in the final report, sufficient materials are available on the side of the prosecution.

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13. It is true that without proper source of information, the respondent has conducted investigation. But at the same time, the approver has given clear statement and some of the witnesses have given identical statements and therefore, the first limb of argument advanced on the side of the petitioners and revision petitioners cannot be accepted. It is also true that after lapse of four years, scientific analysis has been done by an Official of Indian Institute of Technology and he has given his report, wherein it is stated that the work done is not in consonance with the requirement mentioned in the contract.

14. Even assuming that the analysis report cannot be looked into due to lapse of time as pointed out earlier, replete evidence is available on the side of the prosecution so as to come to a conclusion that due to conspiracy some material documents have been forged and in pursuance of the same lesser quantity of Cement has been utilized for executing agreed work. Therefore, viewing from any angle, this Court has not found any merit in the contentions put forth on the side of the petitioner/ criminal revision petitioners and altogether, the Criminal Original Petition and Criminal Revision Cases are liable to be dismissed.

In fine, the Criminal Original Petition and Criminal Revision Cases are dismissed.

Sd/-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

glp

To

1. The III Additional Judge
City Civil Court, Chennai

2. The Additional Chief Metropolitan Magistrate
Egmore.

3. Thro The chief Metropolitan Magistrate, Egmore

4. The Inspector of Police
SPE:CBI:ACB: Chennai
Crime No.RC.MA1.2008.A.0003



5. The Public Prosecutor (CBI CASES)
Chennai

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1 cc to Mr.M. Krishnamurthy, Advocate, Sr. 3852

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and Criminal Original Petition No.853 of 2013

AD (CO)
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