IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 07.01.2016
DELIVERED ON : 28.01.2016
CORAM
THE HONOURABLE MR.JUSTICE A.SELVAM
Crl.O.P Nos.29344 of 2014, 5063 and 5064 of 2015

S.Karunakaran .. Petitioner in all Crl.O.Ps.

Vs.

State by Inspector of Police
CBI, ACB, Chennai in
RC No.40(A)/2011 of CBI/ACB/Chennai .. Respondent in Crl.O.P.No.29344/2014

State by Inspector of Police
CBI, SPE: ACB, Chennai in
RC No.37(A)/2010
Shastri Bhavan, Chennai .. Respondent in Crl.O.P.Nos.5063 & 5064 of 2015

Prayer in Crl.O.P.No.29344/2014:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.46 of 2013 onthe file of the learned XIV Additional Special Judge for CBI Cases, Chennai, quash the proceedings against the petitioner in the above C.C.No.46 of 2013.

Prayer in Crl.O.P.No.5063/2015:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.18 of 2012 onthe file of the learned IX Additional Special Judge for CBI Cases, Chennai, quash the proceedings so far as the petitioner is concerned.

Prayer in Crl.O.P.No.29344/2014:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.3 of 2012 on the file of the learned IX Additional Special Judge for CBI Cases, Chennai, quash the proceedings insofar as the petitioner is concerned in the above case.

For Petitioner : Mr.K.Ravi Anantha Padmanabhan

For Respondent :Mr.K.Srinivasan

COMMON ORDER

These Criminal Original Petitions have been filed under section 482 of Code of Criminal Procedure, 1973 praying to call for records relating to Calendar Case Nos.46 of 2013, 18 of 2012 and 3 of 2012 pending on the file of XIV Additional Special Judge for CBI Cases, Chennai and IX Additional Special Judge for CBI Cases, Chennai and quash the same.

2. The material averments made in Crl.O.P.No.29344 of 2014 can be summarized as follows:

The petitioner has served as Director of SAMEER, a Research Organisation between September 2009 and August 2010. During that period, an arrangement has been made to send Scientists to Georgia Institute of Technology (GIT), USA for Phase II programme and membership fee has also been paid to GIT, USA. The specific case of the prosecution is that the petitioner failed to perform his duties and thereby caused loss to Government of India to the tune of Rs.1,75,00,000/-. It is further averred in the petition that the entire case of the prosecution is groundless. No loss has occurred to the Central Government, since the training programme is nothing but free of cost. The final report filed by the respondent contains only opinion of Investigating Officer. No amount has been remitted by the Government of India for the purpose of sending Scientists for both Phase Nos.I and II. The project period has come to an end during March 2010. The petitioner has sought explanation from the Government of India and to that effect, a letter has been addressed on 3.9.2010. A reply has been received. Further unless and until the Government sanctions grant in aid, SAMEER cannot spend more on its own in sending Scientists to GIT, USA. The petitioner has demitted office on 25.8.2010. The petitioner is not in any way responsible for not sending Scientists to GIT, USA. The respondent has erroneously filed a final report and the same has been taken on file in Calendar Case No.46 of 2013. Under the said circumstances, present petition has been filed for getting the relief sought therein.

3. In the counter filed on the side of the respondent, in paragraph No.3, it is averred like thus:

Against the petitioner, a case has been registered in RC MA 1 2011 A 0040 under section 120-B r/w 420 of Indian Penal Code and also under section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Apart from the petitioner, other persons have also been arrayed as accused. The specific case of the prosecution is that training to be provided by Packaging Research Centre is in addition to PRC members. Accordingly, a letter has been addressed by PRC every year for sending 5 Scientists. During I Phase programme, some Scientists have been sent. But, during II Phase, for a period from 1.9.2009 to 31.8.2010, no Scientists have been sent for training and during that period, the petitioner has been served as Chief Investigator of EDC Project and he should have necessary arrangements. Since the petitioner has not made proper arrangements, a loss of Rs.1,75,00,000/- has occurred to the Government of India. Since due to lapses on the part of the petitioner, the II Phase programme has failed, the petitioner has to be prosecuted and therefore, present petition deserves to be dismissed.

4. The material averments made in Crl.O.P.No.5063 of 2015 can be stated like thus:

The petitioner, from 1.5.2008 to 31.8.2010, has served as Director of SAMEER, Chennai Unit. He awarded a contract of supply of Voice and Data Multiplexer/De-Multiplexer to a Company, who has been arrayed as second accused. The specific case of the respondent is that the second accused is not possessed of requisite qualification, manufacturing experience and financial background. Further, the second accused has delivered a defective quality, but the Head of the Department recommended for payment of Rs.1,90,020/- and thereby caused loss to SAMEER. Further, it is averred in the petition that the second accused has already been served for a period of 5 years in Indian Telephone Industries, Bangalore in some technical area, i.e., voice and data communication. Therefore, it is wrong to say that the second accused is not possessed of requisite qualification. On 13.10.2006, a purchase order has been made by the purchasing department and not by the petitioner. The second accused has delivered project as per order within three months at 16 KBPS. On demonstration done by the second accused, the Head of Division accepted it and found the product to be in order. On 12.2.2007, testing course has been conducted by SAMEER and ultimately found that voice quality needs improvement. The delay mentioned in the final report has not been caused due to fault of the petitioner and under the said circumstances, present petition has been filed for getting the relief sought therein.

5. In the counter filed on the side of the respondent in paragraph NO.6, it is averred that on 2.11.2006, purchase order has been issued by SAMEER in favour of the second accused known as M/s.Wavetech Electronics at a cost of Rs.2,97,000/- per unit with condition to deliver the same within a period of 3 months and payment should be made as per delivery. On 16.1.2007, the said firm supplied VDM and on 12.2.2007, necessary tests have been conducted by one Morougayane, Scientist "E" and Head of Digital Signal Processing Division and ultimately it is found deficient and he demanded improvement in its voice quality to meet the standard of end user. The Voice Data Multiplex (VDM) has been retained by DSP Division and faulty Printed Circuit Board (PCB) has been returned to second accused. After having discussion, 60% payment has been released to the tune of Rs.1,96,020/- with an assurance to rectify PCB and hand over to SAMEER immediately and after some time, 8 reminders have been issued to the second accused, but there is no response.

The proprietor of the second accused by name Rathinavel has had close association with the petitioner. Under the said circumstances, investigation has been done and final report has been filed against the petitioner and others under section 120-B r/w 420 IPC and also under section 13(2) r/w 13(1)(d) of Prevention of Corruption Act and the same deserves to be dismissed.

6. The material averments mentioned in Crl.O.P.No.5064 of 2015 can be stated like thus:

During the relevant period, the petitioner has served as a Senior Scientist in an organisation called SAMEER and the same is nothing but a non-profit organisation. The petitioner has served as a Programme Director. The third accused, viz., Kini has served as Director during relevant period. The said SAMEER functions under the administrative control of Department of Information Technology, Ministry of Communication. The specific case of the prosecution is that the accused 1 to 3 have conspired together and without following procedures of tender auction, only 10 companies have been invited to take part in bid. Further, TOT agreement has been given to the second accused against the terms and conditions. Further it is averred in the petition that necessary arrangements and sanctions have been given by officials of SAMEER and not by the petitioner. Even identification of vendors has been done by the Director of SAMEER. The petitioner has no power in decision making. The accused 1 to 3 cannot be called as public servants. It is needless to allege that some public sector undertakings have been included. It is also equally false to allege that the second accused has not quoted selling prices. Under the said circumstances, present petition has been filed for getting the relief sought therein.

7. In the counter filed on the side of the respondent, it is averred that the petitioner has served as Director in SAMEER, Chennai. The second accused and remaining accused have hatched conspiracy in awarding transfer of technology (TOT) contract to the second accused, that the said firm is not possessed of requisite qualifications, manufacturing experience. Further, the second accused has not been able to deliver IRLMs to BEL before the stipulated date of 31.3.2010 and further no dispatch number is given in the office copy. The petitioner has acted in favour of the second accused. Sufficient materials are available to proceed against the petitioner and therefore, the present petition deserves to be dismissed.

8. Since common questions of law and facts are involved in all the petitions, common order is pronounced.

9. The specific contention put forth on the side of the respondent is that in Crl.O.P.No.29344 of 2014, due to lapses on the part of the petitioner, five Scientists have not been sent to GIT, USA and thereby caused loss to the tune of Rs.1,75,00,000/- to the Government of India.

10. The learned counsel appearing for the petitioner has befittingly contended in the present petition to the effect that the petitioner is alone not responsible for not sending 5 Scientists to GIT and in fact, the petitioner has performed his part properly and everything is borne out by records, but the respondent without conducting proper investigation, has laid a final report on the file of the trial court and the same has been taken on file in Calendar Case No.46 of 2013 and therefore, the proceeding against the petitioner is liable to be quashed.

11. Per contra, the learned Special Public Prosecutor has also equally contended that during the relevant period, the petitioner has served as Chief Investigator of EDC Project and only due to his lapses, five Scientists have not been sent to GIT, USA and thereby caused loss to the tune of Rs.1,75,00,000/- to the Government of India and proper investigation has been done and ultimately filed a final report and the same has been taken on file in Calendar Case No.46 of 2013 on the file of the trial court and therefore, the present petition deserves to be dismissed.

12. Before analyzing the rival submissions made on either side, certain admitted facts have to be mentioned for easy reference. It is an admitted fact that Government of India has sent 5 Scientists to GIT, USA in Phase No.I for getting training. The said training has been given at the cost of the said GIT and no amount has been incurred by the Government of India. Likewise, for II Phase, 5 Scientists have to be sent to that GIT.

13. The specific allegation made against the petitioner is that during the relevant period, the petitioner has served as Chief Investigator of EDC Project and he failed to perform his part and therefore, loss has occurred to the tune of Rs.1,75,00,000/-.

14. For considering the rival submissions made on either side, the Court has to look into the following documents:

On 8.3.2006, a proposal has been sent and the same has been approved by GOI. On 30.3.2006, Government of India has given its approval to various projects including the above proposal. On 5.7.2006, the Government of India has notified the same. On 2.11.2006, details of payments payable towards consortium membership and PRCX membership have been prepared.

On 26.3.2007, second approval has been given by GOI for the project. On 27.4.2007, funds have been released for the project after 2nd approval. On 1.7.2009, project period has been extended upto 38.6.2010 by the Government of India. On 16.7.2010, GAT/PRC consortium membership has been extended till 31.5.2011. On 17.8.2010, the petitioner has handed over 4476 pages of papers to his successor in office (Next Chief Investigator), since he demitted office on 25.8.2010.

15. In fact, this Court has perused certain documents filed on the side of the petitioner and ultimately found that the petitioner has performed his part properly without any lapse. Further, all steps have been properly taken.

16. The main contention of the respondent is that in sending 5 Scientists to GIT, in II Phase programme, the sole responsibility lies with the petitioner, but the documents filed on the side of the petitioner would reveal otherwise. In sending 5 Scientists to GIT, various procedures have to be followed and the Government of India is also having role in the said process. Further, the allegation made on the side of the respondent in sending Scientists to the said programme against the petitioner is really baseless.

17. The specific argument put forth on the side of the petitioner is that even for selecting Scientists, a committee has been appointed and to that effect, necessary document has been filed on the side of the petitioner. Considering the fact that the petitioner has done his part properly without any lapse and also considering the fact that there is no ground for fixing sole responsibility upon the petitioner, this Court is of the view that the petitioner has unnecessarily been prosecuted in the present case. Therefore, the relief sought for in Criminal Original Petition No.29344 of 2014 can be granted.

18. Now the Court has to analyze as to whether the relief sought in Crl.O.P.Nos.5063 and 5064 of 2015 can be granted to the respondent?

19. The learned counsel appearing for the petitioner has contended with great vehements that the contract of supply of Voice and Data Multiplexer/De-Multiplexer has been entered into with the second accused and the second accused as per agreement has delivered products and the same have been checked by the concerned official and the petitioner has no connection whatsoever with the allegations made against him and during the relevant period, the petitioner has served only as a Programme Director and further the petitioner has not taken part in awarding Transfer of Technology contract to the second accused and the petitioner has been falsely implicated

in Calendar Case Nos.18 of 2012 and 3 of 2012 and therefore, the petitioner is entitled to get reliefs sought in the petitions.

20. The learned Special Public Prosecutor has contended that with regard to the averments made in Crl.O.P.Nos.5063 and 5064 of 2015, already a petition has been filed under section 482 of the Code of Criminal Procedure, 1973 and the same has been dismissed by this Court. Under the said circumstances, these petitions are not legally maintainable and further, the petitioner and other accused in pursuance of their conspiracy, have done so many infractions by way of flouting existing norms and in fact, the petitioner has favoured the second accused and further, on the side of the prosecution, three witnesses have been examined. Under the said circumstances, these petitions are liable to be dismissed.

21. The learned counsel appearing for the petitioner has drawn the attention of the Court to the following decisions:

(i) In 1979 Crl.L.J.382 (Kashi Ram Dhandania vs. Union of India), it is held that dismissal of earlier petition on same facts for quashing proceedings is no bar to subsequent petition.

(ii) In 2013 -1 L.W (Crl.) 369 (Rajiv Thapar and others vs. Madan Lal Kapoor), the Hon'ble Supreme Court has held that Section 482 of the Code of Criminal Procedure to quash the initiation of the prosecution against an accused can be filed at the stage of issuing process or at the stage of committal or even at the stage of framing charge.

(iii) In 2012 (1) SCC 130 (Shiv Shankar Singh vs. State of Bihar and another), the Hon'ble Supreme Court has held that second complaint lies if there are some new facts or even on the previous facts, if the special case is made out.

(iv) In 2014 (7) SCC 215 (Rishipal vs. State of U.P.and another), the Hon'ble Supreme Court has held as follows:

> "Before we deal with respective contentions advanced on either side, we deem it appropriate to have thorough look at Section 482 Cr.P.C. which reads:
>
> > "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any orders of this Code or to prevent abuse of process of any Court or otherwise to

secure the ends of justice. "

> A bare perusal of Section 482 Cr.P.C makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of Court and to secure ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising th same is an exception, but not a rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The Courts have to be very circumspect while exercising jurisdiction under section 482 Cr.P.C"

22. From a cumulative reading of the decisions, it is easily discernible that dismissal of a petition filed under section 482 of Code of Criminal Procedure, 1973 is not a bar to file a fresh petition under the said section. Further, on the basis of new facts and circumstances, Section 482 of the said Code can be invoked.

23. It is an admitted fact that with regard to allegations made in Crl.O.P.Nos.5063 and 5064 of 2015, already a petition has been filed and the same has been dismissed simply on the ground that the petitioner has made an endorsement to the effect that he not pressed the same. Therefore, it is quite clear that the earlier petition filed by the petitioner has not been decided on merits.

24. Now the Court has to look into the divergent contentions put forth on either side. The specific case of the prosecution is that on 2.11.2006, a purchase order has been issued by SAMEER in favour of the second accused firm known as M/s.Wave Tech Electronics Private Limited at a cost of Rs.2,97,000/-. The second accused is not possessed of requisite qualification, manufacturing experience and financial background. Further allegation of the prosecution is that the second accused has supplied only deficient materials. Even though the second accused has supplied only deficient materials, certain amount has been released with connivance of other accused.

25. The specific contention put forth on the side of the petitioner is that the petitioner has had no direct connection whatsoever with the contract and the same has been reached only through proper person.

26. It is seen from the final report that the specific contention of the prosecution is that all the accused have

conspired together and in pursuance of their conspiracy, a contract has been entered into with the second accused, who is not having requisite qualification, manufacturing experience and also financial background. The further allegation is that without conducting proper tenders or without inviting proper tenderers from reputed institutions, by way of flouting the existing terms and conditions as well as norms, contract has been awarded in favour of the second accused to purchase materials and the materials supplied by the second accused are deficient.

27. Considering the specific allegations made on the side of the prosecution and also considering that in awarding contract in favour of the second accused, the petitioner is also having role and further on the side of the prosecution, so many lapses are found, the Court cannot come to a conclusion that the petitioner has had no connection whatsoever with the allegations made in the final reports relating to C.C.Nos.18 of 2012 and 3 of 2012.

28. Further, it is seen from the records that the accused including the petitioner have faced charges under section 120-B r/w 420 of Indian Penal Code along with Section 13(2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988. Since Section 120-B IPC has also been included in the final reports, the involvement of the petitioner and other accused can be decided only at the time of trial, after taking proper evidence. Further, in C.C.Nos.3/2012 and 18 of 2012, on the side of the prosecution, some witnesses have been examined and therefore, these cases are part heard.

29. Considering the nature of allegations made against the petitioner in both cases and also considering that prima facie materials are available on the side of the prosecution, the contentions put forth on the side of the petitioner in both cases cannot be accepted and altogether Criminal Original Petition Nos.5063 and 5064 of 2015 are liable to be dismissed.

In fine, Criminal Original Petition No.29344 of 2014 is allowed and the proceeding against the petitioner in C.C.No.46 of 2013 is quashed.

Criminal Original Petition Nos.5063 and 5064 of 2014 are dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ajr
To
1. XIV Additional Special Judge for CBI Cases, Chennai,

2. IX Additional Special Judge for CBI Cases, Chennai,

3. Inspector of Police,
CBI, ACB, Chennai in
RC No.40(A)/2011 of CBI/ACB/Chennai ..

4. Inspector of Police
CBI, SPE: ACB, Chennai in
RC No.37(A)/2010
Shastri Bhavan, Chennai

5.The Public Prosecutor, High Court, Madras.

+3 ccs to Mr.K.Ravi Anantha Padmanaban, Advocate, sr.5618 to 5620

+1 cc to Mr.K.Srinivasan, Advocate, sr.5219

Crl.O.P Nos.29344 of 2014,
5063 and 5064 of 2015

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