IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.O.P.No.29760 of 2013

Shakti International Pvt. Ltd.,
Rep. by MD Mr.Srivinivaas Sirigeri,
No.303B, Alpha Main Street,
Hiranandani Business Park,
Powai, Mumbai-400 076. ... Petitioner

Vs.

1. State by
Sub-Inspector of Police,
Central Crime Branch,
Chennai.
(CCB X Cr.No.189 of 2012).

2. Union of India by
Central Bureau of Investigation,
BS & FC, Bangalore. ... Respondents

Prayer: Petition filed under Section 482 of Cr.P.C., praying to set aside the cognizance taken in the final report filed in C.C.No.503 of 2013 on the file of the learned III Metropolitan Magistrate, George Town, Chennai and to transfer the investigation to the second respondent and to direct them to file a final report.

For Petitioner : Mr.K.P.Anantha Krishna

For Respondents : Mr.C.Emalias,
Additional Public Prosecutor

ORDER

This petition has been filed by the petitioner seeking to set aside the cognizance taken in C.C.No.503 of 2013 on the file of the learned III Metropolitan Magistrate, George Town, Chennai, on the final report filed by the 1st respondent in connection with the case in Crime No.189 of 2012.

2.In the affidavit filed in support of this petition, it has been averred by the petitioner, as follows:-

2(1)The petitioner herein is the defacto-complainant. The 1st accused in this case is one M/s.Indhumathi Refineries (P) Ltd. Company, which is dealing in edible oil. The 1st accused/company approached the petitioner herein seeking to import 2500 metric tons of Palmolien oil from Malaysia, for their company. The 1st accused further represented that they would take delivery of the stock on making the payment. Believing their words, edible oil was imported into India and placed in a warehouse of the 1st accused-company itself. In the meanwhile, a company by name Intertek was engaged to do the specific works of stock control/monitoring. An agreement was accordingly signed on 05.06.2011 between the petitioner and Intertek represented by T.D.Sindhe and P.B.Singh (deleted accused, ranking A4, A5 & A6 respectively) at Mumbai, which envisaged the modus for the 1st accused to take delivery of the stock.

2(2) The basis for agreement was that the services of Intertek, being a reputed company dealing with proven track record of stock control/monitoring, would be used and accordingly, the complete stock of 2500 metric tons was entrusted in their control under specific contractual obligation. Some of the important points of the agreement/contract were that they would take care of the stock and hand over the same to the 1st accused on confirmation by the petitioner. Intertek was also duty bound to provide daily statements of the exact stock retained in their control and for this purpose, Intertek received money as charges. Thus, by virtue of the agreement entered at Mumbai with the company represented by the accused (now deleted), Intertek obtained complete dominion of the stock and was duty bound to abide by the agreement. The company also kept sending some stock reports on a daily basis to the petitioner. On some suspicion, an urgent report from Intertek through surprise check was sought for by the petitioner. For some reasons there was delay on issuing the report and the report, which was received after a few days, mentioned that stock was not available and not in the custody of the company. This came as a complete shock to the petitioner who had been assured by the deleted accused that the stock would be well taken care of by the company and for that sole purpose the Intertek was receiving money from them. They were legally bound to protect the interest of the defacto-complainant. On an enquiry made by the petitioner it came to light that the 1st accused had taken the stock with the aid and collusion of other accused and false status reports had been sent to the petitioner from the company. Therefore, money was demanded from the 1st accused; but, they were evasive. Left with no other efficacious remedy, a complaint was given by the petitioner before the police and the same was registered in CCB X Cr.No.189 of 2012 for offences under Sections 406, 420 and 477 A r/w 34 r/w 109 IpC. A huge amount of Rs.11 crores is the value of the stock which became the subject matter of the investigation and the persons cited in the FIR as accused were Indhumathi Refineries (A1), S.Raji (A2), R.Shenbagam (A3), Intertek (A4), T.D.Shinde (A5), P.B.Singh (A6), A.Suresh (A7), Dinesh (A8).

2(3)Subsequent to the registration of the FIR, investigation was claimed to have been done and the same has culminated into a final report. In the final report, the names of the Accused 5 & 6 viz., T.D.Shinde and P.B.Singh were removed, by a memo filed by the Investigating Officer. In fact, the loss of the property/stock is due and attributable solely to the action of the deleted accused persons who were entrusted with the sole responsibility of taking care of the stock. Further, in the investigation conducted by the 1st respondent, relevant facts were not brought out. It is further case of the petitioner that the petitioner herein was summoned by the 2nd respondent-Police to Bangalore with reference to a case being investigated by the 2nd respondent on the same accused. The petitioner was given to understand that some banks have also given a complaint of similar nature on these accused and they are being investigated by the 2nd respondent. According to the petitioner, if the trial is conducted on the present final report, there may not be sufficient credible evidence to prove the charge beyond any reasonable doubt. Thus, he sought for transfer of the investigation to the 2nd respondent-CBI, by setting aside the cognizance taken by the learned Magistrate on the basis of the final report filed by the 1st respondent-Police.

3.The prosecution opposed the prayer of the petitioner, by filing a detailed counter, contending that on completion of investigation, chargesheet has been filed for the alleged offences punishable under Section 406, 420 and 477(A) IPC r/w 34 IPC, 409, 467 & 468 r/w 109 IPC before the learned III Metropolitan Magistrate, George Town, Chennai, and the same was taken on file as C.C.No.503 of 2013 on 14.12.2013. The next hearing date is dated 24.07.2015, for examination of prosecution side witness. The 1st respondent has conducted the investigation in a fair, free and impartial manner in accordance with law. Thus, they sought for dismissal of the petition.

4.It is the main submission of the learned counsel for the petitioner that if the trial is conducted on the present final report filed by the 1st respondent, there may not be sufficient credible evidence to prove the charge beyond any reasonable doubt. Further more, the investigation has not been conducted in a proper manner. The statements of the deleted accused persons are in Hindi. The deleted accused persons had major role in the offence; but, without any valid reason, their names were deleted from the final report. In fact, A5 & A6 whose names were deleted from the final report, are the employees of the Intertek (A4) and they have been the face of the company interacting with the petitioner. Any criminality or relationship for the purpose of criminal offence of breach of trust can be traceable only from the accused 5 & 6; but, shockingly, their names have been deleted in the final report. Further, for similar offence, already a complaint is pending before the 2nd respondent-CBI as against the deleted accused 5

& 6. In this regard, the learned counsel for the petitioner has relied upon the judgment reported in 2009(6) SCC 661 [Chittaranjan Mirdha Vs. Dulal Ghosh) and submitted that even if the chargesheet is filed omitting some of the accused without any reason, then by setting aside the final report, fresh investigation could be ordered. In the instant case, already similar case is pending against the some accused in this case before the 2nd respondent-CBI. Thus, the learned counsel for the petitioner sought for setting aside cognizance taken on the present final report and to transfer the case to the 2nd respondent-CBI for fresh investigation.

5.The learned Additional Public Prosecutor opposed the prayer made by the petitioner, stating that investigation has already been conducted in fair and impartial manner and after completion of investigation, chargesheet has also been filed before the Court; therefore, at this stage, the prayer made by the petitioner is not maintainable. Further, it is submitted by the Additional Public Prosecutor that the petitioner has not given any particulars about the case, which is said to be pending against the accused persons before the 2nd respondent-CBI. Thus, he sought for dismissal of the petition.

6. I have carefully heard the submissions made on either side and perused the materials available on record.

7.It is the main submission of the learned counsel for the petitioner that in the present case, no fair and proper investigation has been conducted by the 1st respondent-Police; that if the trial is conducted on the present final report, there may not be sufficient credible evidence to prove the charge beyond any reasonable doubt. First of all, in my considered opinion, the said ground raised by the petitioner cannot serve as a ground to set aside the cognizance taken on the final report filed by the 1st respondent and to order for reinvestigation or transfer of investigation. No doubt, this Court can order for reinvestigation/fresh investigation or transfer of investigtion, if the investigation exfacie is unfair, tainted, mala fide and smacks of foul play. But, as per the dictum laid down in the judgment relied upon the learned counsel for the petitioner, (2013) 5 SCC 762 [Vnay Tyagi Vs. Irshad Ali @ Deepak and others], such power has to be exercised fairly, only in rarest of rare cases and not in all cases.

8.In the instant case, the petitioner seeks transfer of investigation on the ground that as against some of the accused in this case, for the similar offence, already a case is pending before the 2nd respondent-CBI in respect of the complaint given by some banks. But, no material evidence has been produced on the side of the petitioner to substantiate their contention. The present petition has been filed by the petitioner only with bald and vague allegations, without producing any tangible material evidence. By merely accepting the statements made in the petition, this Court cannot order for transfer of the investigation. Further, only when this Court comes to the conclusion that the investigation was not conducted by the 1st respondent in a proper and fair manner and the investigation was conducted in violation of the settled principles of investigative cannons, this Court can order for reinvestigation or transfer of investigation. But, in the instant case, I do not find any such situation. I do not find any merit in the present petition and the same is liable to be dismissed.

In fine, the criminal original petition is dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The III Metropolitan Magistrate,
   George Town, Chennai.

2. The Sub-Inspector of Police,
   Central Crime Branch,
   Chennai.
   (CCB X Cr.No.189 of 2012).

3. Central Bureau of Investigation,
   BS & FC, Bangalore.

4. The Public Prosecutor,
   Madras High Court, Madras.

+ 1 cc to Mr.K.P.Anantha Krishna, Advocate Sr 8928 (26/2/16)

Crl.O.P.No.29760 of 2013

KK(CO)
CA(22/02/2016)