

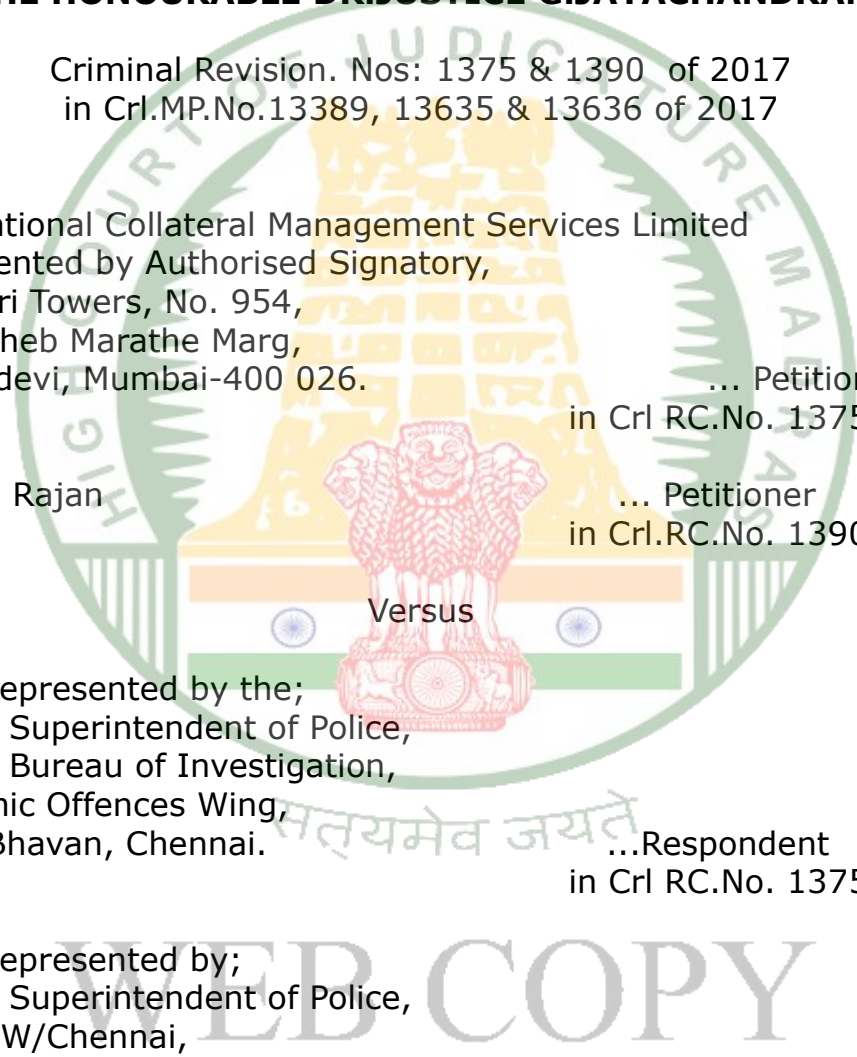
IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 23.11.2017	Date of Pronouncing Judgment 06.12.2017
--	--

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision. Nos: 1375 & 1390 of 2017
in CrI.MP.No.13389, 13635 & 13636 of 2017

- 
1. M/s. National Collateral Management Services Limited
Represented by Authorised Signatory,
Gayathri Towers, No. 954,
Appasaheb Marathe Marg,
Prabhadevi, Mumbai-400 026. ... Petitioner
in CrI RC.No. 1375 of 2017
 2. Ganesh Rajan ... Petitioner
in CrI.RC.No. 1390 of 2017
- Versus
1. State Represented by the;
Deputy Superintendent of Police,
Central Bureau of Investigation,
Economic Offences Wing,
Rajaji Bhavan, Chennai. ...Respondent
in CrI RC.No. 1375 of 2017
 2. State Represented by;
Deputy Superintendent of Police,
CBI/EOW/Chennai,
(Crime No: RC No. 9E/2007/CBI/EOW
Chennai) ... Respondent
in CrI RC.No. 1390 of 2017

PRAYER in CrI R.C.No. 1375 of 2017: Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, against the order passed by the learned Chief Judicial Magistrate, Puducherry

declining refusing to discharge the Petitioner herein in Crl.M.P.No. 419 of 2017 in C.C.No. 63 of 2009 dated 24.07.2017.

PRAYER in Crl R.C.No. 1390 of 2017: Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in Crl MP No. 3392 of 2016 in C.C.No. 63 of 2009 on the file of the Chief Judicial Magistrate, Puducherry and discharge the petitioner from C.C.No. 63 of 2009 by setting aside the order dated 24.07.2017.

For Petitioner : Mr. V.Sounder Rajan
in Crl RC.No. 1375 of 2017

For Petitioner : Mr. M. Selvam
in Crl RC.No. 1390 of 2017

For Respondents : Mr. K.Srinivasan,
in both petitions Special Public Prosecutor
for CBI cases

ORDER

These Revision petitions are directed against the order of the Chief Judicial Magistrate, Puducherry dismissing the petition filed for discharge under section 239 Cr.P.C,.

WEB COPY

2. Brief facts leading to filing of the final report against the petitioner is one Shri. Mahadevan, Deputy Tahsildar, Civil Supplies (CS&CA) Puducherry lodged a complaint with local police for alleged offence under 420 I.P.C r/w section 7 (1) (a)(ii) of Essential Commodities Act, 1955 and r/w Clause 6(4)(i)(ii) of Public Distribution

System (Control) order 2001. The said complaint was re-registered by CBI on reference by the Government on 31.12.2007 and after investigation, the final report has been filed, on the ground that pursuant to the Criminal Conspiracy during the year 2006 and 2007 at Kovilpatti, Chennai and other places of Tamil Nadu and Puducherry, PDS Rice meant for distribution for poor illegally procured and stored at warehouse at Puducherry showing the PDS Rice as stock of A1's Company and received loan from the ICICI Bank.

3. The National Collateral Management Service in short (NCMSL) acting as collateral Manager for ICICI Bank received the PDS rice brought by A1's accused Company and stored the same at designated warehouse. On receipt of the rice NCMSL is supposed to intimate the quality of the rice received, through arrival report. Only based on the said arrival report given by NCMSL, ICICI Bank will realise money to the company. In this case, (A-14) Arun David while serving as warehouse Manager representing NCMSL (A-15) had taken custody of PDS rice knowing fully well it is PDS rice, later the said rice stored in warehouse were sold by NCMSL to A-16 and (A-17) Parthasarathi on 21.08.2007. They in turn moved the stock from the warehouse to various designation based on the sale agreement entered between them and NCMSL as follow:-

Date	Destination	Quantity of Mts
13.09.2007	Gededarshana (Bangladesh)	2340
22.09.2007	Jorhat Town	1247
22.09.2007	New Guwahati	1241
07.10.2007	New Guwhati	2524
	Total	7352MTs

3. When remaining stock was about to be loaded in the wagon at Puducherry Railway Station, based on the information, Officials of Civil Supply and Consumer Affairs Department of Puducherry, inspected the stock on 27.10.2007 and found that goods were booked by M/s. PRS Traders as consignor as well as consignee. After the inspection of the Rice, they found that it is to be PDS rice. Hence 47654.75MT of rice was seized from the Railway wagons and from designated warehouses. Thus, as collateral Manager NCMSL received the PDS rice, knowing fully well it is meant for Public Distribution and later, sold the said rice to be transported away from Puducherry. In such circumstances, after completion of the investigation, final report has been filed against the National Collateral Management Service Limited and his representative Mr. Ganesh Rajan. The petitions for discharge before the Trial court did not found favour with the trial court. Hence the Revision Petition No: 1375 of 2017. (A-15) National Collateral Management Service Limited and 1390 of 2017 filed by (A-6) Ganesh Rajan is preferred.

4. The learned counsel for the petitioner in CrI.R.C. No. 1375 of 2017 submitted that the petitioner being a body corporate engaged in storage and collateral management service, cannot be prosecuted for the offence alleged in the final report as a collateral manager of the Scheduled Bank ICICI. The agricultural produce which was pledged by the borrower was taken into custody by the petitioner company and was stored in the designated warehouse. It has no independent transaction in the trade except to accept the agricultural produce for storage of the petitioner company. They have no knowledge of origin of the rice or the quality of the rice. Therefore, the company cannot be held liable for criminal prosecution.

5. The learned Special Public Prosecutor (CBI cases) submitted that the petitioner company have taken the responsibility of a collateral Manager and had entered into written agreement with the bank. In the said agreement, there is a specific clause, fixing responsibility on the petitioner company to verify the documents and information's furnished by the borrower about the goods before taking into possession of the goods and such information shall be prerequisite for the bank to realise the money.

6. Pointing out the relevant clauses in the agreement entered between the petitioner herein and the ICICI Bank, the learned Special Public Prosecutor (CBI cases) submitted that it is the obligation of NCMSL to correctly assess the quantity and supervise the drawing of the samples for quality check of the produce stored in the warehouse. Further, the petitioners shall monitor the produce lying in the warehouse and report the same to the bank from time to time. While there is a specific mandate on NSMSL that it should assess and certify the quality of the produce given to it for storing, several thousand metric-tonnes of PDS rice had been accepted by the accused company for storage and based on their report, ICICI Bank has realised the fund to A1 Company. Since enough material to charge the petitioner is available, this petition cannot be entertained.

5. The learned counsel for the Revision petitioner in CrI.R.C.No. 1390 of 2017 would submit that the name of the petitioner is not found in the FIR. No evidence to show that the sample from seized rice was drawn and sent for analysis. As a trader in rice and paddy, he purchased the rice from the farmers and sold to A1 Company. The evidence of the lorry drivers, who have alleged to have seen the paddy loaded in FCI Bag, or the gunny bag carrying rice had the seal of FCI, is not sufficient to infer the content of the bag is from FCI or PDS rice.

Except the vague evidence of those drivers, which will not stand the Judicial scrutiny, there is no other evidence to show that the petitioner was involved in transporting PDS rice and the rice seized from the railway godowns was supplied by them.

6. The learned Special Public Prosecutor (CBI cases) submitted that there are enough material to frame charges against the petitioner and it is not the statement of the lorry drivers LW.13 and LW.31 alone who have spoken about the involvement of the petitioner in the crime, but the analysis report received from the laboratory indicates that the rice seized are PDS rice and the bills recovered during investigation indicates that it was supplied by this petitioner and few others.

7. It is the out come of the conspiracy entered between petitioner and others at Kovilpatti, Chennai and other place of Tamil Nadu and Pondicherry. The PDS rice were procured from various parts of the state and transported to Pondicherry and stored in the warehouse at Pondicherry. To give seal of legitimacy for the stock, the conspirators have evolved a process to hypothecate the rice in the warehouse through Collateral Manager of ICICI Bank and thereafter, sell it to third parties. In the chain of conspiracy, each one of them had a role either in procuring, storing or transporting of PDS rice. In the light of the evidence available both oral and documentary, it is not a case fit to

discharge the petitioner from trial.

8. Heard the learned counsel for the petitioner and learned Special Public Prosecutor (CBI cases) and perused the document submitted by the prosecution in support of the case and the impugned order passed by the Trial Court.

9. There is enough evidence collected by the prosecution to show that the petitioner in 1390 of 2017 had involved in procurement of PDS rice and stored it at kovilpatti and later, transported to Pondicherry. Likewise on production of the stock before the Collateral Management (Petitioner in Crl.R.C.No.1375 of 2017) it is mandatory upon the collateral Management to verify the quality of the goods produced for storage. The lorry drivers loaded the rice at Kovilpatti had given statement that they are PDS rice. The transport bills issued by the petitioner, the chemical analysis report received from the laboratory put together indicates that PDS rice has been procured, stored and later attempted to be transported out clandestine. When oral and material evidence available indicating the guilty of the petitioners and as a company (Petitioner in Crl.R.C.No.1375 of 2017) has accommodated for accomplishment of the crime, there is no ground to discharge the petitioners. As far as the company is concerned being a body corporate, it has to face the Trial through somebody as representative of the company as contemplated under Section 305 Criminal Procedure Code. Being a juristic body, it is liable for prosecution and cannot claim

immunity.

9. For the above said reasons, this court holds that the petitioners has no merits in this case. Accordingly, the Criminal Revision Petitions are dismissed. Consequently connected Miscellaneous Petitions are closed.

06.12.2017

speaking/non speaking

Index:Yes/No

Internet:Yes/No

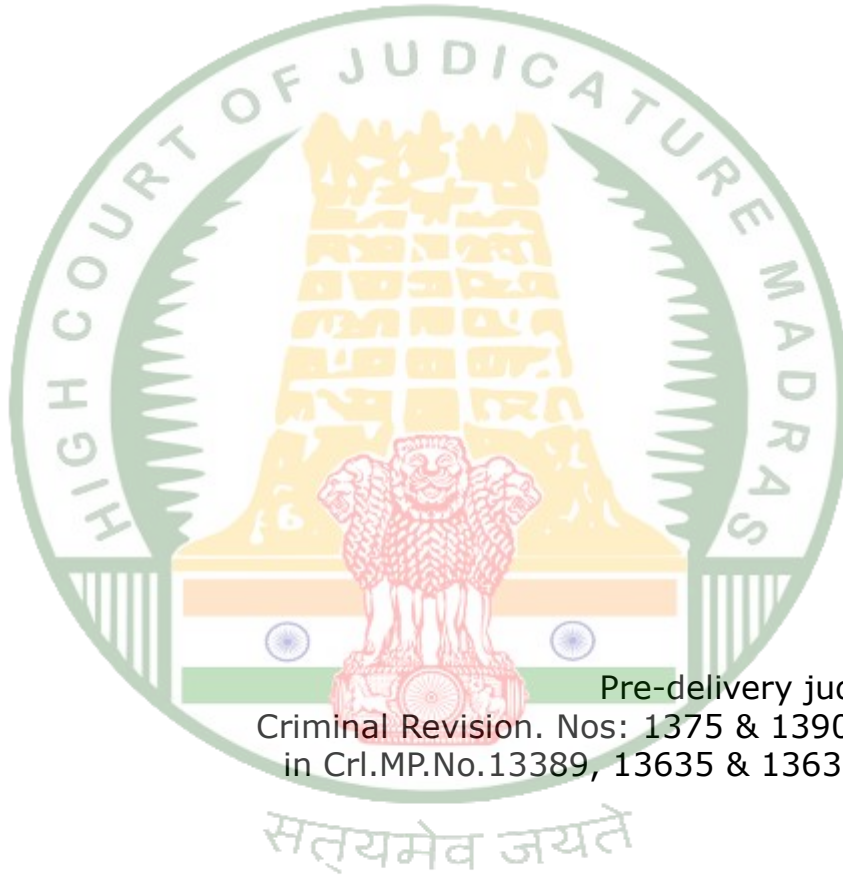
bsm



WEB COPY

DR.G.JAYACHANDRAN.J,

bsm



WEB COPY