IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2017

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.RC.No.760 of 2017

R.Jayapal ... Petitioner

Vs

State Rep.by
The Inspector of Police,
CBI/ACB/Chennai
(RC No.36A to 38 (A)/2007) ... Respondent

Prayer:- Criminal Revision Petition filed under Section 397 & 401 of Cr.P.C., pleased to set aside the order passed in Cr.MP.No.390/2013 in C.C.No.12/2010 dated 22.02.2017 on the file of the Second Additional District Judge/Special Judge, (CBI cases), Coimbatore and allow the Cr.MP No.390 of 2013 by discharging the petitioner from the above case in C.C.No.12 of 2010.

For Petitioner :Mr.B.Kumarasamy

For Respondent :Mr.K.Srinivasan,
Special Public Prosecutor
for CBI

ORDER

This petition is filed to set aside the order passed in Cr.MP.No.390/2013 in C.C.No.12/2010 dated 22.02.2017 on the file of the Second Additional District Judge/Special Judge, (CBI cases), Coimbatore and allow the Cr.MP No.390 of 2013 by discharging the petitioner from the above case in C.C.No.12 of 2010.

2. The case of the prosecution is as follows:-

The specific charge against the petitioner as per the charge sheet is that during March 2002, A.15 R.Janarthanan procured low priced garments and made over invoiced exports of garments from M/s.Showman Exports to M/s.Ali AI Mohammari Trading Co. LLC., Dubai through E.Lourdusamy (Approver), Vendor Exim, CHA, Coimbatore at ICD, Singanallur, Coimbatore. The A.11

S.Rajagopal, Superintendent, ICD, Singanallur by abusing his official position, knowingly cleared the over invoiced consignments vide shipping bill Nos.420, 421 dated 13.03.2002 by giving suitable instruments to the Inspectors working under him, and facilitated the sanction of drawback incentives of Rs.6,15,745/- for Showman Exports and gave pecuniary advantage in favour of Showman Exports. The A.11 S.Rajagopal, Superintendent demanded and accepted an illegal gratification at the rate of Rs.1/per dollar of the export consignment value quoted in the shipping bill. The foreign remittances towards sale proceeds, for the export value of the consignment, were not repatriated to India through the exporter's bank account and thereby resulting in loss and that during 2002 to 2003 A.14 C.Muthusanjeevi procured low priced garments and made over invoiced exports in the name of Jana Associates, Showman Exports and We Win Mills to M/s.Ali-Ai Mohammari Trading Estd., Dubai, through Biju Alias (Approver), Pacific Agencies at ICD., Tirupur. The Deputy Commissioner S.Jayaraman (A.10), Superintendents A5 R.Rangasamy, A6 M.Balaji Rao and Inspectors A8 Ayyakannu, A9 B.Sadasivakurup, A7 R.Jayapaul of ICD Tirupur, cleared the low priced goods of the above firms, at the over invoiced value vide shipping bill Nos.4284, 4285, 4286 dated 24.12.2002 and facilitated in sanctioning of the drawback incentives of Rs.1,86,071/- for Jana Associates, Rs.1,92,896/- for Showman Exports and Rs.2,24,182/- for We Win Mills and gave pecuniary advantage in favour of these firms. The said Customs officials demanded and accepted the illegal gratification of Rs.1/- per dollar of the export value for each consignment. The foreign remittances towards the sale proceeds, for the export value of the said consignment were not repatriated to India through the exporter's bank account and thereby resulting in loss.

3. After investigation charge sheet was filed before the II Additional District Judge, (CBI Cases), Coimbatore and thereafter charge sheet was taken on file in C.C.No.12/2010. The petitioner herein arrived as 7th accused in C.C.No.12/2010 and filed discharge petition under Section 239 of Cr.P.C. before the trial Court, after considering the materials placed before the trial Court from the final report filed under Section 173 of Cr.P.C. the trial Court has found that there are prima facie materials available to proceed against the petitioner and dismissed the petition filed by the petitioner.

4. Aggrieved by the said order of dismissal passed in Cr.MP No.390 of 2013 in C.C.No.12 of 2010 dated 22.02.2017 on the file of the II Additional District Judge/Special Judge (CBI cases), Coimbatore, the present revision petition is filed.

5. The learned counsel for the petitioner would submit that the petitioner has not involved in any offence as alleged by the respondent. There are no materials to implicate the petitioner and there is no conspiracy with other accused. Further he would submit that on the basis of the evidence of the approver the petitioner cannot be implicated in this case and further no sanction order has been obtained from the competent authority to proceed against the petitioner. The trial Court without looking into this aspect mechanically dismissed the application. Therefore the order passed by the trial Court is liable to be set aside and the petitioner herein has to be discharged from C.C.No.12 of 2010.

6. The learned Public Prosecutor submitted that there are prima facie materials available to proceed against the petitioner. Further in a similar case the petitioner filed discharge application in C.C.No.10 of 2010 and it was taken before this Court in Crl.R.C.No.13 of 2015. This Court after going through the entire records found that there are prima facie materials available to proceed against the petitioner. This Court would hold that whatever the defence is taken by the petitioner in this case he can raise the same defence during the trial. Against which the petitioner has not filed any revision or appeal for this. In this case also it is of the similar offence and mere same witness who has declared as approver had spoken about the involvement of the petitioner in this case also. Further even in the charge sheet there is allegation against the petitioner and prosecution witness have also spoken about the involvement of this petitioner. Further, since, the petitioner had retired in the year 2009, there is no need to get sanction for prosecution. Therefore the contention raised by the learned counsel for the petitioner is liable to rejected. Further he would submit that the trial Court has considered all the aspects and dismissed by holding that there is an incriminating material against this petitioner to proceed further, therefore dismissed the application. There is no reason to interfere in the order passed by the trial Court.

7. Heard the rival submissions on either side.

8. On perusal of the charge sheet it shows that prima facie there are incriminating materials against this petitioner and also the witnesses on the side of the prosecution had spoken about the involvement of this petitioner in this case. It is well settled principle of law that at the time of framing of charges the Court has to look into only the final report filed by the respondent under Section 173 of the Cr.P.C. and records placed before it. Therefore at this stage the defence taken by the petitioner need not be looked into.

9. This Court finds that there are incriminating materials available against the accused to frame the charges. No doubt, in the criminal cases, the benefit of doubt always goes in favour of the accused. But at the stage of framing charges under Section 239 of Cr.P.C., the benefit of doubt goes in favour of the prosecution. Even a suspicion drawn on incriminating materials is enough to frame a charge against the accused. At this stage, this Court can have the impression that the petitioner might have committed the offence. At this stage, probative value of the materials cannot be tested.

10. In a case instituted upon police report, the Court is required at the time of framing of charge, to confine its attention to the documents mentioned in Section 173 Cr.PC only. Ordinarily, the documents filed by the defence cannot be considered in framing charge. In fact, the hearing provided to the accused Under Section 239 and 227 of Cr.PC., is only in regard to the record of the case produced by the prosecution and the documents submitted therewith. Further, the Court is not expected to go into the probative value of the materials on record, nor required to discuss every material placed before it by the police along with the charge sheet. At the time of framing the charges, it is not for the Court to determine whether a particular witness is unreliable.

11. In the light of the above discussion there is no perversity or infirmity in the order passed by the trial Court and there is no reason to interfere with the order dated 22.02.2017 passed in Cr.MP.No.390 of 2013 in C.C.No.12 of 2010 on the file of the II Additional District Judge/Special Judge (CBI Cases) Coimbatore, therefore this revision is liable to be dismissed.

12. In the result the criminal revision petition is dismissed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

dpq

To

1. The II Additional District Judge/Special Judge,
   (CBI cases), Coimbatore

2. The Inspector of Police,
CBI/ACB/Chennai

3. The Special Public Prosecutor for CBI Cases,
High Court, Madras.

+1cc toM/S.S.Gunalan, Advocate Sr. 49501

Crl.RC.No.760 of 2017

MP(CO)
VR(085/08/2017)