IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2017

PRONOUNCED ON : 11.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.603 of 2015

V.Gurumurthy ... Petitioner/Petitioner A-2

Vs.

State represented by
The Inspector of Police
SPE/CBI/ACB, Chennai. ... Respondent/Complainant

PRAYER : Petitions filed under Section 397 and 401 of the Criminal Procedure Code, to set aside the order dated 15.10.2014 in Crl.MP.No.259 of 2014 in CC.No.36 of 2013 passed by the IX Additional Special Judge for CBI Cases, Chennai.

For Petitioner : Mr.K.Mani.

For respondent : Mr.K.Srinivasan, Spl.PP for CBI cases.

O R D E R

This Criminal Revision is directed against the order passed by the learned IX Additional Special Judge, CBI Cases, Chennai made in MP.No.259 of 2014 in CC.No.36 of 2013 dated 15.10.2014, in dismissing the discharge petitions filed by the petitioner.

2. The case of the petitioner is that the respondent alleged commission of offences under Section 120B r/w.420, 477A of IPC and offences under Section 13(2) r/w.13(1)(c)&(d) of the Prevention of Corruption Act, 1988.

3. During the period between 2007-2008, one Vijaya Raj Surana(A4) entered into a criminal conspiracy with S.Gurusami (A1) along with the petitioner/V.Gurumurthy(A2) to cheat MMTC Ltd in the matter of bullion trade between Surana Corporation Ltd and MMTC Ltd., In the course of bullion trade during 2007-2011, the MMTC Ltd and A3 company along with A4 and A5/Directors

of A3 company and A6 employee of A3 company conspired with A2 and M.S.S.Ragavan, Manager, Bank of India (A7) and S.S.Raj, Senior Manager, MMTC Ltd with dishonest and fraudulent intention to cheat MMTC Ltd in the matter of bullion trade and induced wrongful loss to the tune of Rs.13.86crores to MMTC Ltd.

4. S.Guruswamy/A1 then the Chief General Manager of MMTC Ltd during the period from 12.05.2006 to 30.06.2008, retired from service on 30.06.2008. The petitioner herein was the Deputy General Manager (Finance and Accounts) from 15.12.2003 to 14.12.2008 and thereafter served as General Manager (Finance and Accounts) from 15.12.2008 to 30.10.2010 and retired from service on 30.10.2010.

5. The petitioner herein states that the documents and the other materials submitted along with final report filed by the respondent disclose that the charges levelled against the petitioner are groundless and unsustainable in law and based on misconception of concepts relating to commercial dispute and principles relating to overseas bullion trade and foreign exchange.

6. The petitioner after receiving the copies of the documents furnished by the Court below, filed a petition to discharge petition for the reasons stated therein and the respondent/prosecution has also filed counter and a reply was also submitted by the petitioner along with the decisions of the High Court and Supreme Court. After considering all the above aspects, the Special Court for CBI Cases has rightly dismissed the Crl.MP.No.259 of 2014 in CC.No.36 of 2013 on 15.10.2014.

7. The case of the prosecution is that during the period between 2007 to 2011, Vijayaraj Surana (A4) entered into a criminal conspiracy with the petitioner/V.Gurumurthy (A2) and S.Guruswamy (A1) to cheat MMTC Ltd in the matter of bullion trade between MMTC Limited and M/s.Surana Corporation Ltd (A3) and during the course of bullion trade A4 to A6 along with A2, A7 and A8 conspired together with dishonest intention to cheat MMTC Ltd. An elaborate discussion of the over tacts of the accused under various heads in causing a wrongful loss to the tune of Rs.13,86,33,277.01 to MMTC and the corresponding wrongful gain obtained by M/s.Surana Corporation Ltd.

8. The petitioner and A3 knowing fully aware that reconciliation was pending in MMTC had drained out the money by way of their modus operandi, claiming excess refund from MMTC Ltd., The petitioner being the exclusive authority to bullion accounts had wilfully failed to reconcile the bullion accounts by making wrong entries in the account ledger of the accused company by raising dummy bullion receipts to the credit of

M/s.Surana Corporation Ltd., and delivery of bullion metal to the accused company without obtaining the requisite financial backup. The above act of the petitioner were not to the foreign exchange concepts rather it attracted substantive offences under law for which the respondent had filed the charge sheet with oral and documentary evidences. The petitioner has also initiated note/proposal to refund the claims made by A3 and recommended and even sanctioned/handed over refunds to A3 without the approval of the competent authority. MMTC is not a facilitator as claimed by the petitioner but it is a trading organisation of the Government of India to do import of bullion, precious metals and other commodities under various schemes and the petitioner being an experience officer, knowingly fully about the terminology used in the MMTC, had averred about the mark up charges and other terminology which did not have any relevance to the discharge of the petitioner. The petitioner had conspired with other accused and willfully failed to follow the instructions contained in the Bullion Drill, which paved way to put MMTC Ltd into a grave financial risk causing wrongful loss to the tune of Rs.13,86,33,277.01.

9. Further the allegation in the final report is between 2007 and 2011 financial years, but the MOU are well prior to the period of offence and it has no relevance to this case. Investigation revealed that the petitioner had raised various provisional invoices to A3, but wilfully failed to raise the final invoices, incorporating all the expenditures incurred by the MMTC and treated the provisional invoices as final invoices and thereby facilitated A3 to unduly enrich. The petitioner failed to route the transactions of A3 through BTS with fraudulent and dishonest intention to cheat MMTC Ltd., The petitioner in pursuance of criminal conspiracy had allowed the false refund claims without reconciliation knowing fully well that such refunds would cause wrongful loss to the Government of India. The Special Auditor appointed by the Corporate Office, New Delhi on the allegation that the petitioner had committed fraud on various bullion accounts, had mined the data and found out numerous irregularities committed by the petitioner. The Special Auditor has also reported a loss of Rs.12,42,86,396/- on the account of A3 and if the petitioner had raised debit note, there could not be any reported loss and hence it is clear that the petitioner had not raised any such debit note and bring into the bullion account.

10. After completing the investigation, the respondent/prosecution filed the charge sheet, wherein it is elaborately discussed about the conspiracy between the petitioner/A2 along with the A1, A3, A4 to A8 to cheat MMTC Ltd.

11. The learned counsel for the petitioner would submit that

the date mentioned in the FIR is 13.06.2012, whereas the written complaint was received only on 25.06.2012 and the investigation based on the FIR dated 13.06.2012 is not sustainable in law and not in accordance to the procedural manual and it is wrong that the petitioner is exclusive authority for bullion account and as per the procedural Drill, the petitioner was one of the officers and all the refund notes were initiated by the lower level Manager and the statement of witnesses LW12 clearly shows that the issue of Dummy Bullion Receipts is permissible and cannot be avoided. Further, the learned counsel for the petitioner also submitted the statement of accounts along with Activity System Map in support of his contention that the alleged loss is not true and in fact there was surplus funds for the period from 01.04.2007 to 31.03.2011. It is also contended that all the refunds were permitted to be adjusted and since the account was running continuously, it can be reconciled at any time and it is backed by valid agreement, bank guarantees and the acts of A2 cannot be concluded as dishonesty or amount to criminal misconduct.

12. The learned counsel for the petitioner would further contend that the investigation was conducted by the respondent based on the anonymous complaint termed as source information is illegal and without conducting preliminary enquiry, the case was registered and the final report filed and all the allegations contained in the final report are vague and bald and not valid in the eye of law.

13. The learned counsel for the petitioner would further submit that the trial Court failed to consider the fact that it is purely Arbitral Commercial dispute and even a civil claim by MMTC Ltd cannot be legally entertained and it should be decided only by the Arbitrator. The MMTC Ltd has also filed OSA.No.224 of 2014 before this Court, wherein the petitioner herein is also made as a party to the suit and upheld the order of the leaned single judge and the First Bench has held that the arbitrator can also decide the allegation of fraud. The trial Court failed to consider the documentary evidences and also the statement of witnesses, mechanically dismissed the application without any substance. Hence, the order of the trial Court has to be set aside and prays to allow the criminal revision.

14. The learned Special Public Prosecutor for CBI Cases would submit that from the statement of witnesses and documentary evidences collected during the investigation and the statements submitted along with the final report, it clearly shows that there is a prima facie case against this accused to frame charges and to proceed further. There are incriminating

materials available against the accused in the documents filed along with the charged sheet. The petitioner herein has to face the trial and prove his innocence at the time of trial, the trial Court after duly considering all the documentary evidences adduced before it, correctly found that there is prima facie case made out against the accused to proceed further and rightly dismissed the claim of the petitioner and the learned special public prosecutor submits that there is no necessity to interfere with the order of the trial Court and prays for dismissal of the revision petition.

15. Heard the rival submissions made on both sides and perused the discharge petition filed by the petitioner before the Special Court and the Counter statement filed by the prosecution and the order passed by the Special Court in the discharge petition in Crl.MP.No.259 of 2014 in CC.No.36 of 2013 and also perused the charge sheet and statements along with documentary evidences annexed with the charge sheet.

16. 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.PC, 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.

17. 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 u/s.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 in to 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.

18. In fine, the criminal revision petition is dismissed and the order passed by the learned Special Court in Crl.MP.No.259 of 2014 in CC.No.36 of 2013 dated 15.10.2014 is confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The IX Additional Special Judge for CBI Cases, Chennai.

2. The Special Public Prosecutor, CBI Cases, High Court, Madras.

3. The Inspector of Police, SPE/CBI/ACB/Chennai

+1cc to Mr.K.Mani, Advocate, S.R.No.48158

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VGII(CO)
CS/27/07/17