IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 23.11.2017	Date of Pronouncing Judgment 05.12.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition No: 22237 of 2017
in Crl.M.P. No: 13051 of 2017

1. K.Vijendra Samuel

2. M/s. Four By Four Motors Pvt.Ltd.,
   Rep.by its Director Shri Vijendra Samuel
   No: 42, Kodamabakkam High Road,
   Chennai-600 034. ...Petitioners/Appellant 9 & 10

versus

State by; The Inspector of Police,
CBI/ACB/Chennai. ...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C.No. 9 of 2014 on the file of the XIV CBI Judge, City Civil Court. Chennai and to quash the same.

For Petitioners : Mr. A.Ramesh, Senior Counsel
for Mr.N.Viswanathan

For Respondent : Mr.Ashok Kumar Gautam
Special Public Prosecutor
for CBI Cases

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ORDER

The petitioner herein is the Director of M/s Four by Four Motors Pvt Ltd. In C.C.No: 9 of 2014 pending on the file of XIV Additional Sessions Court, (Special Court for the trial of CBI cases) he is arrayed as A-11and the company which he

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represents as Director is arrayed as A-12. He seeks quashing of the final report on the ground that the final report is filed even before completion of investigation and the court has taken cognizance without sanction under section 197 of Cr.P.C. Further, the prosecution against Shri V.R.Venkatachalam (A-9) and his company M/s TCP Ltd (A-10) who had been arrayed as co-accused for funding the purchase of luxury foreign car in violation Exam Policy and Transfer of Residence Scheme had been quashed, therefore prosecution against him and his company which received the purchase money, turns baseless.

2. The background facts for this petition is as under:-

The Directorate of Revenue Intelligence, Zonal Unit, Chennai received specific information from its informants on 06.03.2008 about illegal import of luxury cars from foreign by a car broker by name Alex Joseph in violation of import provisions and being sold to various persons in violation of Transfer of Residence Scheme. Initially the informants have given details about 12 such foreign made cars. Subsequently on 12.03.2008 DRI received information about 8 more cars and on 19.03.2008 got information about 9 more luxury cars imported in violation of import provisions and sold by Alex Joseph. The investigation was entrusted to one Murganantham , Senior Intelligence Officer of DRI. Though Shri. Muruganantham identified the vehicles and its possessors who were high profile politicians and industrialists but he did not take steps to seize those vehicles despite knowing the owners and place those vehicles are kept. Instead he had passed on wrong informations and details about his investigation to the higher officials. Therefore CBI had registered first information report on20.03.2003 against Shri. Muruganantham, Sr.Intelligence Officer, DRI , Shri

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Alex Joseph, Thiruvalla , Kerala and unknown persons for offence under 120-B and Section 420,467,468 r/s 471 of IPC and Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.

3. The crux of the crime as found in the FIR is that, under the Transfer of Residence Scheme any Indian who was continuously residing in a foreign country of more than two years and had used a vehicle there for a minimum period of one year, in case he want to settle in India permanently he can import the said vehicle. Provided he should not sell the vehicle within 2 years from the date of import. Alex Joseph a car dealer in connivance with officials and other private individuals had imported cars by tampering the details of the vehicle, forged import documents and got customs clearance. Thereafter got the vehicles registered from Transport Department and sold it to third parties totally in violation and abusing the Transfer of Residence Scheme.

4. In the course of investigation, search was conducted by CBI at 19 places and several incrimination documents were recovered. 36 vehicles were seized from various persons. Out of 57 vehicles came under the scanner, 24 of them were found to have imported in violation of law. Irregularities and mal-practices were found pertaining to the import of these 24 vehicles in respect of import duty, customs clearance, registration, re-registration and subsequent sale. One of those vehicle bearing registration No TN-09-AK-3999 Mercedes Benz is the subject matter of C.C. No. 9 of 2014. The prosecution considering the nature of case had filed final report on 30.04.2014 in respect of this vehicle with a caveat

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that further investigation in respect of other vehicles imported and the involvement of the named accused in this case and other unknown accused persons including the custom officials who cleared the vehicle is being conducted.

5. The final report indicates that,

Charge 1:

During the year 2002-2004 A-1 Shri Alex C Joseph who was working as a car broker and was also running used car show rooms in different name in Dubai, illegally importing these vehicles to India and selling the same in Indian markets, entered into a criminal conspiracy with accused No. 9 Shri V.R.Venkatachalam, Mg. Director of M/s. TCP Ltd., Chennai to sell and illegally imported new Mercedes Benz. Vehicle to him. In pursuance of the said conspiracy, A-1 contacted A-2 Sri Vijayadevan Bhaskaran Pillai for importing a vehicles in his name under transfer of residence scheme and accordingly A-2 joined the conspiracy. In pursuance of the conspiracy A-1 Alex Joseph had collected photocopy of passport No. Z1370075 from A-2 Vijayadevan Bhaskaran Pillai and illegally imported a Mercedes Benz Car bearing chassis No. WDB2201751A142702 from Dubai through Bill of lading No. GOSUDB 1007697 of Gold Star Line Ltd. At this juncture A-4 Joseph Daniel and A-3 John Bosco joined the conspiracy to do the customs clearing works of this vehicle. On the arrival of this vehicle at Cochin, A-4 Shri Joseph Danial K contacted A-2 and accordingly A-2 went to the office of A-4 at W. Island, Cochin. A-4 obtained the signatures of A-2 on various documents for clearing works and also obtained the signature of A-3 Shri John Bosco in the Bill of Entry No. 124434 dated 26.03.2003 and filed the same before the Customs, Cochin after obtaining the signature of A-

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3 Shri John Bosco, since A-4 Shri Joseph Daniel K was not having valid CHA Licence during the said period. A-4 Joseph Daniel in pursuance of the conspiracy declared the vehicle as "Used 2000 model" and misdeclared the value of the vehicles as Rs. 3,12,000/- in the said BoE which is a valuable document in respect of customs clearance and also wrongly mentioned the invoice No. Nil and date 25.03.2003 in the said BoE. During examination of the vehicle, examiner Smt.Vasundhara Rao reported that she could not found the "engine number" of the vehicle and according to her the kilometre reading of the vehicle was 384 km. However, the value declared by the importer/CHA was not taken into account by the appraising officer Smt.Usha Devi and she assessed the value as Rs.20,14,342/- and a total sum of Rs. 33,92,840/- was calculated towards 105% of customs duty plus NCD, special excise duty, cess & special additional duty(SAD) as applicable during the relevant period. Accordingly on 9th May 2003, the CHA had remitted a total sum of Rs. 33,99,187/- towards customs duty for the said vehicle including the extra fittings, vide TR6 Challan No. 97014859 at State Bank of India, Cochin Port Trust Branch. The out of charge of this vehicle was issued by Appraising Officer Shri. O.V.Thomas, who made an endorsement in the BoE that "this vehicle cannot be sold for a period of two years as per the condition of import vide ITC Public Notice No. 3 dated 31.03.2000". After receiving the vehicle from the Customs, Cochin on 09.05.2003, the vehicle was not taken to the nearest local RTO for temporary or permanent registration as envisaged in the Customs Rules/CMVR Rules. Instead the vehicle was brought to Chennai by Shri Raheem, driver of A-1 Shri Alex C Joseph and handed over the same to A-1. A-1 in turn handed over the said vehicle to A-9 Shri V.R.Venkatachalam, Mg. Director

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of M/s. TCP Ltd., Chennai. In pursuance of the conspiracy already hatched with A-1, A-9 Shri V.R.Venkatachaalam took the vehicle into his possession. Thereafter in pursuance of the conspiracy an application was filed before the Transport authority in the name of A-2 Vijaya Devan Bhaskaran Pillai with a bogus Chennai address to get the fancy number “3999”, since all the vehicles owned by A-9 Shri V.R. Venkatachalam are ended with the fancy number “3999”. To avoid payment of commercial tax/entry tax, petition was filed by A-2 Shri Vijayadevan Bhaskaran Pillai before the Hon'ble High Court of Madras stating that the vehicle has been imported is only for the personal use and not for any commercial purpose and hence not to collect the commercial tax/road tax from him, suppressing the fact that the vehicles was imported and cleared under transfer of residence scheme. The Hon'ble High Court of Madras granted interim injunction on condition that the petitioner files an affidavit before the respondent that he will not alienate the vehicle until further orders. Accordingly on 27.09.2004, A-2 has prepared two separate affidavits duly attested by Shri B.Mohan Kumar, Advocate & Notary Public, Chennai. It is mentioned in the affidavits that it is a 2003 model vehicle. At this juncture, accused Ramanathan (A-7) and A-8 Shri Ravindran joined the conspiracy with A-1 for registration of this vehicle as a new 2003 model to get high value of the same to A-1. Accordingly in pursuance of the said criminal conspiracy, A-1 erased “model 2000” mentioned in the BoE and submitted a forged/bogus invoice No. 3020 dated 21.01.2003 of Al-Araf General Trading, Ajman, UAE, a company run by A-1 with his brother in law & others, showing the sale of this vehicle to A-2 Shri Vijayadevan Bhaskaran Pillai for a value of 1,60,000 Dhrs. As instructed by accused Shri Ramanathan (A-7), accused Shri

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Ravindran (A-8), employee of Ramanathan, filed Form 27 and other connected registration documents showing the year of manufacture/model of this vehicle as "2003" with a bogus Chennai address of A-2 Shri Vijaya Devan Bhaskaran Pillai as " Aathi Appellants, 1, 12th Avenue, Ashok Nagar, Chennai-600083, Tamil Nadu" and on 27.09.2004 submitted these application forms along with erased/forged BoE and bogus/false invoice of Al-Araf General Trading Company, a bogus Bill No. 4545 dated 16.08.2004 purportedly issued by M/s. Lakshmi Transports, Fleet Owners & Transport Contractors, Moosa Street, Chennai-1 showing the transportation of the vehicle from Cochin to Chennai and the two affidavits mentioned above. At this juncture A-5 Shri Pongiannan, Regional Transport Officer, Chennai West and A-6 Shri Shanmughasundaram MVI, Regional Transport Office, Chennai West joined the conspiracy accused Ramanthan, Ravindran & others and by abusing their official position as public servants, by accepting illegal gratification from accused Shri Ramanathan (A-7), knowing fully well that forget/false documents were submitted for registration of this vehicle as new model, dishonestly registered this vehicle as TN-09-AK-3999 with model 2003 on 27.09.2004, without conducting proper inspection of the vehicle & proper verification of the documents and without verifying the genuineness of the BoE & connected documents from the Customs department and without even collecting the insurance certificate of the vehicle, allowed registration of the vehicle and without collecting the commercial tax/entry tax, knowing fully well that the vehicle was not at all registered temporarily with any of the registration offices in Kerala, as applicable to the imported vehicles which indicates serious non compliance to CMVR Rules 1989 and thereby committed grave misconduct on the part of

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Regional Transport Office Officials. On registering the vehicle an endorsement was made in the RC Book that "Annual tax accepted as per W.P.No. 23731/2004 dated 19.08.2004, the vehicle should not be sold until the case is disposed." The photograph of accused Shri Vijayadeva Bhaskaran Pillai was affixed on the RC Book and the photographs affixed on the affidavits submitted in RTO office are not matching each other will also prove that the MVI/RTO officials has not taken proper examination of the documents as per the procedures followed by the RTO offices with regard to the registration of imported vehicles. A-1 Shri Alex C Joseph in pursuance of the conspiracy with A-9 Shri V.R.Venkatachalam, Mg.Director of M/s. TCP Limited., Chennai, after obtaining registration mark, as per the choice of Shri V.R. Venkatachalam as TN-09-AK-3999, sold the vehicle to Shri Venkatachalam as against the High Court Order. Shir V.R. Venkatachalam as Mg. Director of M/s. TCP Limited., Chennai, as requested by A-1, paid an amount of Rs.50 lakhs to A-1 on 13.02.2006 by means of a cheque No. 446644 dated 13.02.2006 for Rs. 50 lakhs in the name of M/s. Four By Four Motors Limited., Chennai (A-12) knowing fully well that this vehicle was imported in the name of A-2 Shri Vijayadevan Bhaskaran Pillai and cleared through Cochin Customs under transfer of residence scheme and as per TR scheme, this vehicle would not have sold/purchased for two years, that the said vehicle was not temporarily/permanently registered at Cochin, that 12.5% of total value of the Vehicle (i.e. around Rs.6,77,614/-) towards commercial tax/entry tax was not paid by the importer on the basis of the High Court order, that as per the High Court Order this vehicle would not have purchased by him from A-1 Alex C.Joseph or from any other person without paying the said commercial tax/road tax, that this

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vehicle was registered at Chennai as TN-09-AK-3999 with a bogus Chennai address of the importer etc. At this juncture, accused Shri Vijendra Samuel (A-11) who had already opened a company “M/s. Four by Four Motors Pvt. Ltd., having office at Chennai-34 with other 2 silent directors Shri Mohammed Kassim Anees and Smt. Zeenath Banu, said to be a benami company of A-1, joined the conspiracy with A-1 and as directed by A-1 Alex C Joesph, A-11 Shri Vijendra Samuel debited the said cheque No. 446644 dated 13.02.2006 for Rs. 50 lakhs in the current account of A-12 company M/s. Four By Four Motor Pvt. Ltd., on 13.02.2006. Accused Shri Vijendra Samuel who was looking after the day to day operations including banking transactions of A-12 Company “M/s. Four By Four Motors Pvt. Ltd., subsequently withdrawn the said amount by using the cheques signed by him, as directed by A-1.

6. Thus according to the prosecution, the overtact of the petitioner herein is that he on the direction of A-1 had started a shell company for A-1 by name Four by Four Motors with two more directors who were only sleeping directors and lend their names at the request of A-1. This petitioner being the authorised signatory for the bank operation had received Rs. 50 lakhs from TCS Ltd a company of V.R.Venkatachalam for whom A-1 had sold 8 luxuries foreign cars in violation of the law. The car which is the subject matter of this petition is one among them.

7. The Learned Senior Counsel contented that, there is no sense in alleging that for the car sold in the year 2003 payment was made by V.R. Venkatachalam in the year 2006. There is also no evidence to link the payment to

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the car which was seized from V.R.Venkatachalam. Further, when the case against Venkatachalam it quashed, prosecuting the person who alleged to have received payment from Venkatachalam is baseless. Further, the petitioner was a paid servant of Hi-Tech logistic a sister concern of Four by Four Motors Pvt Ltd. At request of its directors he took charge as Director of Four by Four Motors Pvt Ltd. Though he was designated as its Director he was not a share holder. Further he left the company as early as 2009 and settled in Bostwana. Therefore, the final report which is an incomplete and baseless is liable to be quashed.

8. Per contra, the learned Special Public prosecutor contented that, the main accused in this case Shri. Alex C Joseph handed over a cheque of Rs.50 lakhs received from accused Shri Venkatachalam towards the value of one of the vehicle involved in this case, to the petitioner/accused No.9 Shri Vijendra Samuel and the same was debited in the account of the said company i.e. M/s Four By Four Motors Pvt. Ltd., Investigation also revealed that the said amount was subsequently withdrawn by accused Vijendra Samuel by using cheques signed by him. On perusal of the statement of account of M/s Four By Four Motors Pvt. Ltd., Chennai it was found that there were number of transactions worth several crores of rupees including the above mentioned transaction with regard to the purchase of the vehicle by Shri Venkatachalam had been made. It is worth pertaining to note that the transactions made through the company's account were nowhere concern to the company's day to day affairs i.e. for the very purpose for which the company was floated as obtained from the Registrar of Companies.

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9. Heard the counsels and perused the records relied by the prosecution.

10. The memorandum of Association relied by the prosecution reveals that, Four by Four Motors Pvt Limited, is a body corporate incorporated under the companies Act, with 1000 shares each with face value of Rs 100/- each. The petitioner and one A.Mohamed Kasim Anees are shown as its share holders each holding 500 shares. It has been registered on 4.08.2003. The petitioner herein has opened the Bank account in Vijaya Bank, Egmore Branch Chennai in the name M/s Four by Four Motors Pvt Ltd on 30.12.2003 and he had been operating the account as authorised signatory.

11. The statement of V.Rajasekaran, Executive Director of TCP Ltd recorded under section 161 of Criminal Procedure Code reveals that, the vehicle registered as TN-09-AK-3999 was purchased through Shri Alex Joseph(A-1). At request of Alex Joseph he on behalf M/s. TCP Ltd he made payment of Rs 50 lakhs in favour of Four by Four Motors Pvt Ltd, Chennai through Cheque No. 446644 of SBI, Chennai and V.R.Venkatachalam is the Director of TCP Ltd. The said vehicle was found in possession of V.R.Venkatachalam and same was seized from him on 21/03/2013. The document No. 33 is the payment voucher of TCP Limited for Rs. 50 lakhs for the purchase of BENZ car TN-09-AK – 3999. Document No. 34 is the payment details of TCP Ltd for the said car. Just because due to legal embargo, the ownership of the car still stands in the name of Vijayadevan Baskaran Pillai (A-2), it does not mean that the possession given to V .R.Venkatachalam and receipt of sale consideration by the present petitioner

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gets wiped out. The statements of witnesses recorded during the investigation, particularly the statements of V.Rajasekaran Executive Director of M/s TCP Pvt Ltd LW-30, Meenakshisundaram LW-31, Assistant Manager of M/s TCP Ltd. Mr. Mohamed Kasim Anees, LW-26 one of the director of Four by Four Motors Ltd indicates that the petitioner who is s trusted friend of A-1 Alex Joseph has floated the shell company M/s Four by Four Motors Pvt Ltd as part of the conspiracy to accommodate the transaction of imported luxury vehicles in violation of rule of import and to transfer its possession to third parties.

12. Since enough materials are placed by the prosecution against this petitioner and his company to frame charges and try him, this court holds that the petition deserve to be dismissed.

13. According the Criminal Original Petition is dismissed. Consequently connected Criminal Miscellaneous Petition is closed.

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

DR.G.JAYACHANDRAN.J,

bsm

Judgment in
Criminal Original Petition No: 22237 of 2017
in Crl.M.P. No: 13051 of 2017

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