

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23 .01.2017

(Reserved on: 14.11.2016 ; Pronounced on : 23.01.2017)

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.RC.No.1059 of 2016

Sundarraju ..Revision Petitioner/Petitioner/
4th Accused

Vs.

The State Rep. By
The Inspector of Police,
SPE:CBI:ACB:Chennai ..Respondent/Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 & 401 of Cr.P.C., against the order passed by the learned Special Judge for CBI Cases at Puducherry thereby dismissed the discharge petition filed in Crl.MP.No.743/2015 in Spl.C.C.No.3/2010 by its order dated 30th March, 2016.

For Revision Petitioner : Mr.J.Suresh
For Respondent : Mr.K.Srinivasan
Special Public Prosecutor
for CBI Cases

ORDER

The Criminal Revision Case has been filed against the order passed by the learned Special Judge for CBI Cases at Puducherry thereby dismissed the discharge petition filed in Crl.MP.No.743/2015 by its order dated 30th March, 2016.

2. The facts of the case are as follows:

During the year 2003, the Public Works Department of the Government of Pondicherry came up with a proposal for building "Water Treatment Plants" in and around Yanam town, in order to satisfy the drinking water needs of the residents therein. Accordingly, an action plan for the year 2003-2004 was prepared, which provided for setting up of three different "Water Treatment Plants" with capacities of four, three and two MLD (million litres per day). The Public Works Department prepared a preliminary estimate engaging a private consultant, who estimated the cost of the project of 4 MLD Water Treatment

Plant at Rs.3,01,00,000/- (Rupees Three Crores and One Lakh only), 3 MLD Water Treatment Plant at Rs.2,02,64,638/- and 2 MLD Water Treatment Plant at Rs.1,80,87,100/- After considering the said preliminary estimates, the Government of Pondicherry sanctioned Rs.2,53,55,000/- , Rs.1,80,87,100/- and Rs.1,30,62,000/- for the said three Water Treatment Plants respectively.

3. After clearance of the budget by the Government, the Executive Engineer namely, S.C.B.Mohan (A1) prepared a 'Notice Inviting Tender' for all three projects, without following the Works Manual of the Public Works Department which provides for preparation of a detailed estimate and grant of technical sanction by the Chief Engineer at that stage. The said 'Notice Inviting Tender' was approved by then Chief Engineer, Mr.P.Srinivasan(LW2) for the reason that the projects were proposed to be awarded on 'Lump sum turnkey' basis, under which the successful tenderer would be required to do the entire project including preparation of structural designs/drawings and only based on those designs the detailed estimate could be prepared at a later stage. The 'Notice Inviting Tender' was published on 19th August 2004, with various conditions including that the contractor shall be specialised in Water Treatment Plants and shall have experience in construction of such Plants with electro-chlorination units. The Notice also stipulated that the contractor shall maintain the plants with his own staff and consumables for eighteen months after completion of the project and shall also train the department personnel on the operation and maintenance of the plants. In response to the 'Notice Inviting Tender', applications were presented for participation in the tender by six different contractors. Three out of the six applicants were unceremoniously refused entry into the fray on the grounds, which were not provided under the 'Notice Inviting Tender'. The Junior Engineer of the Public Works Department, namely, K.Jothi Raju(A5) wrongly recommended for the rejection of those three applicants, which were later affirmed by the Assistant Engineer namely, N.Harihara Babu(A6) and the Executive Engineer, S.C.B.Mohan (A1).

4. On the other hand S.C.B.Mohan (A1), K.Jothi Raju(A5) and N.Harihara Babu (A6) accepted the applications of Nagarjuna Constructions Company (A8) K.Subramaniam Raju(A3) and Ramky Infrastructure Ltd and issued tender documents to them, even though they did not have any experience with electro chlorination work, as required under the 'Notice Inviting Tender'. Subsequently on 17th September 2004, Nagarjuna Constructions Company Ltd (A8), K.Subramanyam Raju (A3) and Ramky Infrastructure Ltd., submitted their tender documents to the Public Works Department . The tender

submitted by the Nagarjuna Constructions Ltd was signed by its then Vice President Mr.VRK.Raju (LW33). As per the Works Manual of the Public Works Department, 'two bid system' has to be followed, under which price bids would be finalised only after approval of the technical bids. Accordingly, the technical bids for all three Plants were opened on 18th November, 2004 and were sent to the Chief Engineer (A4) Public Works Department, Pondicherry for approval.

5. On 18th February 2005, the Executive Engineer, SCB.Mohan (A1) opened the price bids of the tenderers and forwarded them to the Chief Engineer, Public Works Department, Pondicherry. The price bids revealed that Nagarjuna Constructions Company Ltd (A8) quoted the least price for the two Water Treatments Plant of 4MLD and 2MLD and K.Subramanyam Raju (A3) quoted the least price for the other plant of 3MLD. When the technical bids for the three plants were kept pending approval, R.Sundarraju (A4), who was then appointed as the Chief Engineer, forwarded the price bids to the Works Board for approval, even before the approval of technical bids. While considering the price bids, the Assistant Surveyor of Works namely R. Suresh (LW-11) arrived at the 'justified costs' for three plants respectively, which were lesser than the lowest rates quoted in the tender. However, R.Sundarraju (A4), the Chief Engineer, failed to exercise negotiations with Nagarjuna Constructions Company Ltd (A8) and K. Subramanyam Raju(A3) in order to arrive at a justified price. In spite of the remarks made by the then Executive Engineer, R. Narasimha Murthy (LW7) that the technical bids were not yet approved and the fairness of the prices could not be ascertained, R.Sundarraju (A4) recommended the overpriced bids to the Works Board of the Pondicherry Government, for its approval. Based on the recommendations of R.Sundarraju (A4), the Works Board approved the price bids of Nagarjuna Constructions Company Ltd (A8) and K. Subramanyam Raju (A3). Thereafter on 19th July, 2005 two agreements were signed between SCB.Mohan (A1) and Nagarjuna Constructions Company Ltd (A8) Represented by its then Vice President, VRK.Raju (LW35), for execution of the works of four and two MLD Water Treatment Plants and another agreement was signed between SCB.Mohan (A1) and K.Subramanyam Raju(A3) for three MLD Plant, at the respective costs quoted in the tender. Thereafter, the Chief Engineer, R.Sundarraju (A4) granted technical sanction for the construction of three MLD plants by making an endorsement on the copies of the respective price bids. On the other hand, such technical sanction should have been granted only on the detailed estimate prepared by the Public Works Department.

6. Although as per the case of the prosecution, the contracted prices were lesser than what was arrived at in the

'Preliminary Estimates' that were prepared by the Public Works Department by engaging an independent consultant, the investigation officer has come to the conclusion that the contracted prices are exorbitant. Moreover when the Government has not cleared the bills fully and has failed to pay even what has been claimed as 'justified price' by the prosecution, the investigation has arrived at a finding that the Government had suffered a loss of Rs.61,99,772/- .

7. On the strength of above allegations, the respondent police filed a final report before the trial court on 31.01.2010 for alleged offences under Sections 120(B) r/w. 420 IPC and Section 13(1) (d) of Prevention of Corruption Act, 1988. The petitioner sought discharge from the above case on the basis of various grounds moved a discharge petition before the trial court. After hearing both sides, the trial court dismissed the said petition. Aggrieved with the above said order passed by the trial court in CrI.MP.No.743/2015, A4 has filed this revision petition before this court.

8. The averments made in counter as follows: The case in RCMA 1 2008 A 0058-CBI-ACB- Chennai, was registered u/s.120 B r/w. 420 IPC and Section 13(2) r/w. 13(1) (d) of Prevention of Corruption Act, 1988, based on source information that during the period 2003-2005, Shri. S.C.B.Mohan (A1) Executive Engineer, Public Works Department Yanam, Puducherry, A. Rangaraju (A2), Managing Director representing M/s.Nagarjuna Construction Co., Ltd (A8), Hyderabad, K.Subramanyam Raju (A3) Contractor, Hyderabad, and other unknown public servants, entered into criminal conspiracy to cheat the Government of India, Public Works Department, Puducherry in the matter of design and construction of three Water Treatment Plants in and around Yanam Region, of Pondicherry; that in pursuance of the said criminal conspiracy, the accused public servants, by abusing their official position, eliminated eligible contractors from the tender process and fraudulently awarded the contract to A2 and A3, at exorbitant costs much above the estimated cost and thereby A1 to A3 caused wrongful loss to the Government of India and corresponding wrongful gain to themselves.

9. Heard both sides.

10. Learned counsel for the petitioner would submit that the petitioner herein was the Chief Engineer during the period 14.02.2005 to 30.11.2005. Public Works Department Pondicherry came up with the proposal of building 3 different Water Treatment Plant of 2MLB, 3 MLB , 4 MLB in the year of 2003. The petitioner joined as Chief Engineer only on 14.02.2005

regarding the fixing of eligibility of the contractors which was on 13.09.2004. Even as per the charge sheet, the petitioner herein had no role since he joined five months after the event. Further, he would submit that two of the accused have filed the Criminal Original Petition before the Honourable Court for quashing the complaint against them. This Court has quashed the complaint against A2, hence this petitioner also has to be discharged. Since he was not the Executive Engineer on the date of the event, he has no role and there is no prima facie case against him. The trial court has failed to consider all these facts and mechanically dismissed the discharge application filed by this petitioner.

11. Learned counsel for the respondent/State would submit that even though the petitioner was appointed only on 14.02.2005 as Chief Engineer, he cannot say that he has no connection whatsoever with the alleged offences and therefore, the relief sought for cannot be granted. Further, even if the petitioner has not caused any loss, considering the nature of the evidence for the alleged offence committed by the petitioner and others, he cannot be absolved from the liability. Further, he would submit that the prima facie materials available against this accused to proceed. Further, at this stage, the case of the defence cannot be looked into only the case of the prosecution alone and has got to be considered. In charge sheet, there is a specific allegation against this petitioner. Therefore, if there is a strong suspicion found in the materials before the Magistrate, it is sufficient for framing charge. Therefore, when there is a specific allegation against the petitioner in the charge sheet and from the other statement of witnesses recorded during the investigation Prima facie material is available against the petitioner. Defence of the accused need not consider at this stage. The trial court has considered all the aspects and has rightly dismissed the applications and there is no reason to interfere with the order passed by the trial court as there is no merit in this revision. Therefore, this Criminal Revision Case is liable to be dismissed.

12. Perused the records. Admittedly, the prosecution has registered a case stating that even though the petitioner was appointed only on 14.02.2005 as Chief Engineer, he cannot say that he has no connection whatsoever with the alleged offences. But on careful perusal of the records and charge sheet and other statements of the witnesses, it is revealed that there is a specific allegation against this petitioner in the charge sheet, from the available material A2 and A4 cannot be placed on the same foot. Therefore, the contention raised by the learned counsel for the accused cannot be accepted.

13. Considering the facts and circumstances of the case, as already stated that, from the admitted facts and on perusal of the charge sheet, it is clear that there are certain allegations levelled against this petitioner with other accused under Sections 120-B/420 of IPC and Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988. The main allegation against the petitioner is that this petitioner/4th accused knowing well that M/s.Nagarjuna Construction Co.,/A8, quoted exorbitant rates and unwanted items in their price bid and that the justified rates of the common set of items at Rs.2,45,69,000/- were much lesser than the prices quoted by the said Firm, fraudulently and dishonestly, by abusing his official position, recommended the exorbitant price bid of M/s.Nagarjuna Construction Co.,/A8 as such at Rs.2,86,12,000/- to the Works Board without exercising item wise justification and negotiation. Based on the recommendation of Shri.R.Sundarraju/A4, the Works Board, Puducherry Government, approved the price bid of M/s.Nagarjuna Construction Co., After considering the police report, documents sent along with it under Section 173 of Cr.P.C., this court finds prima facie there are sufficient materials available against the petitioner to proceed the case further, if there is strong suspicion charge should be framed.

14. Further, if one sees Sections 239 and 240 of Cr.P.C., if the Court comes to a conclusion that the case put up against the accused is groundless, if unrebutted it would not warrant conviction, there is no sufficient material to frame the charge, to put it simply, there is no prima facie case as against the accused, the Court has to discharge the accused. But if it is otherwise, there is a ground to proceed further, the Court has to frame the charges.

15. In the instant case, as already stated, there are sufficient incriminating materials are available against the petitioner to proceed the case further. At this stage, this Court can have the impression that the petitioner might have committed the offence and the probative value of the materials cannot be tested at this stage. The defences of the petitioner can be considered only during the trial and not at the stage of framing charges.

16. Considering the above facts and circumstances of the case and the charge sheet and other documents, it is very clear that there is a specific allegation levelled against this petitioner/A4. Even on perusal of the order of the trial court, he has considered all the facts and made discussion elaborately and has come to the conclusion that there is sufficient materials to frame the charges. Therefore, the trial court dismissed the discharge petition filed by A4. On

perusal of the order passed by the trial court, in CrI.M.P.No.743/2015 in Spl.C.C.No.3/2010 dated 30.03.2016 on the file of Special Judge (under Prevention of Corruption Act, 1988) for CBI Cases at Puducherry, the said order does not suffer from any material irregularity or patent legal infirmity in the eye of law. Therefore, this Criminal Original Petition is liable to be dismissed.

17. In fine, the revision petition is dismissed and hereby dismissal order passed by the trial court in CrI.M.P.No.743/2015 30.03.2016 is confirmed.

Since the alleged commission of offence is of the year 2003 and the Special Criminal Case is of the year 2010, the trial court is directed to expeditiously dispose of the case, preferably within three months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge for CBI Cases,
Puducherry.

2 The Inspector of Police
SPE: CBI: ACB: Chennai

3. The Public Prosecutor,
High Court, Madras.

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