IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.1378 of 2016

State through
Inspector of Police,
CBI : SCB: Chennai. .. Petitioner

Vs

S.Yuvaraj .. Respondent

Criminal Revision is filed under Sections 397 to set aside the order passed in Crl.MP.No.17 of 2014 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai dated 31.07.2014.

For Petitioners : Mr.K.Srinivasan,
Spl.P.P. for CBI Cases.
For Respondent : Mr.M.Anandaraj.

ORDER

This Criminal Revision is filed against the order passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai made in Crl.MP.No.17 of 2014 in CC.No.5260 of 2013 dated 31.07.2014. Originally, the revision is filed before the trial Court in Crl.RC.No.42 of 2015, and as per the order of this Court dated 20.11.2015 made in Crl.RC.Nos.62 and 63 of 2015, the Crl.RC.No.42 of 2015 is withdrawn and sent to this Court, thereafter, this Court taken up the same on file and renumbered the same as Crl.RC.No.1378 of 2016.

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

On the basis of the source information on 30.01.2013, case in Cr.No.RC1/S/2013/CBI/SCB/Chennai was registered, which discloses the commission of the offences under Section 120(B) r/w.420 IPC and Section 420 r/w.511 IPC, Section 7(1)(A)(2) of Essential Commodities Act, 1955 and Section 25(1)(2) of the Fertilizer (Controller) Order 1985 and Section 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988.

3. The allegation is that M/s.YSR Trading Services and M/s.ETS Impex are proprietary concerns. S.Yuvaraj, Proprietor of M/s.YSR Trading Services and Ethiraj, Proprietor of M/s.ETS Impex entered into a criminal conspiracy during the year 2009 at Chennai and other places with Rajesh Jain @ Rajesh Balar, Rajnikanth representative of M/s.Ramgopal Maritime Associates and L.Ramasubramaniyam, one of the Directors of M/s.Sandhya Shipping Services and Freight Forwarders and unknown Public Servants and others by way of procuring Muriate of Potash (herein after in short referred to as “MoP”) meant for agricultural purposes, attempted to export 175MTS of MoP

(Fertilizer Grade) a restricted item for export, which requires a valid license for export, M/s.YSR Trading Services and M/s.ETS Impex, Chennai attempted to export of MoP Stealthily to Malaysia in the grab of industrial salt by misdeclaring in the invoices, packing list and connected documents. The said MoP was diverted illegally to foreign countries against the provisions of Fertilizer (Control) Order 1985 and Essential Commodities Act, 1955 and thereby cheated Government of India to the tune of Rs.62,72,000/-.

4. The complainant filed charge sheet against the accused for commission of the offences punishable under Section 120(b) r/w.420, 420 r/w.511 IPC and substantive offences thereof, before the Additional Chief Metropolitan Magistrate, Egmore, Chennai on 30.10.2013.

5. During the Course of trial, the respondent herein filed Crl.MP.No.17 of 2014 to discharge him from the charges levelled against him. The trial Court after considering the materials placed before it discharged the respondent by an order dated 31.07.2014, on the following grounds :-

(i)the charge sheet against him is incorrect, improper and illegal.

(ii)No person shall be prosecuted twice for the same offence as per the Article 20(1)(2) of the Constitution of India.

(iii)That the CBI suppressed the entire case filed by the customs for mis-declaration of MoP and subsequently filed charge sheet for the very same offence by invoking the IPC offences.

(iv)The second and consecutive trial for one occurrence in two different courts is abuse of process of law and

(v)There is no absolute evidence to show that the accused has committed an offence under Section 420 IPC.

6. Aggrieved against the said order of discharge, the petitioner/complainant/CBI filed the present revision on the following grounds :-

The customs authority registered and investigated the case under the Customs Act and Essential Commodities Act, whereas the CBI investigated the case under IPC offences and charge sheet was also filed against the accused 1 to 4 for the offences punishable under Section 120B r/w.420 IPC and 420 r/w.511 IPC.

The accused had intend to cheat and attempted to cheat the Government of India and caused wrongful loss to the tune of Rs.62,77,000/- which is clearly borne out by the evidence. The respondent coming to know that there is huge demand of industrial salt in Malaysia, he located a buyer i.e, Karunakaran in Malaysia. Thereafter, he came to know Ethiraj/A2 and contacted him and appraised him about the information. The respondent wanted to export industrial salt to Malaysia, due to shortage of money the respondent requested A2 to join in his business. In turn, the respondent introduced A4 to A2, with the help of A4/M/s.Sandhya Shipping Services and Freight Forwarders, A1 along with A2 exported 50 MTS of industrial salt to Malaysia. Realising that there is good benefit in the export of industrial salt, A1 started a new company in the name of M/s.YSR Trading Services and registered with DGFT, Chennai and obtained IE code. In the meanwhile, A1 introduced A3 to A4. One Chandrasekhara Reddy of Hyderabad got licence for retail sale of fertilizer in the name of M/s.Pawani Hybird Seeds and purchased 1360 bags of MoP during June-July 2009. During July 2009, A3 arranged two trucks through M/s.Geo Fast Carriers, Hyderabad for transportation of goods from Hyderabad to Chennai. It is evident from the evidence of LW1, LW2 and LW3 that they had detained the export consignments under the declaration as Industrial salt at ICBC CFS Manali and as per the orders of AC, Customs, on 28.07.2009, they examined the said consignments weighing 75 MTs declared as Industrial Salt vide shipping bill No.3436388 in the name of M/s.YSR Trading Services kept in three containers No.MXCU 0000179, GSU 2469162 and JAYU 1070182. The samples contained in the said consignment were forwarded to M/s.Coramandal fertilizers Ltd and Customs House Laboratory on 29.07.2009 for the purpose of testing and analysing the same for chemical composition. The lab report dated 03.08.2009 confirmed that the samples are MoP (Potassium Chloride), a restricted item for export. The accused 1, 3 and 4 given their voluntary statement before the Customs Officials under Section 108 of the Customs Act, 1962 and A2 was not examined by the customs authority. During the course of investigation by the CBI, the version of A2 was tallied with the statements of other co-accused. As stated above, A1 to A4 committed the criminal conspiracy, in purchasing Agricultural MoP from A.Chandrasekhara Reddy of Hyderabad and attempted to export the same in the grab of industrial salt and thereby cheated the Government of India. Hence, the accused committed the offences under Section 120B r/w.420, 420 r/w.511 IPC.

7. In the grounds of revision, the complainant/CBI has relied on the following judgments :-

1. **Sree Atyachari Virodhi Parishat V. Dilip Nathumal Chotta – 1991 (1) SCC 715.**
2. **Leo Roy Frey V. Superintendent District Jail, Amristar – (1958) SCR 822.**
3. **Monica Bedi V. State of Hyderabad – 2011 (Crl. L. J) 427.**
4. **Jitendra Panchal V. Intelligence Officer NCB – 2009 (3) SCC 57.**
5. **Maqbool Hussain V. The State of Bombay – (1953) SCR 730.**
6. **S.A.Venkataraman V. The Union of India and another – (1954) SCR 1150.**
7. **Sangeetha Ben Mahendra Bhai Patel V. State of Gujarat.**
8. **Syed Basheer Ahamed and others V. Mohamed Jameel and another.**

8. The learned counsel for the respondent would submit that no one should be tried twice for the very same offences, the Customs officials has taken action against the accused under Sections 132 and

135 of the Customs Act citing the respondent as first accused before the Additional Chief Metropolitan Magistrate, Egmore, Chennai in EOCC.No.70 of 2013. Now, for the very same cause of action, the CBI has registered the case and hence, the present charge sheet, therefore, it is violation of Article 20 and 21 of the Constitution of India. Article 20(1)(2) of the Constitution of India, Section 26 of The General Clauses Act and Section 300 of the Code of Criminal Procedure, 1972 prohibits giving double punishment to the accused.

9. The CBI cannot prosecute the accused for the very same offences, further, the respondent has no knowledge about the materials attempted to be exported and the witnesses has spoken that the prosecution has implicated the respondent and the respondent in his statement before the Customs authority has clearly stated that he has no knowledge about the materials which was attempted to be exported. The trial Court after considering the circumstances and the documents produced before it comes to the conclusion that the prosecution is not having materials to show that there is prima facie case against the respondent/accused, since already a customs case is submitted before another Court for the very same alleged occurrence under different Act. The learned counsel submits that the witnesses have not spoken about the offences

committed by the respondent and the trial Court rightly discharged the accused and the order passed by the trial Court does not warrant any interference by this Court and prays for dismissal of the revision.

10. Heard the rival submissions made on both sides and perused the records.

11. On perusal of the charge sheet and the documents annexed along with charge sheet, the discharge petition filed by the petitioner therein and counter affidavit filed by the CBI and the order passed by the trial Court, it reveals that the revision petitioner/complainant/CBI registered case based on the source information which disclosed the commission of cognizable offence under Sections 120B r/w.420 of IPC and Section 420 r/w.511 of IPC against the respondent and others. The oral and documentary evidences collected during investigation established the role of the respondent for commission of offence punishable under Sections 120B r/w.420 and Section 420 r/w.511 IPC. The customs authority registered and investigated the case under Customs Act and Essential Commodities Act and whereas the CBI investigated the case under IPC which is distinct offence which discloses the commission of cognizable offence under Sections 120B r/w.420 and Section 420 r/w.511 IPC. The investigation conducted by

the CBI discloses that the respondent herein had intention to cheat and attempted to cheat and cause wrongful loss to the Government of India to the tune of Rs.62,72,000/-. The evidences of LW15 and LW16, D6 and D7 clearly established that the consignment attempted to export was MoP fertilizer grade which is restricted for export. The petitioner attempted to export 75 MTs of MoP to Malaysia misdeclaring the same as Industrial salt. The foreign buyer had given certain specification for the industrial sale and the same was procured through Rajesh Jain/A3. Before starting the firm M/s.YSR Trading Services, the respondent was acquainted with Ethiraj/A2 of M/s.ETS Impex. It is revealed that as per the advice of the respondent, the other accused entered into criminal conspiracy with the intention to cheat the Government of India by way of exporting MoP restricted item for export. Based on the source information FIR was registered and filed charge sheet after a thorough investigation and based on the oral and documentary evidences gathered during investigation. As per the guidelines issued by the Hon'ble Supreme Court and other High Courts that the charges can be framed on the strength of the police report, list of witnesses and list of documents, if prima facie evidence is sufficient.

12. The learned Special Public Prosecutor for CBI cases would submit that the trial Court has gone beyond the scope of Section 239 Cr.PC. The main allegation against the accused is that the respondent herein/Yuvaraj proprietor of M/s.YSR Trading Services and Ethiraj proprietor of M/s.ETS Impex entered into criminal conspiracy at Chennai and other places with one Rajesh Jain and Ramasubramaniam and in pursuance of the said criminal conspiracy procured subsidized Muriate of Potash meant for agriculture purpose, a restricted item for export without a valid license exported 100 MTS of MoP in the grab of industrial sale and the same was recalled by DIU/Customs and they also attempted to export 75 MTs of MoP (fertilizer grade) a restricted item to Malaysia by misdeclaring the same as industrial salt with a view to cheat the Government of India thereby caused a wrongful loss to the tune of Rs.62,72,000/- to the Government of India and corresponding wrongful gain to themselves.

13. The witnesses of LW15 and LW16 and the document Nos.6 and 7 collected during the investigation would reveal the details of the samples collected and the report stating that the samples are Fertilizer grade MoP as per Schedule I Part A 1(c) 1 of the Fertilizer Control Order, 1985.

14. It is settled proposition of law, at the time of framing of charges, the Court has to exclusively see the charge sheet and the documents annexed with it by the prosecution. Therefore, the trial Court failed to consider this aspect and gone elaborately into the probative value of the material evidence and discharged the accused and failed to follow the ratio laid down by the Hon'ble Apex Court in the decisions cited supra.

15. The learned counsel for the respondent/accused would submit that the customs officials has filed a case before the concern authority and subsequently the CBI filed charge sheet for the very same offence by invoking the IPC offences.

16. The learned Special Public Prosecutor for CBI cases would submit that the customs officials filed a complaint before the trial Court in EOCC.No.70 of 2013 before the Additional Chief Metropolitan Magistrate, Egmore, Chennai for evasion of the customs duty and also invoked penal provisions under the Customs Act. But, this case is only for commission of offences by the respondent under IPC, there is no bar for the petitioner/CBI in registering the case against the respondent and other persons for the offences under IPC. It is no bar

even in any proceedings made against the respondent and any Special enactment will not take away the proceedings by the petitioner/CBI under IPC offences. Since, the offence involved is cheating the Government of India by way of evading customs duty, thus the respondent/accused has committed the offences under Section 120B r/w.420 and 420 r/w.511 IPC.

17. At the time of framing charges, the Court has to look into the charge sheet/final report filed by the prosecution, whether the allegations levelled against the respondent and whether any witnesses or any material documents would support the allegations levelled in the charge sheet. But, in this case as contended by the learned Special Public Prosecutor for CBI Cases, the LW1 has clearly spoken about the charges levelled against the accused and other persons, based on the source information that exporters are exporting MoP in the guise of industrial salt, the officials inspected the consignment in containers No.MXCU 0000179, JESU 2469162 and JAYU 1070182 were examined on 28.07.2009. On examination it was found 500 white polythene bags kept in container MXCU 0000179, in container JESU 2469162 out of 500bags 345 bags where of white coloured powder and 155 bags containing red coloured powder and in container JAYU 1070182 revels that out of 500 bags 455 bags

whereof white coloured powder and 45 bags containing red coloured powder and there is a reasonable belief that the goods were misdeclared as industrial salts.

18. On perusal of the documents viz., D2, D3 and D4, it is seen that in Document No.2/Invoice and Document No.3/Packing list, it is clearly mentioned the name of the exporter as M/s.YSR Trading Services/A1 and the consignee name as STS Global Trading, Malaysia and the description of the goods is mentioned as industrial salt and other details containing the invoice numbers, references, and flight details and the country of origin of goods it is mentioned as India and country of destination it is mentioned as Malaysia. The corresponding Document No.4 it is also shown that the name of the exporter details as M/s.YSR Trading Services/A1 and the consignee name as STS Global Trading, Malaysia and the port of loading is mentioned as Chennai Customs House.

19. The documents referred to above would clearly shows the involvement of the respondent in exporting the goods to Malaysia in the name of Industrial Goods. Therefore, the charge sheet and the deposition of statement of witnesses and the documents collected during the investigation revels there is a prima facie case made out

against the respondent and there are incriminating materials available against the respondent to proceed further. At the stage of framing of charges, the Court need not go into the probative value of the witnesses. As far as the point raised by the learned counsel for the respondent regarding no one should be charged twice for the same offences is concerned, as earlier, the case was registered by the Customs authority under the Customs Act and the scope of lodging the complaint is different under Sections 132 and 135 of the Customs Act. Now, the present scope of lodging the complaint, purpose of lodging the complaint and taking cognizance of the offence against the accused is entirely different. The contention raised by the learned counsel for the respondent is not sustainable either under law or on facts for the reasons stated above. The trial Court has also not gone into the various aspects and decisions rendered by the Hon'ble Supreme Court and High Courts and travelled beyond the scope of Section 239 Cr.PC and discharged the respondent from the charges.

20. This Court finds that there is illegality, infirmity and perversity in the order passed by the trial Court and the same requires interference by this Court, in the light of the above discussions and also the decisions referred to by the learned Special Public Prosecutor for CBI Cases in the grounds of revision, the order

passed in Crl.MP.No.17 of 2014 in CC.No.5260 of 2013 dated 31.07.2014 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai is liable to be set aside and the same is hereby set aside.

21. In the result, the criminal revision is allowed. The trial Court is directed to proceed with the case further and in accordance with law and dispose of the same as expeditiously as possible. The respondent/accused and the prosecution is directed to cooperate for expeditious trial.

09.08.2017.

Index : Yes/No.

To
1. The Additional Chief Metropolitan Magistrate, Egmore, Chennai.
2. The Special Public Prosecutor, CBI Cases, High Court Madras.

P.VELMURUGAN, J.

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Crl.RC.No.1378 of 2016.

09.08.2017