

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2017

Coram:

The Hon'ble Dr.Justice G.Jayachandran

Crl.O.P.No.25966 of 2017

and

Crl.M.P.No.14980 of 2017

Dr.I.Vijaykumar

.. Petitioner

/versus/

State Rep.by
The Superintendent of Police,
CBI-ACB,
Chennai.

.. Respondent

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records and quash all the proceedings in RC MA1 2016 A 0023 now pending investigation on the file of the respondent.

For Petitioner:Mr.P.Kumaresan

For Respondent:Mr.K.Srinivasan, Spl.P.P(CBI Cases)

O R D E R

The Criminal Original Petition is filed praying to call for the records and quash all the proceedings in RC MA1 2016 A 0023 now pending investigation on the file of the respondent.

2. The petitioner herein is arrayed as A1 in the First Information Report, which alleges that while he along with other the accused were working as Chairman-cum-Managing Director of Madras Fertilizes Limited (in short "M/s MFL"), they entered in to a criminal conspiracy in the matter of awarding contract for purchase of 130 sets of Primary Reformer Radiant Section Catalyst Tube Assembly and 64 Nos. of Grids Primary Reformer Radiant Section Catalyst Tube Assembly meant for the Ammonia Plant of M/s MFL. The tender for purchase of above said products was floated on 06.09.2011, five vendors were enlisted and purchase enquiry was sent to them on 07.10.2011. The date for submission of tender was extended from 08.11.2011 to 25.11.2011 and it was opened on 28.11.2011. The petitioner as Chairman-cum-Managing Director was joined M/s MFL during May 2012. Instead of e-reverse auction through external agency, the petitioner had re-floated the tender and accepted the tender

submitted by M/s Schmidt + Clemens and M/s Parallooy Limited. The tender quoted by M/s Schmidt + Clemens Group(A9) for Rs.6.94 crores was accepted and the other two bidders, who have quoted for Rs.6.93 crores and Rs.8.80 crores were rejected. Thus, by re-floating the tender, without assigning reason and accepting the revised quote of Rs.12.59 crores of M/s Schmidt + Clemens, the petitioner along with other accused has made wrongful gain to the tune of Rs.5.65 crores.

3. It is contended by the petitioner that, the above registration of the complaint is done by mala fide intention, in order to take revenge against him. The registration of the case by the respondent, on source information, does not have any valid sanctity. In case of any such information discreet and secret, preliminary enquiry should be conducted in respect of the information and only if prima facie case made out against the public servant in the preliminary enquiry, it should be followed by detail enquiry. In this case, no such preliminary enquiry was conducted and due to some external force, the First Information Report has been registered.

4. It is also contended by the petitioner that as an officer high rank in the Income Tax Department, he retired in the rank of Additional Secretary of Central Government on 31.10.2015. Had unblemished record both in Income Tax and M/s MFL, where he served on deputation for about 3 ½ years. While so, the respondent police without proper preliminary enquiry, had implicated him, in this case with mala fide intention. Further, when he was called for enquiry, he had produced all the documents and explained about the difference in the price and the reason for deferring the purchase from 2011-2013, his role in the said purchase vis-a-vis the role the Tender Opening Committee, which is responsible for analysing the bid and recommend the purchase. In spite of submitting entire details relating to the procurement by letter dated 02.08.2017, the Investigating Officer has not taken note of it. Therefore, he have no confidence in the manner the investigation is conducted. Hence, the First Information Report has to be quashed.

5. The learned Special Public Prosecutor for CBI Case appearing for the respondent submitted that the investigation is under way. The explanations and documents given by the accused person will be duly considered, while filing the final report.

6. Heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor for CBI Cases appearing for the respondent.

7. The petitioner herein is arrayed as an first accused in this case along with eight others. The case is under

investigation. The petitioner herein submits that he was summoned and during the course of interrogation, he has produced certain documents to the Investigating Officer, which will prove his innocence. However, he alleges that the documents produced by him were at all considered and the Investigating Officer is likely to file a final report against him.

8. This Court is conscious of the fact that even an iota of evidence is available against the accused person, the investigation has to be allowed to continue and the First Information Report cannot be quashed at this stage. Therefore, if any document produced by the petitioner herein is worthy of consideration, it is expected that the Investigating Officer will not over look it. Because, the CBI has registered the case based on the source information, it is not necessary to test the source at this stage by calling for the records. Therefore, this Court is not inclined to entertain this petition.

9. Accordingly, this Criminal Original Petition is dismissed. However, the Investigating Officer, in this case, shall give due consideration about the documents produced by the accused/petitioner herein and arrive at appropriate conclusion before filing the final report. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintendent of Police, CBI-ACB, Chennai.
2. The Special Public Prosecutor for CBI Cases, High Court, Madras.

SSD(CO)
sm:26.12.2017

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