IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 03.01.2017

Judgment Pronounced On : 22.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

Crl.O.Ps.18569 and 18570 of 2016

K.Pongiannan
N.Shanmugasundaram ..Petitioners/Accused 5 and 6 in Crl.O.P.No.18569 of 2016

K.Pongiannan
D.Sukumar .. Petitioners/Accused 4 and 5 in Crl.O.P.No.18570 of 2016

vs.

State Rep. By
The Inspector of Police
CBI/ACB/Chennai
[R.C./MA 1/2013/A0012] ... Respondent/Complainant in both the Criminal O.Ps.

PRAYER IN CRL.O.P.No.18569 of 2016:-Filed under Section 482 of Crpc Criminal OP filed seeking to quash the final report filed in C.C.No.9 of 2014 now pending on the files of the learned XIV Additional Special Judge for CBI Cases, Chennai, for the alleged offence under Section 120(b) r/w. 420, 467, 468, 468 r/w.471 of IPC and under Sections 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988.

PRAYER IN CRL. O.P.No.18570 of 2016:-
Criminal OP filed seeking to quash the final report filed in C.C.No.10 of 2014 now pending on the files of the learned XIV Additional Special Judge for CBI cases, Chennai, for alleged offences under Section 120 (b) r/w.420, 467, 468, 468 r/w.471 IPC and under Sections 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

For Petitioners : Mr.K.Shanker
For Respondent : Mr.R.Mohan, Spl.P.P., for CBI Cases.

COMMON ORDER

These Criminal Original Petitions are filed seeking to quash the Final report filed in C.C.Nos.9 and 10 of 2014 now pending on the file of Learned XIV Additional Special Judge for CBI Cases, for alleged offence under Sections 120(b) read with 420, 467, 468, 468 r/w.471 of IPC and under Sections 13 (2) read with 13(1)(d) of Prevention of Corruption Act, 1988, as against the petitioners.

2. The case of the prosecution is that on source information, FIR was registered in RC MA1 2013 A 0012 of CBI:ACB: Chennai on 20.03.2013 against A-1 to A-9 including these petitioners who are arrayed as A-4 and A-5 in Crl.O.P.No.18570 of 2016 and A-5 and A-6 in Crl.O.P.No.18569 of 2016.

3. The allegation in the FIR in brief is that during 2008-2012, the accused Alex Joseph who is a car broker conspired with one V.R.Venkatachalam arrayed as A-6 in C.C.No.10/2014 and A-7 in C.C.No.9/2014 to import luxury vehicles from abroad through the Indian Sea Ports in the names of NRIs returning to India by using them as conduits and sold the same illegally to M/s.TCP Ltd., Chennai, arrayed as A-7 in C.C.No.10/2014 and as A-8 in C.C.No.9/2014 whose Managing Director is the said V.R.Venkatachalam-A6 in C.C.No.10 of 2014 and ranked as A-7 in C.C.No.9 of 2014. The petitioners who are Tamil Nadu State Government Employees attached to Road Transport Department are alleged to have participated in conspiracy with other accused to bring in luxury vehicles from foreign countries under Transfer of Residence Scheme with the help of Customs officials and sold the same in India.

4. It is averred that one Ismail K.P. @ K.P.Mohammed Ismail Abdulla who was working as Labourer in Dubai, imported "Toyota Land Cruiser" car bearing Chasis No.HDJ1010025240, Engine No.1 HD0245691 under Transfer of Residence Scheme to Cochin on 30.09.2003 and he is arrayed as A-2 in C.C.No.10/2014 in respect of which Crl.O.P.No.18570 of 2016 is filed. As far as the case in Crl.O.P.No.18569 of 2016 is concerned, Alex Joseph (A-1) had contacted one Vijayadevan Bhaskaran Pillai (A-2) a Indian Labourer at Rasal Kaima, Dubai, and imported "Mercedes Benz car" bearing Chasis No.WDB 2201752A142702 vehicle through him under the Transfer of residence scheme to Cochin on 26.03.2003. In both the cases, A-2 viz., Ismail and Vijayadevan Bhaskaran Pillai (A-2), declared the vehicles as 2002 model used car and its value as Rs.2,04,500/- (C.C.No.10/2014) and as a 2000 model used car and its value as Rs.3,12,000/- (C.C.No.9/2014). However, disbelieving the same, customs officials valued the car at Rs.13,31,814/- (Toyota Land Cruiser) and assessed the duty as Rs.22,45,385/- and in respect of Mercedes Benz car, the customs officials had valued the car at Rs.20,14,342/- and assessed the duty as Rs.33,99,187/-. The said amount (Rs.22,45,385/-) was paid by A-2 Ismail K.P. (Toyota Land Cruiser) on 12.11.2003. Vijayadevan Bhaskaran Pillai (A-2) had paid Rs.33,99,187/- on 09.05.2003 with the help of Customs House Agent Licence Holder Don Bosco (A-3) Joseph Daniel (A-4). Thereafter the vehicle was taken to Chennai by L.W.38 Raheem without doing any temporary or permanent registration at Cochin in violation of Central Motor Vehicle Registration Rules. At Chennai, Alex Joseph (A-1) received the vehicle and

handed it over to A-6 Venkatachalam. Thereafter A-2 K.P.Mohammed Ismail Abdulla (Crl.OP.18570/2016) and A-2 Vijayadevan Bhaskaran Pillai (Crl.O.P.18569/2016) approached RTO at Chennai, through intermediaries who are subsequently treated as approvers to get their cars registered; Car No.TN 09 AH 3999 - Toyota Land Cruiser as if it is a 2003 Model vehicle and No.TN-09-AK-3999 for the Mercedes Benz. It is further averred that A-2 in both the cases also approached this court seeking exemption to pay entry tax for the imported car by filing W.P.17680 of 2004 (Crl.O.P.18570/2016) and W.P.No.23731 of 2004 (Crl.O.P.No.18569/2016) and obtained interim order. On source information, DRI Chennai, started investigation in 2008 about 33 vehicles imported over the period of time and the same was entrusted to N.Muruganandam, staff of DRI and he colluded with A-2 and submitted a false report causing revenue loss to the Government to the tune of Rs.48.40 crores. After the respondent registering the present case, search was conducted at 19 places in Chennai and various irregularities in respect of 33 imported cars was found out. A-1 Alex Joseph was the brain behind the transfer of residence scheme and with the active cooperation of the RTO officials, the purchasers of the vehicles registered their vehicles in Chennai. The originally named accused Ramanathan and Ravindran turned approvers and after completing the investigation, the respondent filed interim final report on 30.04.2014. Thus the petitioners herein who are the officials attached to Road Transport Department is alleged to have facilitated the Registration of the above said vehicles with false particulars causing Revenue loss to the exchequer.

5. On the other hand, disputing the claim of the prosecution, the learned counsel for the petitioners contended that the final report did not disclose any offence allegedly committed by the petitioners herein. The final report is bereft of basic prima facie material to show that the petitioners colluded with the other accused in causing revenue loss to the State. The petitioners being Tamil Nadu State Government employees, no consent letter was obtained by the CBI to investigate and file final charge sheets against the State Government servants under the Prevention of Corruption Act. The case of the prosecution that the petitioners acted in collusion with the other accused is not supported by any material. The imported car is still in the name of A-2 Ismail in Crl.O.P.18570/2016 and Vijayadevan Bhaskaran Pillai in Crl.O.P.18569/2016 and the same was not considered. The petitioners have no knowledge about any violation of any customs duty or any other Rules in the course of import of cars by A-2. There is nothing on record to prove that the petitioners acted in collusion and conspired with Accused Nos.1 and 2 in importing the cars. The petitioners have not done anything to attract the charge under Section 120B IPC. There is nothing mentioned specifically about the petitioners colluding and cooperating with other accused and conspired with them. The Act of the respondent in filing the final

report even before the investigation is completed is not proper. In the final report, at one part, it is stated that the other accused have forged documents before customs officials, but in another part of the final report, it is stated that the accused who are the RTO officials conspired with the other accused to cheat the Government. Thus the petitioners contend that no material is placed before the court concerned to hold that the petitioners were involved in conspiracy with the other accused in committing the alleged crime. Hence, the petitioners seek to entertain the petition and to quash the final reports filed against them in C.C.No.9/2014 and C.C.No.10/2014 as stated above.

6. Admittedly the petitioners are RTO and MVI attached to Tamil Nadu Government Service. The fact that the vehicles involved in this case got registered in the RTO Office, where the accused were employees at Chennai, is also admitted. It is true that the vehicles have not been transferred to the name of V.R.Venkatachalam, Managing Director of M/s.TCP Limited. Pointing it out the learned counsel for the petitioners contended that unless and until the name transfer is effected, it cannot be stated that the registration was done by the petitioners herein, in collusion with the owner of the vehicle. Therefore, it was contended that there was no role for the petitioners in any criminal conspiracy and they have not done anything wrong in violation of the Rules relating to the registration of vehicles or customs duty and as there is no material to link them with the alleged offence, the petitioners seek that the case registered against them to be quashed.

7. As stated above, the petitioners in Crl.O.P.No.18570 of 2016 viz., K.Pongiannan and D.Sukumar, who are arrayed as A-4 and A-5 in C.C.No.10/2014 are concerned, they are working as officials in the RTO office. They only have registered the vehicles mentioned as stated above. As per the averments of the respondent, in the final report and also in the counter filed in the above criminal original petitions, as officials of the RTO office, the petitioners herein colluded with A-1 Alex Joseph in getting the vehicle registered without following the proper procedure. It is mentioned in paragraph 10 of the counter that for getting the fancy number an application was filed in the name of Shri Mohammed Ismail Abdulla with the above mentioned Chennai bogus address, before the Transport Department, Government of Tamil Nadu and an order in this regard was issued by the Additional Secretary to Government Vide letter dated 03.11.2004. Instead of writing the year of manufacture/model as "2002" year of manufacture "2003" was written in Sl.No.12 in the form of application for registration of the motor vehicle. Along with the application, the party had submitted copy of Bill of Entry in which the model number has been cleverly erased; the purpose was to cheat the buyer in India and to collect more money by selling it as a new one. The BOE containing the endorsement

"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, copy of BOE, Copy of Customs duty paid challan, copy of passport of Ismail purportedly issued by M/s.Lakshmi Transports, Chennai, showing the transportation of this vehicle from Cochin to Chennai. It is further stated in paragraph 11 of the counter that the documentary as well as oral evidences are available to prove that on receipt of the application forms and connected documents for registration of the vehicle as stated above, accused Sukumar MVI in connivance with accused K.Pongiannan the then RTO, (A-5 and A-4 in C.C.No.10/2014) without conducting proper inspection of the vehicle and proper verification of the documents and without verifying the genuineness of the BOE and connected documents with the customs department, allowed registration of the vehicle by putting his signature below the seal impression affixed on Form 20 that "Inspected the motor vehicle". Further as per the choice of the party, RC Book was issued to the party showing the year of manufacture of this vehicle as "2003" with bogus Chennai address of the party. According to the prosecution, nothing is available in the file to show that they have conducted verification of the genuineness of BOE and other connected documents produced by the party. It is further alleged by the prosecution that after customs clearance on 12.11.2003 at Cochin, registration of the vehicles was done on 02.12.2004 at Chennai, after a gap of around 13 months, that also without doing any temporary or permanent registration of the vehicles in Kerala. It is further alleged that the RTO officials did not bother to obtain insurance certificate of the vehicle which indicates serious non compliance to CMVR Rules, 1989 and grave misconduct on the part of RTO officials.

8. So for as Petitioners in Crl.O.P.No.18569 of 2016 viz., K.Pongiannan and N.Shanmugasundaram, who are arrayed as A-5 and A-6 are concerned, they are working as officials in the RTO office. As per the averments of the respondent in the final report and also in the counter filed in the above criminal original petitions, it is stated that the investigation revealed that one used 2000 model Mercedes Benz-S 500- bearing Chassis No.WDB2201752A142702 imported in the name of Vijayadevan Bhaskaran Pillai, was cleared through Cochin Customs, under transfer of residence scheme vide Bill of Entry dated 26.03.2003. The BOE was filed by accused No.4 Shri Joseph Daniel, who obtained the signature of John Bosco (A-3), Customs House Agent (CHA), authorized signatory of M/s.Cochin Air Cargo Clearing House, Cochin. The Customs Official 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 and 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. The Appraising Officer made an endorsement in the BoE that "The Vehicle Registration

Authorities shall endorse the Registration Certificate 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." It is further stated in the counter that the investigation revealed that 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. It is revealed that after customs clearance, the said vehicle was brought to Chennai and produced before the petitioners/accused No.5 and 6 at RTO Chennai West and they have allowed to register the vehicle as TN-09-AK-3999 on 27.09.2004 in the name of Vijayadevan Bhaskaran Pillai, with a bogus address-"Aarthi Apts, 1, 12th Avenue, Ashok Nagar, Chennai-600 083, Tamil Nadu". For showing the transportation from Cochin to Chennai, a bogus Bill No.4545 dated 16.08.2004, purportedly issued by M/s.Lakshmi Transports, Fleet Owners and Transport Contractors, Moosa Street, Chennai-1 was submitted. Investigation revealed that no such Lakshmi Transports functioning in Moosa Street, Chennai. It is further stated in the counter that Fancy No."3999" is the number of almost all the vehicles owned by M/s.TCP Ltd., or its sister concerns, owned by V.R.Venkatachalam and to obtain the same fancy number, they applied for a different series not being used by the RTO office at that time, to the transport ministry which clearly indicates that the vehicles was imported and registered for the use of Venkatachalam. For getting this fancy number an application was filed in the name of Vijayadevan Bhaskaran Pillai with the above mentioned Chennai bogus address, before the Transport Department, Government of Tamil Nadu and an order in this regard was issued by the Additional Secretary to Government vide letter No.74590/Tr.VI/2004-I dated 28.07.2004. For registering the vehicle, various types of applications forms such as Form No.20, 27, 33 and 60, duly filled in were submitted before the RTO West, Chennai. Instead of writing the year of manufacture/model as "2000", year of manufacture "2003" was written in Sl.No.12 in the form of application for registration of a motor vehicle. Along with the application, the party had submitted copy of Bill of Entry No.124434 dated 26.03.2003 in which the model number has been cleverly erased; the purpose was to cheat the buyer in India and to collect more money by selling it as a new one. It is also submitted that documentary as well as oral evidences are available to prove that on receipt of the application form and connected documents for registration of the vehicles as stated above, accused Shanmugasundaram MVI in connivance with accused K.Pongiannan, the then RTO, without conducting proper inspection of the vehicle and proper verification of the documents and without verifying the genuineness of the BoE and connected documents with the Customs Department, allowed registration of the vehicle by putting his signature below the seal impression affixed on Form 20 that "Inspected the motor vehicle" "Certified that the particulars mentioned in the applications are true and that the vehicle complies with the requirement of the Motor Vehicles Act and the rules made thereunder." No record/document is available in the registration file showing the BoE and connected documents was sent to Customs for verification of genuineness of these records and if these documents were sent to the Customs, Cochin, they would have definitely get the correct picture that year of manufacture of this vehicle was 2000 and not 2003. Without doing so, registration No.TN-09-AK-3999 was assigned to this vehicle by the petitioners/accused persons (A-5 and A-6) as per the choice of the party and RC Book was issued to the party showing the year of manufacture of this vehicle as "2003" with bogus Chennai address of the party. According to the Prosecution, nothing is available in the file to show that they have conducted verification of the genuineness of BoE and other connected documents produced by the party. There is an endorsement 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." It is mentioned in the RC Book that MVI Shanmugasundaram (Accused No.6) conducted inspection of the vehicle. It is also stated that the photographs of Vijayadevan Bhaskaran Pillai affixed on the RC Book and the photographs affixed on the affidavits submitted in RTO Office for address proof with regard to the registration of the vehicle said to be that of Vijayadevan Bhaskaran Pillai are not matching, and they are the photographs of two separate persons, which shows that the offence of impersonation has been committed by somebody before the Notary Public, which will also prove that the MVI/RTO officials have not taken proper examination of the documents also. It is submitted that after customs clearance on 09.05.2003 at Cochin, registration of this vehicle was done on 27.09.2004 at Chennai, after a gap of around 16 months, that also without doing any temporary or permanent registration of this vehicle in Kerala. Further, there was serious non compliance of CMVR rules 1989, that before registering the vehicle, RTO officials did not bother to obtain insurance certificate of the vehicle and thus according to the prosecution, Vijayadevan Bhaskaran Pillai with the active connivance of the petitioners viz., K.Pongiannan and N.Shanmugasundaram/RTO Officials, got the vehicle registered as TN-09-AK-3999 with the year of manufacture as 2003.

9. Pointing it out, the learned Special Public Prosecutor contended that the petitioners herein as officials of the RTO department were actively involved in registering the imported car without verifying the documents i.e., only in collusion with the importer, they have played a role in the offence causing loss to the exchequer. The respondent relied on the dictum of Apex Court in the case of Satyanarayana Sharma Vs. State of Rajasthan 2001 CLJ 4640 SC.

10. The learned Special Public Prosecutor also contended

that at this stage, it is only to be seen as to whether there are materials available to presume the offence has been committed and it is not to be seen whether the case will end in conviction. According to the prosecution, the accused are involved in registering the imported vehicle in violation of the Rules without applying the mind and without following the Rules and Regulations, which would amount to playing a role in the conspiracy and further the approvers in this case already stated that they used to give bribe amount to the RTO officials and the act of the petitioners herein itself will go to prove the role played by them in registering the imported vehicle. The said contention of the prosecution has to be accepted at this stage and there appears to be prima facie material available to link the accused with the alleged offence and accordingly, this Court is not inclined to entertain these petitions. This court is of the view that the contention of the petitioners cannot be accepted at this stage.

11. The learned counsel for the petitioners contended that the petitioners being the State Government Officials, the respondent CBI has no power to lay the charge sheet against them and further no sanction order was obtained from the concerned authority to prosecute the State Government Servants and on that ground, petitioners seek to quash the final reports.

12. However, the learned Special Public Prosecutor contended that the respondent CBI originally filed the case against N.Muruganandam, arrayed as A-1 who was working as Senior Intelligence Officer in the Directorate of Revenue Intelligence and against other unknown public servants and unknown private individuals. Subsequently, during the course of investigation, the role played by the petitioners herein/accused came to their knowledge and they were included as additional accused in this case. It is also contended by the respondent that both the petitioners have already retired before filing of charge sheet and as such no sanction need be obtained. The said contention of the respondent/State is correct and the same merits to be accepted.

13. The learned counsel for the petitioners also contended that the investigation is completed and charge sheet filed only in respect of 3 cars and investigation is going on in respect of other cars under the same FIR and as such the procedure adopted by respondent in filing final report even before investigation completed is not proper and the same itself is sufficient to quash the proceedings. In support of the same, he relied upon the Ruling reported in PMC Mercantile Limited VS. The State [Order of Madurai Bench of Madras High Court dated 31.07.2014 in Crl.R.C.No.231 of 2013] and stated that such report shall be termed incomplete report based on which no cognizance of the offence can be taken by Judicial Magistrate or the Judge as the case may be.

14. However, refuting the same, the learned Special Public Prosecutor submitted that the interim final reports were filed and along with that further investigation is going on and on conclusion of the same, further reports will be filed.

15. Taking note of the all the above said materials and the fact that the petitioners who are officials of RTO have played a role in registering the imported car and this according to the prosecution, the same was done in violation of Rules and Regulations and there are prima facie material to prove the same, the plea of the petitioners cannot be entertained at this stage.

16. Considering the materials placed before this court and the rival contentions of both the parties put forth before this court, I am of the view that the prosecution has laid the final report mentioning various facts of involvement of the petitioners herein in registering the imported vehicle, without following the proper procedure for Registration. In such circumstances, it cannot be stated that the prosecution has not placed any material before the court to make out a prima facie case and prosecute the case against the accused herein. In such circumstances, the claim of the petitioners, has to fail and the same cannot be entertained. In the result, these criminal original petitions are dismissed. Connected MPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

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

2.The Inspector of Police
CBI/ACB/Chennai
[R.C./MA 1/2013/A0012]

3.The Public Prosecutor,
High Court, Madras.

Crl.O.Ps.18569 and 18570 of 2016

PVS(CO)
GN(09/11/2017)