

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.O.P.No.2276 of 2013

&

M.P.Nos. 1 and 2 of 2013

1.National Refrigeration Service

Rep. by its Proprietorix

C.D. Angel Bright,

W/o. T. Kesavan,

140, Kamaraj Salai,

Karaikal - 609 602.

2.T. Radhakrishnan,

S/o. Thanga Nadar,

Manager (Power Agent)

National Refrigeration Service,

140, Kamaraj Salai,

Karaikal - 609 602.

... Petitioners

Vs

1.The State of Pondicherry,

Rep. by Station House Officer,

Neravy Police Station,

Karaikal.

2.M/s. Oil and Natural Gas Corporation Ltd.,

Rep. by its Head Engineering Services,

Cauvery Asset,

Neravy,

Karaikal - 609 604.

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.351 of 2011 on the file of the learned Judicial Magistrate No.II, Karaikal and quash the same.

For Petitioner : Mr. R.C. Paul kanagaraj
for Mr.J.Vincent Kumar
For respondents : Mr.R.Thangavel, GP(P)
for R1
Mr.A.Muralidharan,
for R.2

ORDER

Criminal Original petition has been filed to quash the proceedings in C.C.No.351 of 2011 on the file of learned Judicial Magistrate No.II, Karaikal. Petitioners are accused in this case and a charge sheet was also filed against them, which reads as follows:

'Since 1999 at ONGC Cauvery Asset, Neravy, Karaikal, 2 KMs East to PS, the accused No.1 C.D. Angel Bright, w/o Kesavan, the proprietor of M/s National Refrigeration Service and the accused No.2 Radhakrishnan, s/o Thanga Nadar, Manager and Power Agent of the Proprietor of M/s National Refrigeration Service, having its place of business at No.140,

Kamaraj Salai, Karaikal, in furtherance of their common intention, produced forged invoice and debit memos (give the particulars of the forged bills) for the period from 1997-2001 with the defacto complainant company (ONGC Neravy) under the pretext that the repair and replacement of compressor in air cooling machine were carried out and M/s Shravan Engineering Enterprises Pvt. Ltd., Chennai issued the said debit memos and also produced forged bills (give the particulars of the forged bills) under the pretext that the said bills were issued by M/s Refrigeration Allied Traders, Chennai and realized the bill amount Rs.10,12,595/- and thereby cheated the defacto complainant company and rendered themselves liable to be punished under Section 468 IPC r/w 34 IPC.

That at the same time and place and in the course of same transaction, the accused noted above, in furtherance of their common intention fraudulently and dishonestly used the said forged document as genuine with the knowledge that they are forged and rendered themselves liable to be punished u/s 468 IPC r/w 34 IPC

That at the same time and place and in the course of same transaction, the accused noted above, in furtherance of their common intention, fraudulently and dishonestly cheated the defacto complainant (ONGC, Neravy) by producing the forged invoices and debit memos at if M/s Shravan Engineering Enterprises Pvt. Ltd., Chennai and M/s.Refrigeration Allied Traders, Chennai, issued it and induced the deceived company to part with a sum of Rs.10,12,595/- and rendered themselves liable to be punished under Section 420 IPC r/w 34 IPC.'

2. Section 161 (3) Cr.P.C statement of Deputy General Manager, Oil and Natural Gas Corporation Limited, informs inter-alia that bills submitted by C.D.Angel Bright, proprietor of M/s. National Refrigeration Service were not originals, but only the photo copies of bills alleged to have been issued by M/s. Refrigeration Allied Traders, Chennai, and M/s.Shravan Engineering Enterprises Pvt. Ltd., Chennai.

3. Relevant portion of statement of one Rajagopalan belonging M/s.Shravan Engineering Enterprises (Pvt.) Ltd., reads as follows:

'After verifying our original records I confirm that the above mentioned bills were issued from

our firm only, but the amount mentioned in the above bills were initiated by adopting cut & pasting method by some body with intension to cheat ..Whereas in our bills only Rs.7400, 286/5.5650.5,550 & 7525/- respectively. Further I confirm that bills being produced before me vide bill Nos.11051, 11053, 11054, 11056, 11057, 11060, 11061, 11119, 1148, 11124, 11141, 11147, 11126, 11144, 11143, 11134, 10951, 11135, 11150, 10956, 11145 and 11052 are bogus and were not issued by us. Apart from the above bill 13797, dated 25.05.1999 and 13884, dated 03.06.1999 not matching with our records i.e. during the particular period of time our running serial number. Of bill was from 14300 to 15316 during the period 01.04.1999 to 31.03.2000. The following were the actual serial numbers dealt by our firm 01.04.2k to 31.03.2001 - 15517 to 17363, 01.04.01 to 31.03.02 - 17364 to 19211 01.04.02 to 30.11.02 - 19212 to 20506 I was given to understand that M/S National Refrigerator Service had produced the above discussed bogus and fabricated bills to ONGC, Karaikal with an intension to cheat and had caused monetary loss to ONGC. To-day (08/04/2006) I was examined by the Sub-Inspector of Police/Neravy, Karaikal.'

4. Similarly, statement of Mr.Pradeep belonging to M/s.Refrigeration and Allied Traders, Chennai informs thus:

'I am also shown the tabulated statement containing the particulars of the bills, bearing my signature and it was the one produced by the Senior Vigilance Officer Thiru L.Chandirasekaran on 04.09.2004 and my remarks were also furnished pertaining to the genuineness of bills discussed thereon. I still strict to my statement duly confirming that Sl.No.1 to 20 listed in the tabulated statements vide bill No.1)1474 dated 05.07.1999 for Rs.7,500/-, 2)1493 dated 30.06.1999 for Rs.34,100/-, 3)1478 dated 01.02.1999 for Rs.31,600/-, 4)1476 dated 01.02.1999 for Rs.63,200/-, 5)1477 dated 01.02.1999 for Rs.55,300/-, 6)1475, dated 25.02.1999 for Rs.31,600/-, 7)1429, dated 03.11.1999 for Rs.9,900/-, 8)1491 dated 27.08.1999 for Rs.23,000/- 9)1498 dated 10.10.1999 for Rs.29,800/- 10)1483 dated 12.04.1999 for Rs.7,200/- 11)1485 dated 28.04.1999 for Rs.35,500/-, 12)1488 dated 13.10.1999 for Rs.29,800/-, 13)1431 dated 23.10.1999 for Rs.17,100/-, 14)1497 dated 28.10.1999 for Rs.22,200/-, 15)1411 dated 14.10.1999 for Rs.10,600/-, 16)1476 dated 12.11.1999 for Rs.33,700/-, 17)1484 dated 26.04.1999 for Rs.20,100/-, 18)1479 dated

08.03.1999 for Rs.15,800/- 19)1487 dated 24.04.1999 for Rs.37,700/- 20)1482 dated 16.03.1999 for Rs.3,600/- were not issued by our firm and I further state they were all bogus. I have been told that M/S National Refrigerator Service of Karaikal had submitted bogus bills in the name of our company to ONGC, Karaikal with an intension to cheat today (08/04/06) I was examined by Sub-Inspector of Police, Neravy-Karaikal and my statement was recorded.'

5. Affidavit dated 12.06.2017 filed by one Mr.G.Kannan, who is the Deputy General Manager (Instrumentation), Engineering Services, ONGC Cauvery Asset, Karaikal and who is the defacto complainant reads as follows:

'1. I am the Deputy General Manager (Instrumentation), ONGC and well acquainted with the facts of the case and as such I am filing this affidavit.

2. The Hon'ble Court by Order dated 25.04.2017 directed the second respondent/defacto complainant to inform the availability or otherwise of the originals of all the documents referred in paragraph 6 of the complaint by filing an affidavit.

3. I humbly submit that the petitioner/accused submitted only photocopies of the bills of Original Equipment Manufacturers

(OEM)/Original Equipment Suppliers (OES) and not the originals. There are no original bills of OEM / OES available in the records maintained by the Engineering Services department, ONGC.

4. It is submitted that Senior Vigilance Officer sent a Vigilance Investigation Report dated 30.11.2004 to the Head Quarters, Dehradun recommending a regular Departmental Enquiry under ONGC Conduct, Discipline and Appeal Rules, 1994 against 22 officers. Based on the said Investigation Report, Departmental Enquiry had been conducted against Two Chief Engineers (Electrical), Three Superintending Engineers (Electrical), Executive Engineer (Electrical), Assistant Executive Engineer (Electrical), ONGC, Cauvery Asset by which it was alleged against the charged officials that they had processed the bills based on photocopies of the bills other than the originals. All the six officers were exonerated of the charges except one Chief Engineer, viz., Mr.A.Naresh Kumar by imposing penalty of reduction to one lower stage in the time scale of pay for a period of one year.'

6. The investigation report filed by Senior Vigilance Officer informed that an amount of Rs.37,055/- may be recovered from petitioner - M/s. National Refrigeration Service.

7. It is thus admitted prosecution case that accused have received payments on production of xerox copies of bills, fabricated or otherwise tampered with. Admittedly officials of the defacto complainant did not obtain original bills while sanctioning payment and were departmentally proceeded against. Rightfully investigation ought to have covered also the role of such officials. Be that as it may, no charge of commission of offences u/s. 467,468 or 471 IPC can be proved by placing reliance on xerox copies as they cannot form the basis for examination by an expert towards informing them to be false/fabricated. Recording the affidavit dated 12.06.2017 filed by the respondent Department, this Court is inclined to allow this petition.

Accordingly, Criminal Original Petition is allowed. The proceedings in C.C.No.351 of 2011 on the file of the learned Judicial Magistrate No.II, Karaikal is quashed. Consequently, connected miscellaneous petitions are closed.

15.06.2017

Note:Issue on 18.08.2017
Index: Yes/No

cla

C.T. SELVAM, J

cla/kpr

To

- 1.The State of Pondicherry,
Rep. by Station House Officer,
Neravy Police Station,
Karaikal.
- 2.M/s. Oil and Natural Gas Corporation Ltd.,
Rep. by its Head Engineering Services,
Cauvery Asset, Neravy,
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