IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2018
Pronounced on : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.28982 of 2011
and
M.P.Nos.1 & 2 of 2011

P.Bojarajan,
S/o.Parthasarathy Mudaliar.
...Petitioner/Accused No.1

Vs.

1.The State rep. by
the Sub-Inspector of Police,
Central Crimes Branch - III,
Egmore,
Chennai - 600 008.

2.Ranajit Sengupta,
Associate Finance Manager,
Hindustan Coca Cola Marketing Pvt. Ltd.,
T.T.K. Road,
Alwarpet, Chennai. ... Respondents/Complainant

[2nd respondent is impleaded as per the order of the Hon'ble Court dated 11.07.2017 made in Crl.M.P.No.8604 of 2017 in Crl.O.P.No.28982 of 2011]

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.248 of 2015 on the file of the Judicial Magistrate Court, Alandur and quash the same in respect of the petitioner herein.

For Petitioner : Mr.S.D.S.Phillip
For R1 : Ms.V.Saratha Devi
Government Advocate [Crl. Side]

For R2 : No appearance (Notice served)

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O R D E R

The petitioner has filed the above quash petition to quash the proceedings of C.C.No.196 of 2010 which was pending on the file of the Judicial Magistrate Court No.I, Poonamallee, which case was later transferred on the point of reorganization of jurisdiction of the respondent as C.C.No.248 of 2012, which is now pending on the file of Judicial Magistrate Court, Alandur.

2.The petitioner is accused No.1 in Crime No.23 of 2004, which was registered by the 1st respondent on the complaint of the 2nd respondent. On completion of investigation a charge sheet has been filed against the petitioner and one J.Ananthakrishnan a former Shipping Supervisor, Hindustan Coco Cola Private Limited.

3.The case of the prosecution is that the petitioner, who is the proprietor of M/s.Deepak Agencies was appointed as clearing and forwarding Agent (clearing and forwarding agent) of the 2nd respondent and started to function from 15.06.2003. The job of clearing and forwarding agent is to receive stock from the 2nd respondent company supply the same to various sellers and upon the supply of the stock, it is the responsibility of the agents on daily basis the collections to be credited on the same day to the 2nd respondent company's account, collect empty returnable glass bottles (RGB) and return the same.

4.Further, the clearing and forwarding agent is responsible for losses, damages caused by persons employed by him and all the said losses to be compensated by the clearing and forwarding agent. Further, stocks supplied to clearing and forwarding agent is based on trust till the value for the beverages are to be paid and empty RGBs are returned to the company. The clearing and forwarding agent are the custodian of the company's stock. The clearing and forwarding agent operations were overseen by the company employee J.Ananthakrishnan, who was working as Shipping supervisor. During the stock taking and verification and while reconciling the empty RGB and sale of beverage account it was found that huge deficit of empty RGBs and huge sums collected was not duly accounted for and thereby, the petitioner and the said Ananthakrishnan had entered into criminal conspiracy misappropriated a sum of Rs.35,75,157/-.

5.The contention of the petitioner is that the petitioner is a Proprietor of M/s. Deepak Agencies and was appointed as clearing and forwarding agent for Hindustan Cocacola beverages Private Limited for loading and unloading the beverages at the godown premises rented out by the said company. A clearing and forwarding agent Agreement was entered on 12.06.2003 and commenced from 15.06.2003. The entire operations were run by the said company through their employees and they had employed J.Ananthakrishnan as their Shipping supervisor, who was the overall charge of the said godown. The only work performed by the petitioner was to load and unload goods from the company vehicles that came to the godown and the petitioner has acted as per the instruction of Ananthakrishnan. Further, within a short period of five months the company stopped bringing the goods to the godown and the operation was closed without any notice or information.

6.The other grounds was that there had been a delay in filing the final report. The case was registered on 28.05.2004 and the final report was filed only on 09.07.2010, thereby the liberty guaranteed under 21 of the Constitution for speedy trial has been grossly violated. There is no reason given explaining the delay. It is also contended that the statement of all the witnesses have been recorded in the year 2004 except for one witness namely LW2 which was recorded on 18.01.2010. Further, it had also questioned the recoveries alleged to have been made on 14.06.2004 and 17.06.2004 and Form-95 for the same had reached the Court with some delay. Further, though as per the clearing and forwarding agent agreement, there is an arbitration clause, no arbitration proceedings have been initiated for the alleged loss. Assailing these points the quash petition has been filed.

7.The 1st respondent had filed a counter wherein, it had reiterated the complaint and the charge sheet, the manner in which the investigation has been conducted, examination of the witnesses and recovery of the articles arrest of the petitioner and other accused, confession leading to the recovery and submits that there are totally 15 witnesses and there are enough documents to prove the complicity of the petitioner in the above case. It is seen that the petitioner had filed the quash petition one year after the charge sheet has been filed.

8.The learned Government Advocate produced the clearing and forwarding agent Agreement. On perusal of the same, it is found that the petitioner is the signatory to the same wherein, it had been categorically held that the petitioner is liable to account for the proceeds which have to be deposited in the account of the company and the accounts to be furnished regularly and the petitioner is exclusively responsible for the stock held and handled either by himself or by sub agent as well as for the realization of the proceeds.

9.Further, the petitioner is responsible for the entire operations of the godown at Kottivakkam and he is responsible for filled and empty cases in the Ware House. Further the statement of mismatch of empty stocks and filled stocks have been produced which form part of the charges sheet on perusal of the same it reveals that there have been corrections in the report in the stocks and balances and the statement also shows how the difference has arised which the petitioner has to answer only during trial which cannot be gone into in the quash petition.

10.The petitioner had relied upon judgment of ODISA HIGH COURT HEMANT KUMAR PATRA VS. STATE OF ODISHA in Crl.M.C.No.2564 of 2010. This judgment is a judgment rendered after full-fledged trial and conviction and judgment reported in 2000 Crl.J.1184 of KARNATAKA HIGH COURT in the case of STATE OF KARNATAKA VS. SYED MEHBOOB stating that there is no particulars with regard to specific physical entrustment and diversion of fund. In this case, the statements produced, the clearing and forwarding agent agreement categorically states that the petitioner is responsible for filled and empty cases in the warehouse. Likewise in citation reported in 1944 Supplementary (3) SCC 97 in the case of BISWANATH PRATAP SINGH VS. STATE OF BIHAR and reported in 1986 Cri.LJ 1771 in the case of PATNA HIGH COURT MADESH VARDARI SINGH AND ANOTHER VS. STATE OF BIHAR. The facts of the cases are different from that of the case in hand.

11.The Supreme Court case pertains to a public servant wherein he had been dismissed from service and his terminal benefits have been forfeited. These cases does not apply to the facts of the above case with regard to 1990 (2) SCC 340 STATE in the case of ANDHRAPRADESH VS. P.V.PAVITHRAN. This case pertains to grant of sanction after the High Court had quashed the proceedings. The cases referred pertains to inordinate delay on the part of investigating agency in completing the investigation. In the case in hand the 1st respondent though had taken some time during investigation, now charge sheet has been filed and the case has been taken on the file, which is pending trial as C.C.No.248 of 2015. Hence, the citations relied by the petitioner are not applicable to the facts of the above case.

12.Considering the rival submission and on perusal of the materials and the statement of witnesses, documents and materials produced, this court finds that the charge sheet has been filed after full-fledged investigation with sufficient materials. Hence, the quash petition is liable to be dismissed.

13.Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Alandur.

2.The Sub-Inspector of Police,
Central Crimes Branch - III,
Egmore, Chennai - 600 008.

3.The Public Prosecutor, High Court, Madras.

KR/8/11/18 Crl.O.P.No.28982 of 2011