IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2017

DELIVERED ON : 14.11.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Revision Petition Nos.1014, 1020 & 1025 of 2016

and

Crl.M.P.Nos.8323 of 2016 (Crl.R.C.1020 of 2016)

& 8224 of 2016(Crl.R.C.1014/2016)

Crl.R.C.No.1014 of 2016

M/s.Olam International
(Represented by its authorized
Representative Suresh Sundararajan)
No.9, Temasek Boulevard,
11-02, Suntee Tower,
Singapore - 038989 … Petitioner/Accused 3

Vs.

The Additional Deputy Superintendent of Police,
Special Police Department,
CBI/Anti Corruption Board,
Chennai … Respondent/Complainant

Crl.R.C.No.1020 of 2016

Rahul Ahuja
S/o.Shri A.D. Ahuja,
R/O 9 Rhu Cross # 06-17
Costa Rhu,
Singapore - 437 436 … Petitioner/Accused 6

Vs.

CBI represented by
Deputy Inspector General of Police,
Head of Branch,
CBI : ACB : Chennai … Respondent/Complainant

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Crl.R.C.No.1025 of 2016

Hariharan
Managing Director,
Hari & Co. 3rd Floor,
No.48, Rajaji Salai,
Chennai - 600 001. .. Petitioner/Accused 4

Vs.

State represented by
The Deputy Inspector General of Police,
Head of Branch,
CBI : ACB : Chennai … Respondent/Complainant

Prayer in Crl.R.C.No.1014 of 2016:- Criminal Revision filed against the order passed by the XIII Additional City Civil Judge, (CBI Cases), Chennai dated 12.07.2016 in Crl.M.P.No.3282/2015 in Calendar Case No.34/2012.

Prayer in Crl.R.C.No.1020 of 2016:- Criminal Revision filed against the order passed by the XIII Additional City Civil Judge, (CBI Cases), Chennai dated 12.07.2016 in Crl.M.P.No.3279/2015 in Calendar Case No.34/2012.

Prayer in Crl.R.C.No.1025 of 2016:- Criminal Revision filed against the order passed by the XIII Additional City Civil Judge, (CBI Cases), Chennai dated 12.07.2016 in Crl.M.P.No.7497/2016 in Calendar Case No.34/2012.

For Petitioner
in Crl.R.C.No.1014/2016 : Mr.A.Ramesh, Senior counsel
for M/s.Anirudh Krishnan

For Petitioner
in Crl.R.C.No.1020/2016 : Mr.Rajesh Ranjan
for Mr.V.S.Senthil Kumar

For Petitioner
in Crl.R.C.No.1025/2016 : Mr.N.R.Elango,
Senior Counsel
for M/s.R.Vivekananthan

For Respondent in all Crl.R.Cs.: Mr.K.Srinivasan,
Special Public Prosecutor for CBI cases

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COMMON ORDER

In the above all the three Criminal Revision Petitions, the prosecution is one and the same. The Revision Petitioners are arrayed as Accused Nos.3, 6 & 4 respectively in C.C.No.34 of 2012 on the file of the XIII Additional Special Judge (CBI Cases), Chennai for the alleged offence under Sections 120(b) & 420 I.P.C. and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. However, the case had to be split up against accused Nos.3 & 6 for want of serving of summons and accordingly it was renumbered as C.C.No.6/2014 and accused Nos.3 & 6 were arrayed as Accused Nos.1 & 2 in C.C.No.6/2014.

2. The Revision Petitioners filed Discharge Petitions under Section 239 Cr.P.C. before the trial Court seeking for discharge from the respective calendar cases. The trial Court dismissed their petitions vide separate orders dated 12.07.2016 in Crl.M.P.Nos.3282 & 3279 of 2015 and 7497 of 2016 respectively. Aggrieved against the same, the petitioners have preferred these Revision Petitions separately before this Court. Since all the Revision Petitioners sought for discharge against the common charge sheet, all the three Revision Petitions were heard together and common order is pronounced.

Brief Case of the Prosecution:-

3. The case of the prosecution is that Accused No.1, K. Suresh, Accused No.2, M.K. Sinha and Accused No.5, G.J. Rao conspired with Accused No.4 Hariharan, who was the Steamer Agent of Accused No.3, who in turn was represented at the relevant point of time by its General Manager, Mr. Rahul Ahuja, Accused No.6, to abuse their official position to allot a berth in the Chennai Port to allow a dead ship - MV San Giorgio (the "ship") to dock. It is the case of the prosecution that Accused Nos.1, 2 & 5, who were officials of the Chennai Port Trust, a Government entity, were aware that the ship did not have valid documents and was abandoned by the owners, was inoperative, was without its crew and was for all practical purposes a dead ship and yet the alleged officials of the Port have granted permission to the ship to enter and berth at the Chennai Port without following the requirements set out in law and under international conventions and consequent to which the Chennai Port has suffered a huge financial loss to the tune of Rs.50.31 crores.

4. The allegations against the revision Petitioners are that they have suppressed an arrest order issued by the Bombay High Court and failed to bring to the notice of the Port authorities and have furnished false information as regards the

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existence of P&I insurance of the ship. Further, when the petitioners had to submit an indemnity bond, it was the Petitioner's Indian subsidiary submitted the bond, which became null and void pending arrest warrant. While this being so, the petitioners were permitted to discharge the cargo by the port authorities without insisting on the production of a Bank Guarantee contrary to the legal advice. The 1st Accused allowed the petitioners to take delivery of 1098 logs in November 2007, without paying demurrage which at that time totaled Rs.6.03 crores thereby creating suspicion. Though the revisions petitioners have initially undertaken to pay all the vessel related charges, later disinclined to pay the same. In the meanwhile M/s.Exclusive Marine Inc, owner of the vessel filed a writ petition in W.P.No.33899/2007 seeking for waiver of additional berth charges and the third accused filed W.P.No.37348 of 2007 seeking for a direction to the Chennai Port for releasing the entire cargo. The Hon'ble High Court of Madras vide order dated 21.4.2008 dismissed both the writ petitions. Subsequently, in view of the entry of M/s.Exclusive Marine Inc. claiming ownership over the Vessel, the petitioners who are owners of the cargo sought for delinking of cargo related and vessel related charges separately and also requested for the area where the cargo was kept to be treated as licensed area and therefore pay rent rather than demurrage and the port authorities had agreed to all these terms thereby resulting financial loss to Chennai Port and the Government of India.

Brief case of the Petitioners:-

5. It is the case of the Petitioners that the Bank of Beruit filed an Admiralty Suit for recovery of money against M/s.Exclusive Marine Inc. in the High Court of Bombay. In the above-mentioned suit, the Bombay High Court passed an order directing the arrest of the vessel 'MV San Giorgio'. Simultaneously, Accused No.6 sent a letter to the Chennai Port Trust Authority requesting for permission to dock the ship at Chennai Port and provided an undertaking to compensate the Chennai Port Trust in case of any losses to be suffered by it in relation to the same. In furtherance of the order of the Bombay High Court, the Mumbai Sheriff intimated the arrest order to the Chennai Port Trust Authorities.

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6. At this juncture, the Chennai Port Trust requested for a legal opinion. The aforesaid legal opinion stated that the Chennai Port Trust had to adhere to the order passed by the Hon'ble High Court of Bombay, as such an act, in contravention of the said order would invoke a Contempt Proceeding against the Chennai Port Trust. Pursuant to this legal opinion and the indemnity bond furnished by the

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petitioners, the Chennai Port Trust permitted the vessel to dock at the Chennai Port. Subsequently, the Mercantile Marine Department conducted a thorough investigation and found that the ship is not sea-worthy. Hence the Mercantile Marine Department directed the Harbour Master to detain the ship in the berth. On 18.04.2007, M/s.Exclusive Marine (owner of the vessel) which came into picture sent a legal notice requesting the Chennai Port Trust to detain the cargo and realize the Port dues from the petitioners. It is the contention of the Petitioners that on reappearance of M/s.Exclusive Marine, the liability to pay the dues shifted to the latter. Thereafter, the Petitioners in light of the above said contention requested the Chennai Port Trust to split the cargo related and vessel related charges. Subsequently, the Chennai Port Trust had released the cargo in two tranches relying upon the Madras High Court Order dated 11.10.2007 and the legal opinion dated 30.10.2008.

7. Heard the learned counsel for the petitioners and the learned Special Public Prosecutor appearing for the respondent

8. The learned counsel for the petitioner in Crl.R.C.No.1014/2016 hereinafter would be referred as Accused No.3, would submit that the petitioner has, at all circumstances, adhered to the orders of the Chennai Port Trust with a bonafide intention. The petitioner/Accused No.3 did not remove the vessel from the berth owning to the standing order of the Mercantile Marine Department. Moreover, Accused No.3 approached the Madras High Court for releasing the entire cargo on two grounds, namely a) the vessel owner re-entered the picture, thereby the liability to pay the port dues shifted upon the vessel owner and b) the petitioner did not contemplate the vessel to be detained at the port. Moreover, the Petitioner/Accused No.3 being the owner of the cargo duly paid the cargo charges levied by the Chennai Port Trust. Therefore, there is no criminal intention that could be attributed to the petitioner.

9. The learned counsel for the petitioner in Crl.R.C.No.1020 of 2016 hereinafter would be referred as Accused No.6 would submit that even as per the case of prosecution in the charge sheet, the petitioner was working as General Manager in the year 2007 and has never been a Director much less Managing Director in Accused No.3 Company, that the petitioner was just a salaried employee of the Accused No.3 company and was neither a Director nor vested with any power of management, and being an employee, he has just acted in discharge of his duty towards the accused company and being an employee, he cannot be held liable for commission of an offence. The learned counsel

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would further submit that Accused No.6 has resigned from the 3rd Accused Company even before commission of the alleged offence of cargo removal, waiver of berth hire charges, waiver of statutory charges causing alleged losses to the Port Trust and so no role can be attributed to the Accused No.6 in the commission of the offence and that Accused No.6 has signed the documents on and behalf of 3rd accused company and hence Accused No.6 has not committed any offence as alleged.

10. The learned counsel for the petitioner in Crl.R.C.No.1025 of 2016 hereinafter would be referred as Accused No.4 would submit that Accused No.4 was merely appointed as a Steamer Agent and he has nothing to do with M/s.Olam International, 3rd Accused Company. It is further submitted that he was acting as an agent on behalf of M/s.Olam International and he had placed all the papers received from M/s.Olam International before the Port Authorities. He would further submit that the admitted fact would establish that the petitioner was not involved in the alleged conspiracy on 03.04.2007, when the abovementioned letter was issued to the Chennai Port Trust by Mr. Rahul Ahuja. The learned counsel further submitted that the object of the alleged conspiracy was achieved on 11.04.2007, when the ship was allowed to dock at the Chennai Port. It is further submitted that the Steamer Agent License was issued to the Petitioner/Accused No.4 only on 12.04.2007, after the object of the alleged conspiracy was achieved. Hence, the offence under Section 120B of IPC is not made out against him.

11. The trial Court dismissed the discharge petitions filed by the revision petitioners on the ground that the grounds put forth by the petitioners for discharge cannot be decided before letting in evidence and that their involvement in the offence have to be decided only after the trial. Hence the claim of the petitioners was considered as premature at that point of time. However, the petitioners would submit that when they are not involved in the alleged offences, proceedings with the trial against them, itself, is an unnecessary one for which they are put to mental agony and irreparable hardship. Furthermore, the prosecution cast a cloud of criminal intention only on the basis of the theory with regard to financial loss for which the petitioners have also been charged. This according to the Petitioners is against the principles laid down by this Court. In this regard, the learned counsel for the petitioners relied on the following Ruling reported in 2011 Crl.L.J. 1044 (P. Thangaraju vs. State rep. by its Deputy Superintendent of Police, Vigilance and Anti Corruption), wherein, it is held as follows:-

"That because of the actions of the Appellants in

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> breach of codal provisions, instructions and procedural safeguards, the State may have suffered financially, particularly by allotment of work on nomination basis without inviting tenders, but those acts of omission and commission by themselves do not establish the commission of criminal offences alleged against them.
>
> The principles stated in the said judgment squarely apply to the facts of the present case. Assuming that the Petitioner was also a party to the breach of the procedures contemplated in the matter of sanction of the loan under the Scheme, in my considered opinion that will not amount to any of the offences as stated in the final report. Thus, I do not find any material on record to frame charges against the Petitioner. The learned Additional Public Prosecutor has also not brought to the notice of this Court any other materials prima facie making out any offence as alleged so as to frame charges against the Petitioner. Thus, the order of the trial Court is liable to be interfered with and the Petitioner is entitled for discharge from the case".

12.1. Per contra, on the side of the prosecution, the learned Special Public Prosecutor, by way of reply submitted the following Ruling reported in (2012) 9 SCC 460 (Amit Kapoor vs. Ramesh Chander and another), wherein, it is held as follows:-

> "Thus we are of the considered view that the finding returned by the High Court suffers from an error of law. It has delved into the field of appreciation and evaluation of evidence which is beyond the jurisdiction, either revisional or inherent, of the High Court under Sections 397 and 482 of the Code."

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12.2. However, it is pointed out by the Defence counsel that the above said Ruling relied upon by the Prosecution is not appreciable, since the Petitioners have not sought for quashing the Criminal Proceeding or FIR registered against them.

13. These petitions being Civil Revision Petitions challenging the order of the trial Court in dismissing the discharge petitions, let us now discuss about the merits of the case on the basis of the citations referred on both sides.

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14. The trial Court negatived the claim of the petitioners on the basis of CDJ 2008 SC 1805. In the above said citation, it is held that if prima facie case is made out, charge can be framed against the accused. By following the above said Ruling, the trial Court did not accept the grounds for discharge pleaded by the Petitioners herein. The specific case of the petitioners is that the abandoned ship does not belong to them. Accused No.3 hired the ship for consignment of goods viz., wooden log, but it was abandoned by the owner of the ship and to protect the goods, Accused No.3 brought the ship after complying with the formalities as contemplated by the Authorities. It was only with proper prior permission and authorization, the ship was brought to the Port and the goods was unloaded. If really any charge is due from the above ship, it is contended that the same can be very well recovered from the hirer. As such, it is contended by the Petitioners that for the payment of any dues, criminal liability cannot be fastened against the accused as per the dictum laid down in the Ruling reported in 2011 Crl.L.J. 1044 as referred above. According to the prosecution, Accused 1 & 2 involved in the malpractice against the rules and regulations of the Port Trust and to commit the above said malpractice, the petitioners have conspired with them. If really any malpractice alleged by the prosecution is really committed, as a Government Servant, they are liable to be prosecuted under the relevant provisions. The petitioners are not the Government Servants and they are not the officials of the Port Trust. The petitioners are only doing business by way of sending consignment of goods through the Port Trust by making payment of charges payable to the Port Trust. If any lesser charge was paid by them, the relevant charges can be collected even with penalty. Thus, it is contended that there is no question of their involvement in a criminal conspiracy or criminal offence.

15. The prosecution relied on the Ruling reported in (2012) 9 SCC 460 (cited supra) with regard to Sections 397 and 482 Cr.P.C. In the above said citation, it was held that the appreciation and evaluation of evidence which is beyond the jurisdiction of either revisional or inherent jurisdiction under Sections 397 and 482 Cr.P.C. In this case, the petitioners have not sought for quashing of FIR or criminal proceedings against them and have only sought for discharge from the case before framing of charges where the probative value of materials and conduct of deep roving enquiry into the evidence are not gone into. So the above said citation is not applicable to the facts of this case.

16. The learned trial Judge dismissed the discharge petitions only on the ground that prima facie case has been made out against the petitioners, but nowhere in the order of the trial Court, anything is stated about the prima facie offence

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against the petitioners. The trial Court narrated about the allegations against the petitioners and contention of prosecution and referring to the Ruling reported in CDJ 2008 SC 1805 came to the conclusion that if prima facie case is made out, the petitioners cannot be discharged. The grounds put forth by the petitioners for discharging the accused viz., delay of three years in registering the F.I.R.; the petitioners are not the employees of the Port Trust and the involvement of loss of money to the Port Trust cannot be construed as criminal offence, were not considered by the learned trial Judge. As per the citations referred on the side of the petitioners, mere involvement of loss of money to the Port Trust alone is not sufficient to prosecute the petitioners. The petitioners were not party to the breach of the procedures contemplated in the rules and regulations of the Port Trust and furthermore, that will not amount to any of the offences as stated in the final report. The principle stated in the judgment relied upon by the Petitioners is squarely applicable to the facts of the case in hand. Furthermore, on the side of the prosecution, no other facts is brought to the notice of this Court, prima facie making out any offence as alleged by them so as to frame charges against the petitioners. Further, the FIR is filed against the petitioners' only after three years from the date of occurrence. The delay of three years is not explained by the prosecution. As such the same is fatal to the case of the prosecution.

17. On perusal of the records, it is clear that the prosecution has not brought out material particulars pertaining to the offences alleged under Sections 120(b), 420 IPC and Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act. The courts have unanimously held that when the police have failed to state details as to how the offence was committed i.e. material particulars of the offence, the accused is liable to be discharged. Thus in the absence of vital elements constituting the crime, the charge sheet become groundless insofar as the petitioners are concerned. Further, at the stage of framing of charges, the trial Court has to generally consider the materials as placed before it. However, as stated above, the prosecution has not made out a prima facie case against the revision petitioners through the materials placed. Therefore, this court feels that no prima facie case is made out by the prosecution against the revision petitioners and hence the revision petitioners are liable to be discharged from the case thereby warranting interference of the order of the trial Court. The Point is answered accordingly.

18. In the result, the Criminal Revision Petitions are allowed. The impugned orders dated 12.07.2016 passed by the learned XIII Additional Special Judge (CBI Cases) in

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Crl.M.P.Nos.3282, 3279 & 7497 of 2016 in C.C.No.34 of 2012 are set aside and the petitioners viz., Accused Nos.3, 6 & 4 are discharged from the said case. The trial Court may proceed with the trial of the case in respect of the other accused uninfluenced by this order in accordance with law. Consequently, connected M.Ps. are closed.

s/d-
Assistant Registrar(CS VIII)

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Sub-Assistant Registrar

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To
1.The Additional Deputy Superintendent of Police,
Special Police Department, CBI/Anti Corruption Board, Chennai

2.The XIII Additional City Civil Judge, (CBI Cases), Chennai

+1 CC to Mr.V.S. Senthil Kumar , Advocate sr 77513.
+1 CC to Mr.K. Srinivasan, Advocate sr 77511.
+1 CC to Mr. Anirudh Krishnan, Advocate sr 77722.

Crl.R.C.Nos.1014, 1020 & 1025 of 2016

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SP(07/12/2018)

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