BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
06.02.2018	12.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD)No.16274 of 2016

R.Inbaraj : Petitioner

Vs.

The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Sastry Bhavan, Chennai 6. : Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for records relating to C.C.No.2 of 2016, pending on the file of the Second Additional District Court for CBI Cases, Madurai and quash the same as against the petitioner.

For Petitioner : Mr.N.Sankar Ganesh
For Respondent : Mr.N.Ashok Kumar Gowtham
Special Public Prosecutor

O R D E R
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The CBI registered a case in RC.MA1-2014-A-0050, on 17.12.2014 and after completing the investigation, have filed a charge sheet in Special C.C.No.2 of 2016 before the Second Additional Sessions Judge For CBI Cases, Madurai, against A.P.Muthuramalingam (A1), S.Srinivasan (A2) and R.Inbaraj (A3/petitioner) for the offences under Section 120-B, r/w 420 IPC and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, [for brevity, "the Act"], for quashing which, R.Inbaraj [A3] has filed the present application.

2. Heard Mr.N.Sankar Ganesh, learned counsel appearing for the petitioner and Mr.N.Ashok Kumar Gowtham, learned Special Public Prosecutor appearing for the respondent.

3. When the Criminal Original Petition was taken up for hearing, the learned Special Public Prosecutor appearing for the respondent submitted that the charges have been framed against the accused and 25 witnesses have been examined by the prosecution before the trial Court. On this short ground alone, this Criminal Original Petition requires to be dismissed.

4. But, however, the learned counsel appearing for the petitioner insisted that he would argue the case on merits.

5. The learned counsel appearing for the petitioner submitted that absolutely, there is no evidence against the petitioner and that even, according to the CBI, he had acted merely on the instructions of his superior officers namely, A.P.Muthuramalingam (A1) and S.Srinivasan (A2). The learned counsel appearing for the petitioner further submitted that there is a free service way bill, that is issued to the persons to take the materials to the station from the stores and that register has not been seized by the CBI. He also contended that the allegation of the CBI that the furniture were not found in the Railway Station, as per the purchase order will stand negated, if the purchase distribution register is produced.

6. This Court gave its anxious consideration to the rival submissions.

7. To understand the allegation against the petitioner, it may be necessary to extract the relevant portion in the charge sheet.

> "9.That in pursuance of said criminal conspiracy, Shri A.P.Muthuramalingam (A-1), being the Senior Divisional Commercial Manager during that time, had instructed _Shri R.Venkataraman, Chief Commercial Inspector (Planning) to assess the requirement of the quantity and description of the furniture items to be provided to the individual stations located between Villupuram and Vellore. Accordingly, Shri R.Venkataraman had assessed the final requirement as follows:-

SI. No	**Description of the item**	**No. of items to be supplied to the Stations at Villupuram-Vellore Section (excluding Villupuram and ' Vellore**	**No. of items to be supplied to Villupuram alone**
1	UTS Table	12	8
2	Table without drawer	13	2
3	Table with drawer	16	6
4	Executive Revolving Chair	20	9
5	Tubular Chair	26	7
6	Steel Cupboard.6'	50	5
7	SS Three Seater Perforated Chair (Waiting Room)	83	---

8	Luggage Rake (Waiting Room)	17	----
9	SS Three Seater PerforMed Chair (Waiting Hall)	97	----
10	Cash Chest	----	1

10. That quantity of furniture items as assessed by the Chief Commercial Inspector (Planning) was sufficient enough to the stations located between Villupuram Vellore and also Villupuram. As far as the supply of furniture items to Vellore is concerned, the Office of the Gauge Conversion/Tambaram had already provided'-Steel Table, Half Arm Steel Ttibular Chair, Revolving Chair, Almirah etc., to Vellore Station on 26.06.2009.

11.That Shri R.Inbaraj (A-3) was attached to Operating/Traffic Department, Southern Railway, Tiruchirapalli Division and. was looking after the procurement of non-stock items for both Operating and Commercial Department of the Division. Vide letter No.T/C 14PA/GC/VLR-VM Sec dated 07.03.2011, Shri A.P.Muthuramalingam had instructed Shri R. Inbaraj, the then Head Clerk, Stores, Traffic, Tiruchirapalli, to procure and supply the items as assessed by Shri R. Venkataiaman, the Chief Commercial Inspector (Planning). As advised by Shri A.P.Muthuramalingam (A-1), Shri R.Venkataraman, the Chief Commercial Inspector had given the assessment to Shri R. Inbaraj.

12. That in pursuance of criminal conspiracy, knowing fully aware of the quantity of furniture items assessed by the Chief Commercial Inspector (Planning) for Villupuram-Vellore Section on account of gauge conversion, Shri R.Inbaraj, without initiating the process for procuring the required quantity by consolidating and preparing a single indent for each items, had misused his official position as public servant and to show undue favour to Shri R.Venkatesan of Aadhithyaa Traders and themselves, had prepared 26 indents on various dates splitting the quantities without consolidating each items, as follows:-

Sl. No.	**Purchase Order Number and date**	**Description of the item**	**Quantity. and Rs.**	**Amount**
1	No.65030 - 09.04.2010	Half-arm steel Tubular Chair	45 x 1,025	Rs.46,125/-.
2	No.65033 - 09.04.2010	Steel Almirah 4 1/2 Feet	18 x 4,950	Rs,89,100/-

3	No.65029 - 09.04.2010	Heavy Duty Steel Table 4'x 2'	17 x 4,800	R5.81,600/-
4	No.65032 - 09.04.2010	Revolving Chair- Medium back	28 x 2,950	Rs.82,600/-
5	No.65031 - 09.04.2010	Heavy Wooden Table 4 1/2 x 2 1/2'	13 x 7,500	Rs.97,500/-
6	No.65034 -09.04.2010	Steel Almirah 6 feet	13 x 6,800	Rs.88,400/-
7	No.65318 - 08.07.2010	Steel Table with Mica Top	24 x 3,800	Rs.91,200/-
8	No.65332 - 09.07.2010	Half-arm Steel Tubular Chair	100 x 950,	Rs.95,000/-
9	No.65427 - 12.08.2010	Fake Note Detecting Machine	35 x 2,800	Rs.98,000
10	No.65430 -12 08 2010	Revolving Chair- High Back Executive	23 x 4,200	Rs.96,600/-
11	No 65509 - 31 08 2010	Parcel Trolley	6 x 16,000	Rs.96,000/-
12	No 65572 - 17.09.2010	Steel Tubular Chair	85 x 1,100	Rs.93,500/-
13	No.65573 - 17.09.2010	Executive Revolving Cushioned Chair	25 x 2,950	Rs.73,750/-
14	No.65574 - 17.09.2010	Wooden Table 4 1/2 x 2 1/2'	12 x 7,500	Rs.90,000/-
15	No.65575 - 17.09.2010	Steel Table 4'x 2'	15 x 5,100	Rs.76,500/-
16	No.65576 - 17.09.2010	Steel Almirah 4 1/2 feet	38x 4,950/	R. 89,100/-
17	No.65970 - 04.01.2011	Heavy duty Wooden Table 4 x 2	14 x6,800	Rs.95,200/-
18	No.65966 - 04 01 2011	Half Arm Steel Tubular Chair	50 x 1,500	Rs.75,000/-
19	No.65965 - 04.01.2011	Wooden Table 6 'x 3 1/2,	5 x 18,400	Rs.92,000/-
20	No.65971 - 04.01.2011	Steel Almirah 4 1 /2'	12 x 7,500	Rs.90,000/
21	No.65990 - 10.01.2011	Heavy Duty Wooden Table 4 1/2 X 2 1/2	12 x 8,200	Rs 98,400/
22	No .65991- 10.01.2011	Revolving chair cushioned	15 x6,250	Rs 93 750/-
23	No.65007 - 07.04.2011	Steel Table 4'x 2'	14 x 6,700	Rs 93 800/-
24	No.65008 - 07.04.2011	Wooden Table 4 1/2 x 2 1/2	10 x 9,800	Rs 98 000/-

25	No.65009 - 07.04.2011	Half arm Steel Tubular Chair	50 x 1,300	Rs 65,000/-
26	No.65010 - 07.04.2011	Revolving Chair - Medium Back	20 x 4,800	Rs.96,000/-

13. That the indents should not be split to bring it to the scope of local purchase or to avoid finance concurrence. "All non-stock purchases require consolidation and essentiality certificate as laid down by the extant guidelines as laid down in Board's Letter no.2005/RS(G)/779/7 dated 28.05.2007" - as given in the Delegation of Powers of Southern Railway. However, in pursuance of the criminal conspiracy hatched between the accused pi sons, more number of furniture items than the actual requirement were purchased on account of gauge conversion for Villupuram-Vellore Section".

8. Apart from the above allegation, there are other allegations against the petitioner, about which, it may not be necessary to advert to. The crux of the allegation against the petitioner is that he along with his superior officers conspired to give indents to Aadhithyaa Traders for purchase of furniture in excess of the requirement and also by placing individual indents for each type of furniture so that the payment can be made within the financial powers of A-1 to Aadhithyaa Traders.

9. On the request of the CBI, the learned Judicial Magistrate No.II has recorded 164 statement of one R.Venkatesan of Aadhithyaa Traders, who has clearly implicated this petitioner in the offence. The petitioner cannot be heard to say that he had merely acted on the instructions given by his superior officers, namely, A.P.Muthuramalingam (A1) and S.Srinivasan (A2), because, no employee is required to carry out illegal orders.

10. The learned counsel appearing for the petitioner placed strong reliance upon the Judgment of the Supreme Court in CBI, Hyderabad Vs. Narayana Rao [2012 (9) SCC 512], in respect of the contention that the petitioner had prepared indents only in accordance with the Rules. Narayana Rao's case [supra] relates to role of an advocate, while giving title opinion to a bank for loan. An advocate is a professional and he gives legal opinion based on the documents submitted by his client. The petitioner herein cannot be treated on par with that of an advocate. Hence, Narayana Rao' case [supra] will be of no help to the petitioner. Since there are overwhelming materials to implicate the petitioner in the offence, this Court is of the view that this is not a fit case to quash the prosecution, in the light of the law laid down by the Hon'ble Supreme Court in State of Haryana Vs. Bhajal Lal &_Others [AIR 1992 SC 604].

11. The learned counsel appearing for the petitioner submitted that only Section 7 of the Act will be attracted and not Section 13 (1)(d) of the Act. This Court is unable to countenance the said submission, because, this is not a trap case for invoking the Section 7 of the Act. This is a case, in which the accused had abused his official position by placing single indents, on account of which Aadhithyaa Traders derived pecuniary advantage. Such an allegation will not fall within the scope of Section 7 of the Act, but, will fall within the ambit of Section 13(1)(d) of the Act.

12. In the result, the Criminal Original Petition is dismissed. In view of the dismissal of the present Criminal Original Petition, the order dated 01.09.2016 made in Crl.M.P.(MD).No.7945 of 2016, dispensing with the personal appearance of the petitioner before the Trial Court, stands vacated and as a sequel, the petitioner/the accused is directed to appear before the Trial Court and cross-examine the witnesses on the date of their examination in chief and there should not be any adjournment as held by the Hon'ble Supreme Court in the case of Vinod Kumar vs. State of Punjab reported in 2015 (1) Scale 542. If the accused adopts any dilatory tactics, he can be remanded to custody under Section 309 Cr.P.C. in the light of the law laid down by the Supreme Court in State of U.P. v. Shambu Nath Singh [2001 (4) SCC 667].

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To
1.The Second Additional District Court for CBI Cases,
Madurai.

2.The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Sastry Bhavan, Chennai 6.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.N.Shankar Ganesh, Advocate, SR.No. 47992

ORDER MADE IN
Crl.O.P.(MD)No.16274 of 2016
Dated:-
12.02.2018

NB
AM/KK/SAR 2/20.02.2018/6P/5C