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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
12.02.2018	22.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P. (MD) No.22277 of 2016

and

Crl.M.P. (MD) .No.11557 of 2016

M/s.Seaport Logistics Private Limited,
Represented by
Shri M.S.Tajudeen, M/70yrs,
S/o.Samsudeen,
No.42, Dheen Estate, First Floor,
Moore Street, Chennai. : Petitioner/Accused No.5

Vs.

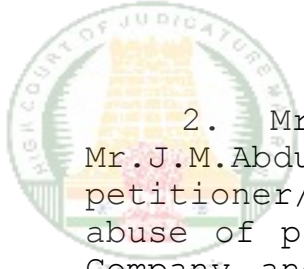
State, Rep by
The Deputy Superintendent of Police,
ACB, CBI, Central Bureau of Investigation,
Chennai,
[Crime No.RC MA1 2015 A0016]. : Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for records relating to the charge sheet in C.C.No.2 of 2016, on the file of the Chief Judicial Magistrate, Madurai District and quash the same.

For Petitioner	: Mr.M.Ajmal Khan Senior Counsel for Mr.J.M.Abdul Rahman
For Respondent	: Mr.N.Nagendran Special Public Prosecutor

O R D E R

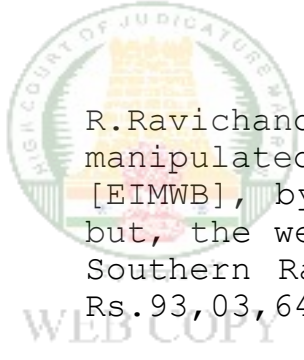
On source information, the Central Bureau of Investigation registered a case in Crime No.RC MA1 2015 A0016, on 24.04.2015, against certain officials of the Southern Railways and private persons and after completing the investigation, have filed the charge sheet in C.C.No.2 of 2016, on the file of the learned Chief Judicial Magistrate, Madurai District, for the offences under Sections 120-B, r/w 420 of the Indian Penal Code, Section 13(2) r/w 13(1)(d) of the Prevention Corruption Act, 1988 and Sections 65 and 66 of the Information Technology Act, 2000, against accused No.5, challenging which, M/s.Seaport Logistics Private Limited, Represented by Shri M.S.Tajudeen/Accused No.5 has filed the present Criminal Original Petition.



2. Mr.M.Ajmal Khan, learned Senior Counsel, representing Mr.J.M.Abdul Rahman, learned counsel on record for the petitioner/Accused No.5 submitted that the entire charge sheet is an abuse of process of law, inasmuch as the petitioner is a Logistics Company and they had nothing to do with the Electronic in Motion Weigh Bridge Room [EIMWB] that was installed and managed by M/s.Senlogic Automation Private Limited/Accused No.4 in the premises of the Railways. It is further contended that there are no documents for correspondence between the petitioner/Accused No.5 and the other persons concerned in the offences in respect of the alleged activity and there was no culpable mental state for the petitioner/Accused No.5. It is also submitted that the punitive charges are governed by the Railways [Punitive Charges for Overloading of Wagon] Rules, 2012, framed under Section 73 of the Railways Act. 1989 and this empowers the Railway Administration to impose punitive charges for overloading in Railway wagon, but, whereas, the Railway Administration had not taken any action against the consignee in this regard. To understand the submission of the petitioner, it may be apposite to extract Paragraph No.3 of the charge sheet, which is self-explanatory, which is as under:-

"3. It was further alleged that in furtherance to the said criminal conspiracy Sh.R.Ravichandran, Director (Technical), M/s Senlogic Automation (P) Ltd. dishonestly and fraudulently manipulated / got manipulated the software program of the EIMWB through Shri Tamil Arasan installed at Milavattan Goods Yard (shed) in such a way that whenever any wagon carrying weight more than the gross permissible carrying capacity (89.6 tons), the Electronic In Motion Weigh Bridge. would display much lower weight than the actual weight, causing. the railway to believe that the displayed weight is the actual weight, resulting. In M/s Seaport Logistics (P) Ltd requiring to pay less / nil punitive charges. In tune with the conspiracy Sh.Mukesh Kumar and Sh.Shanmugavel. who were responsible for monitoring the correctness of the weight, failed to do so even when similar set of readings was being shown in respect of the wagons of different rakes weighed on different dates. Due to the acts of omission and commission on the part of the above accused persons, a wrongful loss to the tune of Rs.1,42,73,879.01 has been caused to the Southern Railway and corresponding wrongful gain to the accused.

3. The allegation in the charge sheet is that the gross permissible carrying capacity of a railway wagon is 89.6 tons and that the petitioner, who has acted as the clearing agent for Ramco Cements, Tamil Nadu News Prints and Papers Limited, Malabar Cements Private Limited and M/s.Malco Energy Limited, in conspiracy with



R.Ravichandran of M/s.Senlogic Automation Private, Chennai, had manipulated the source code of the Electronic in Motion Weigh Bridge [EIMWB], by which excess weight was transported via railway wagons, but, the weighing machine showed lower weight. The total loss to the Southern Railways by this fraudulent process has been estimated at Rs.93,03,642/-.

4. Mr.M.Ajmal Khan, learned Senior Counsel, contended that the beneficiaries, namely, Ramco Cements, Tamil Nadu News Prints and Papers Limited, Malabar Cements Private Limited and M/s.Malco Energy Limited, have not been shown as accused and therefore, the prosecution stands vitiated.

5. The police have recorded the statements of the officials of Ramco Cements, Tamil Nadu News Prints and Papers Limited, Malabar Cements Private Limited and M/s.Malco Energy Limited and the investigation revealed that they were not parties to the manipulation of the source code of EIMWB and that is the reason why, they have not been made as accused and instead , they have been cited as witnesses.

6. The learned Senior Counsel further submitted that it is impossible to manipulate the source code, because under the Annual Maintenance Contract with the accused No.1, the EIMWB was inspected by the railway officials once in three months to check, if there had been any manipulation in the source code. In support of this submission, the learned Senior Counsel produced documents showing that the EIMWB was verified every quarterly.

7. The question as to whether there was quarterly verification of EIMWB, as contended by the learned Senior Counsel, is a question of fact, which cannot be gone into in a petition filed under Section 482 of the Code of Criminal Procedure.

8. The contention of the petitioner that they had nothing to do either with A-1 or A-2 cannot be accepted, because, the investigation conducted by the CBI shows that in pursuance of the conspiracy entered into between the petitioner and R.Ravichandran, the Director [Technical] of M/s.Senlogic Automation Private Limited, the source code in EIMWB has been manipulated. This has been clearly explained in Paragraph Nos.6 and 7 of the final report, which reads as under:-

6.Investigation further revealed that during the period from 2013 to 2014, A-1 Shri R. Ravichandran- Director (Technical) of A-4 M/s. Senlogic Automation Pvt. Ltd., Chennai, A-2 Shri U. Prakash -Service Engineer of A-4 M/s. Senlogic Automation Pvt. Ltd., Chennai, A-3 Shri M. Tamilarasan -Senior Manager/Software Developer of A-4 M/s.Senlogic Automation Pvt. Ltd., A-4 M/s. Senlogic Automation Pvt. Ltd., Chennai represented by Shri R. Ravichandran- Director and A-5 M/s.



Seaport Logistics Pvt. Ltd., Chennai represented by its Managing Director Shri M.S. Tajudeen agreed to do an act by illegal means i.e. to suppress actual weight of consignments transported through Railway Rakes by manipulating the EIMWB installed at Milavittan Goods Yard near Tuticorin to evade punitive charges being levied by Southern Railway and thereby caused wrongful loss to Southern Railway.

7. Investigation further revealed that in pursuance of the said criminal conspiracy with M/s. Seaport Logistics (P) Ltd., the source code of the software with the option for enabling and disabling the manipulation of the weight factor was developed for EIMWB Milavattan by Shri Tamil Arasan (A-3) on the directions of Shri R. Ravichandran (A-1). The same was compiled into an executable format and installed in the EIMWB, Milavittan by A-2 Shri U. Prakash, Service Engineer of M/s. Senlogic Automation Pvt. Ltd., Chennai so that the same could be enabled or disabled at site by A-2 or A-3 whenever they come for Annual Maintenance Contract or attending to complaints".

9. The statement of P.Baskaran Victor Raja, [LW-13], Chief Booking Supervisor at Dindigul and the statement of A.Ruthra Thandeswaran, [LW-1], Chief Vigilance Inspector, Southern Railway, clearly show how the entire manipulation was done. In the charge sheet, the Investigating Officer has given the details of individual consignments of Ramco Cements, Tamil Nadu News Prints and Papers Limited, Malabar Cements Private Limited and M/s.Malco Energy Limited, that were handled by the petitioner, in which the weights of the consignments were manipulated so as to cause loss to the Railways and gain to the conspirators.

10. The learned Senior Counsel further contended that there is no evidence to show that there was conspiracy amongst the accused for manipulating the source code of EIMWB. It is a trite law that conspiracy is hatched in secrecy and by virtue of Section 10 of the Indian Evidence Act, 1872, the act of one conspirator is relevant as against the other under the circumstances set out in the said Section. The facts of the case do not pass muster the law laid down by the Hon'ble Supreme Court in State of Haryana v. Bhajan Lal & Others [AIR 1992 SC 604 : 1992 Supp (1) SCC 335] and State of Tamil Nadu Vs. N.Suresh Rajan [2014 (11) SCC 709] for quashing the prosecution.



11. In the result, this Criminal Original Petition is devoid of merits and it is dismissed accordingly. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar

To

1.The Chief Judicial Magistrate,
Madurai

2.The Deputy Superintendent of Police,
ACB, CBI, Central Bureau of Investigation,
Chennai.

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

+One cc to Mr.Abdul Rahuman, Advocate, SR.No.50890

NB

RL/5C/5P/CVC/SAR1/2/3/2018

ORDER MADE IN
Cr1.O.P. (MD) No.22277 of 2016

Dated:-
22.02.2018