

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE Nos. 680 of 2011, 685 of 2011,
687 of 2011, 688 of 2011, 800 of 2011, 803 of 2011 &
814 of 2011

COMMON ORDER:

1. These revisions are filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, challenging the orders in CrI.M.P. Nos. 999 of 2005, 765 of 2005, 732 of 2005, 913 of 2005, 641 of 2005, 914 of 2005 and 711 of 2005, in C.C. No.16 of 2004 on the file of the Special Judge for C.B.I. Cases, Visakhapatnam, which were disposed of, by common order dated 08.02.2011, whereby the petitions filed for discharge of the petitioners/ A.4, A.5, A.7, A.2, A.6, A.3 and A.1 were dismissed.

2. Heard the learned counsel for the petitioners/A.4, A.5, A.7, A.2, A.6, A.3 and A.1, and Sri K.Surender, learned Special Public Prosecutor for CBI Cases appearing for respondent/State. Perused the record.

3. The petitioners herein are A.4, A.5, A.7, A.2, A.6, A.3 and A.1, in C.C. No.16 of 2004 before the Special Court. The Special Court had taken cognizance of the said case against them for the offences punishable under Sections 120B read with 420, 468 and 471 IPC and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988. The allegations in the charge sheet, in brief, are as follows.

A.1 was Manager/officer on Special Duty and Chief Manager of Ship Repairs Division, A.3 worked as Deputy Manager of Ship Repairs Division, and A.4 was the Chairman and Managing Director, of Hindustan Shipyard Limited; A.5 was Director (F&C), A.6 was Deputy Manager

(Finance) and A.7 worked as General Manager (Finance), of Hindustan Shipyard Limited, at the relevant period. A.2 was the Managing Director of M/s. Patel Engineering Works, Mumbai.

During 1992, Dredging Corporation of India, Visakhapatnam offered steel renewal works contract of one of their Dredges viz. Dredge-V, to Hindustan Shipyard Limited, Visakhapatnam (HSL). A.1, A.3 and A.6 were looking after contractual works of Ship Repairs Division of HSL. It was a major contract for renewal of 150 to 200 meters and was to be completed in a time frame i.e. about 30 to 45 days. The work could be entrusted to listed sub-contractors of HSL whose capacity was to turnout only one ton or so of steel renewals on a rate contract of around Rs.7,000/- per ton i.e. basic rate of Rs.5,250/- and additional.

Even in case of urgent works of this nature, when local sub contractors working on RC rates were not suitable and when suitable outside contractors were identified, such outside contractors were required to be addressed to quote the rate to HSL within a specified period to enable it to open them on a particular date preferably in the presence of such outside contractors or their representatives to rule out any malpractices. But, in pursuance of criminal conspiracy, A.1 put up a note on 19.11.1992 in favour of A.2 recommending abnormal amount of Rs.24,000/- per one tone of steel renewals whereas the existing RC rates per ton was only around Rs.7,000/-. Though some firms were sent messages for quoting their rates, no common date for opening their offers was mentioned. A.2 has submitted neither any quotation nor any letter quoting its rate. But, A.1 mentioned in his note the rate of Rs.27,500/- per ton as was being paid to A.2 by Mazagon Docks, Mumbai

without actually verifying the claim or the terms and conditions from any source.

In continuance of the criminal conspiracy, A.4 constituted a committee consisting of A.1, A.7 A.6 and another late Venkataramaiah (the then General Manager), for evaluating this offer of A.2 firm, and the committee unanimously recommended in favour of A.2 firm @ Rs.24,000/- per ton and the same was approved by A.4. Because of underperformance, less than Rs.24,000/- per ton should have been worked out proportionately and paid to accused firm instead of paying Rs.24,000/- per ton fixed for 3 tons a day target. Bills of A.2 were settled at Rs.24,000/- per ton. When the under-performance of A.2 firm for justifying payment of a lesser rate was pointed out by the accounts section of HSL, A.3, vide his note dated 31.1.1995, justified the said rate stating that the delay was only attributable to HSL and not to A.2.

When another vessel M.V.Ravidas came to HSL for steel renewal works of around under 50 tons during September, 1993, A.1 awarded the said work to A.2 firm @ Rs.21,600/- per ton. As the owner of the vessel Shipping Corporation of India did not offer very high rate to HSL as in case of Dredge-V, to bring down expenditure, the total work was distributed to A.2 firm @ Rs.21,600/- per ton and M/s. Sri Venkateswara Constructions, Visakhapatnam (one of the listed subcontractors working on RC with HSL) @ Rs.12,000/- per ton. A.4 approved the proposals of A.1 though the accused firm did not submit any quotation.

Similarly, when another vessel M.V.Mowla VI of M/s. Irano Hindu Shipping Corporation came to HSL during 1993 for 70 tons of steel renewal works, A.1 and A .3, in connivance with A.2 firm and A.4, awarded entire work to it since the owner of the ship was paying a good rate. A.5

concurred with the views of other accused as a special case and approved the unjustified rate of Rs.21,600/- to accused firm. After the work was completed, as the scope of the work underwent some changes, HSL increased its original quoted rate and the owners of the ship agreed for such increase. Although Rs.21,600/- paid to A.2 was all inclusive, it also demanded 50% raise on the said amount. A.3 recommenced raise of 20% on the original rate and the same was supported by A.1. Though finance department opposed the same, A.4 approved the increase on 02.12.1993.

The aforesaid acts of A.1, A.3 to A .7 caused undue benefit to A .2 and corresponding loss of Rs.46.00 lakhs to HSL as a result of criminal conspiracy among the accused persons and A.2 firm.

4. Learned counsel for the petitioners/A.1 to A.7 would contend that the order passed by the learned Special Judge is illegal, improper and incorrect; that the learned Special Judge erred in dismissing the applications filed for discharge; that the applications were dismissed summarily without even adverting to the submissions and contentions raised on behalf of the petitioners; that the learned Special Judge failed to observe that the contracts of HSL are time bound contracts and the officers should call for tenders from the local contractors to bid for the subject contract work; that the learned Special Judge failed to observe that the local contractors did not have adequate infrastructure to complete the time bound (45 days) contract works; that the learned Special Judge failed to see that there was no complaint from any quarter, and registration of the case on source information was without there being any foundation; that the learned Special Judge failed to see that

HSL made huge profits by awarding the subject three works to A.2; that there are no *mala fides* or criminal conspiracy or intention to cause loss of HSL; that the subject contracts were given to A.2 in the interest of HSL; that in view of the time bound contract works, at the most, there may be some procedural lapses, but there cannot be application of penal provisions as alleged against the petitioners/A.1 to A.7, and ultimately, it is prayed to set aside the impugned common order and discharge the petitioners/A.1 to A.7 of the offences alleged in C.C. No.16 of 2004.

5. On the other hand, K.Surender, learned Special Public Prosecutor for CBI Cases appearing for respondent-State would contend that the petitioners-A.1, A.3 to A.7, after due deliberations, without following the procedure contemplated and without giving an opportunity to local contractors to undertake the subject works, entrusted the works to A.2, as a result of which, HSL suffered a loss of Rs.46.00 lakhs; that the existing RC rates per ton was around Rs.7,000/- per ton, whereas for the subject three works, Rs.24,000/-, Rs.21,600/- and Rs.21,600/- per ton, were approved and paid by the accused; that the volume of works is 100 to 200 tons of steel; that A.1, A.3 to A.7 conspired with A.2, and fraudulently, dishonestly and in flagrant violation of the procedures laid down, awarded the contracts of steel renewals to A.2. He further contended that the officials could have called for tenders as per the procedure, from outside contractors to quote their rates to HSL to undertake the subject works and complete the same within the specified time, and that the tenders could have been opened on a particular day preferably in the presence of outside contractors or their representatives, to rule out any malpractice; that merely by putting a notice on

19.11.1992, the subject contract was given in favour of A.2 at the aforesaid rate, which is unusually at high rate for steel renewals; that there is *prima facie* material to frame charges against the petitioners-A.1 to a.7, and that the Special Court considered these aspects in right perspective and dismissed the petitions filed for discharge, and ultimately, he prays to dismiss the revisions. In support of his submissions, he relied on a decision in *Amit Kapoor v. Ramesh Chander & another*¹, wherein it is held thus: (paras 27.3, 27.6, 27.9, 27.12 and 27.16)

“Having discussed the scope and jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now, it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be :

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3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

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¹ (2012) 9 Supreme Court Cases 460

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

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9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

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12) In exercise of its jurisdiction under [Section 228](#) and/or under [Section 482](#), the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

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16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under [Section 482](#) of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence.”

6. In view of the submissions made by both the sides, the point that arises for determination is whether the common order dated 08.02.2011 in CrI.M.P. Nos. 999 of 2005, 765 of 2005, 732 of 2005, 913 of 2005, 641 of 2005, 914 of 2005 and 711 of 2005, in C.C. No.16 of 2004 on the file of the Special Judge for C.B.I. Cases, Visakhapatnam, is liable to be set aside and the petitioners-A.1 to A.7 are entitled for discharge in the subject Calender Case ?

7. There cannot be any dispute that revisional jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is a truncated one. Unless the findings are illegal or improper or incorrect, normally, this Court will not interfere with the same in exercise of its revisional jurisdiction. To see whether the findings of the court below are based on record or not, it is necessary to examine the material placed on record.

8. There cannot be any dispute that if the acts alleged do not make out *prima facie* case of the offence, the question of framing any charge against the accused does not arise, as continuation of proceedings is nothing but abuse of process of Court. *Prima facie* evidence means on the face of it, there is a ground for proceeding; it is not the same thing as 'proof', which comes later when the Court has to find whether the accused is guilty. *Prima facie* evidence is evidence, which if accepted appears to be sufficient to establish the fact unless rebutted by acceptable evidence to the contrary.

9. To prove the charge of criminal conspiracy punishable under Section 120B IPC, the prosecution has to establish that two or more persons agreed to do or cause to be done

an act, which is illegal or which is not illegal but by illegal means. Criminal conspiracy will be held in secrecy. Therefore, normally the prosecution could not bring direct evidence. Conspiracy can also be inferred from the circumstances of the case.

10. To constitute an offence of cheating defined under Section 415 IPC, which is punishable under Section 420 IPC, there must be a fraudulent or dishonest inducement of a person deceiving another, and that the person so deceived should be induced to deliver any property to any person or to consent that a person shall retain any property; or that the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived. It is settled law that the intention to deceive must be existing from the time of inception. No doubt, intention can be gathered from the acts of the person committing the crime.

11. A person can be said to have committed the offence only if he does so with the intention of causing wrongful gain to one person or wrongful loss to another person – wrongful loss means land or property to which a person is entitled, while wrongful gain to a person means a gain to him by any wrongful means of property to which the person gaining is not legally entitled. The intention of the accused can be gathered from the circumstances.

12. It is also well established that intention is an essential ingredient to the commission of crime; where there is no *mens rea*, there can be no offence. The intention must not only have preceded the act in point of time. Intention is an operation of the will directing an

overt-act; motive is the feeling, which prompts the operation of the will, the ulterior object of the person willing.

13. It is the allegation of the prosecution that A.1, A.3 to A.7, being the employees of the HSL, conspired together with A.2 and caused undue benefit to A.2 and corresponding loss of Rs.46.00 lakhs to HSL by awarding the steel renewal contract works of Dredging Corporation of India, Visakhapatnam(Dredge-V); the Shipping Corporation of India (M.V.Ravidas) and M/s. Irano Hindu Shipping Corporation (M.V.Mowla VI) to A.2 at Rs.24,000/-, Rs.21,600/- and Rs.21,600/- respectively, thereby cheated HSL.

14. As per the records, Dredging Corporation of India Limited offered steel renewal contracts of their Dredger-V to HSL for renewal of 150 to 200 tones of steel. As per the terms of contract, it is required to be completed within a period of 45 days. It is alleged that A.1, A.3 to A.7 conspired together, and without resorting to regular procedure and without calling for tenders from the local contractors, entrusted the said work to A.2 at an abnormal rate of Rs.24,000/- per ton. Similarly, the steel renewal contracts of the Shipping Corporation of India (M.V.Ravidas) and M/s. Irano Hindu Shipping Corporation (M.V.Mowla VI) were awarded to A.2 at a higher rate of Rs.21,600/- each, thereby causing caused loss to HSL to a tune of Rs.46.00 lakhs. It is alleged that A.1 had put up a notice on 19.11.1992 in favor of A.2 exhibiting allocation of the contract works @ Rs.24,000/- per ton when compared to the prevailing rates.

15. As per the records placed before this Court, the internal office memo dated 19.11.1992 of HSL reveals that M/s. Dredging Corporation of India Limited offered to pay Rs.90,000/- per ton and there would be margin of profit of Rs.32,000/- per ton to HSL. Paragraphs 3 and 4 thereof clearly disclose as to how the existing work force of HSL was being engaged. The said paragraphs read thus:

“3. The steel work cannot be undertaken and completed by HSL employees since

(i) the existing surplus steel workers in yard will be deployed on repairs on INS ARNALA & INS COHARPAD being docked in our building dock.

(ii) DD/SR steel workmen would be deployed 50% for completion of steel works on INS ANDROTH and the balance 50% will be engaged on other areas of dredge-V on upper decks which will not be off-loaded.

4. If we want to engage contractors who are capable of executing the work within the time stipulated, it may not be possible to restrict the awarding of the work as per the existing rate contract entered in May' 91.”

16. As HSL had no adequate facilities and work force and since the contract work on Dredge-V of DCI was to be completed within a stipulated time of 45 days, HSL found it necessary to engage an outside contractor having required experience and infrastructure to meet the target of completing the subject work within the time stipulated. It is also clear from the record that there were negotiations between the officers concerned and ultimately the rate was fixed at Rs.24,000/- per ton and the work was awarded to A.2 firm as it had already engaged in similar works at Mazagon Dock Limited, Mumbai for Rs.27,500/- per ton.

17. Further, the statement of Sri V.Radha Krishna Murthy, who was the Managing Partner of Sri Venkateswara Construction, Room No.1, Dry Dock Canteen Complex, HSL, Visakhapatnam, recorded during the course of investigation on 30.09.2002 reveals that his firm is also one of the rate contractors to HSL during 1990; that timely completion of ship repairs is very important and the ships are ready to pay higher amounts if the work is done at faster rate. His statement further reveals that after successful completion of steel renewal work of Dredge-V of Dredging Corporation of India Limited, HSL gradually gained credibility and revenues from steel works and turnover of ship repair of HSL steadily grown from single digit to Rs.30 to 85 crores. His statement further reveals thus:

“During this period, when all was set to give a boost to this branch of work, Sri Varma, the C&MD (A.4) called all the sub contractors including me who were doing ship repairs and steel renewals and asked us whether we had the capacity to achieve 3 tonnes per day. Since we did not have the required man power and equipment, we expressed our inability to achieve that sort of target. As such there remained only one alternative and i.e. M/s. PEW (A.2).”

It is clear from his statement that sub-contractors including his firm, which was doing ship repairs and steel renewal works, were called and enquired whether they had capacity to achieve the target of 3 tonnes per day, and as they expressed their inability because of lack of requisite man power and equipment, A.1 and other accused were having only one alternative to allocate the work to A.2.

18. The statement of Sri G.Rama Rao, who worked as General Manager (Acting), Ship Repairs, HSL, Visakhapatnam, recorded during the course of investigation on 26.09.2002 reveals that after entrustment of subject work to A.2 firm during 1992-93, it was completed within the stipulated time of 45 days; that the capabilities of local contractors was below 1 tonne a day, which is not useful for the said kind of work; that a big contractor, capable of doing the work, would not be able to do the said work on the existing RC rates i.e. around Rs.7,000/- per MT as overheads will be much higher and the situation demanded working round the clock and higher over time cost. It further reveals that the rate of Rs.24,000/- all inclusive, quoted by A.2 firm was approved by A.4, who was the Chairman and Managing Director, and the work was completed within the time stipulated. His statement also reveals the incapability of HSL in undertaking outside renewal works and unable to complete within the stipulated time.

19. It is pertinent to state that timely completion of ship repairs is very important. The subject work viz. steel renewal works contract of one of the Dredges of Dredging Corporation of India, Visakhapatnam viz. Dredge-V, is a work required to be completed within 45 days. The local contractors had no capability to undertake and complete the work within the stipulated 45 days' time. It was a commercial contract. The rate offered by Dredging Corporation of India, Visakhapatnam was at Rs.90,000/- per ton and it was awarded to the sub-contractor i.e. petitioner-A.2 @ Rs.24,000/- per ton. Further, as per the records, the work was completed within the stipulated time and additional work of 70 tons was completed in

another 8 days. The main source of income of HSL was shipping repairs works. During 1991-92, it made a profit of Rs.10.00 crores, and after petitioner-A.2 undertaking the subject work and other works, it raised by 20% to 25%. At the relevant time, local sub-contractors had capacity to hardly complete 1 ton steel renewal works. But, to undertake the subject work, the sub-contractors should have the capacity to complete atleast 3 tons work in a day. There is record to show that local sub-contractors were brought and consulted before the tender was finalized in favour of petitioner-A.2. Viewing from any angle, HSL did not suffer any loss in view of awarding the subject contract works to petitioner-A.2. On the other hand, it made lot of profits. There is record to show that the petitioner-A.2 and other accused violated requisite procedure in awarding the subject contracts in view of exigency to complete the subject works within the stipulated time. There is no action including departmental action against them in awarding the subject contracts to petitioner-A.2. There is also material to show that petitioner-A.2 had mobilized men and material resources from different sources and completed the subject works within the stipulated time. Since petitioner-A.2 had requisite man power and infrastructure to complete the subject works in stipulated time frame and as the sub-contractors expressed inability to do so, the works were allotted to petitioner-A.2 at reasonable rate and the subject works also fetched profits to HSL.

20. It is not a case where the crime was registered on the report lodged by any of the officials of HSL or sub-contractors alleging irregularities. *Mens rea* is an essential element to attract the offences alleged. It

appears from the record that there is no *mens rea* on the part of any of the petitioners/accused to cause wrongful loss to HSL. There is no dishonest intention from the inception to cheat HSL on the part of any of the petitioners/accused. The subject work was allotted and completed in the interest of HSL. There is no other ulterior motive either to cause wrongful loss to HSL or to enable petitioner-A.2 to gain wrongfully. This Court is of the opinion that even if all the allegations are accepted as true and correct on their face value, the same would not result in conviction of the petitioners/A.1 to A.7 for the offences alleged against them. Therefore, continuation of the impugned proceedings would be a futile exercise. Even if there are lapses, as alleged, it is for the HSL to initiate necessary proceedings against the petitioners/A.1, A.3 to A.7, if they choose to do so. All the petitioners/A.1 to A.7 retired from service. Even during their service, no departmental action had been taken. Without there being any *mens rea*, the petitioners/A.1 to A.7 cannot be troubled. No *prima facie* case for the offences alleged is made out. There is no sufficient material to frame charge against the petitioners/A.1 to A.7 for any of the offences alleged.

21. In the result, all the Criminal Revision Cases are allowed. The impugned common order passed by the learned Special Judge is set aside. The petitioners/A.1 to A.7 are discharged from the offences alleged against them in C.C. No.16 of 2004 on the file of the Special Judge for C.B.I. Cases, Visakhapatnam.

Dr.SA, J.

20.9.2018
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