

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.03.2019

CORAM:
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.312 of 2019
and
Crl.M.P.No.3736 of 2019

A.C.Thiruneelakandan

...Petitioner/Accused No.3

/Vs/

The State Represented by its
Deputy Superintendent of Police,
Special Police Establishment,
Central Bureau of Investigation,
Anti-Corruption Bureau, Chennai.

...Respondent/Complainant

PRAYER: Criminal Revision filed under sections 397 r/w 401 of the Criminal Procedure Code, to call for the entire records and set aside the order dated 23.10.2018 made in Crl.M.P.No.5061 of 2018 in C.C.No.24 of 2017 before the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai.

For Petitioner : Mr.S.Samuel Rajapandian

For Respondent : (*)**Mr.K.Srinivasan**
Special Public Prosecutor (CBI)

O R D E R

This Revision has been filed against the order dated 23.10.2018 passed in Crl.M.P.No.5061 of 2018 in C.C.No.24 of 2017 by the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai dismissing the petition under Section 239 of Cr.P.C. seeking to discharge the petition.

2. The case of the prosecution is that the petitioner/A-3, who is a former Assistant Grade-I, (Depot) at Food Corporation of India (FCI), Food Storage Depot, Arakkonam had entered into a criminal conspiracy at Arakkonam and other places to cheat FCI in the matter of receipt and issue of food grains at Food Storage Depot, Arakkonam and in pursuance of the criminal conspiracy has prepared the fraudulent entries into various official documents like Stock Label Register (SLR), Daily Statement of Receipts (DTR), Daily Statement of Issues

(DSI), etc., to show there was stock. He is also alleged to have placed some empty gunny bags on the stock of wheat and rice which was recovered as empty gunnies during Zero Level Liquidation of the stock. The alleged wrongful loss in respect of MG 11, 12 and 13 alone was Rs.14,69,328/-; Rs.14,04,1399 and Rs.17,15,423/- respectively. The main offence listed against the petitioner is that of Section 409 of IPC which deals with criminal breach of trust and also to other provisions of Prevention of Corruption Act dealing with causing loss to the exchequer. The petitioner/A-3 along with A-8 have prepared electronic lorry weight bridge register wherein they fraudulently and dishonestly entered inflated figures of the numbers of bags and weight concerned therein. Moreover, it is stated that they have not taken any computerized weighment sheet instead they maintained only had written register for the issue and receipt of food grains. The weight bridge register was not properly maintained and as a result many of the bags exceeded their limit of 50 kgs in weight and thereby, there is a manipulation loss caused by the petitioner/A-3.

3. The learned counsel appearing for the petitioner would submit that the petitioner is arrayed as A-3 in C.C.No.24 of 2017 pending trial for the offence under Sections 120(B) r/w 409 IPC and Sections 13(2) r/w 13(1) (c) of Prevention of Corruption Act, 1988. He would further submit that the Bank Account bearing No.11080805465 of the petitioner was initially frozen, but later during the investigation nothing incriminating was found against the petitioner as if, he has made any illegal gains or otherwise. Further, during the searches nothing was seized from the petitioner's residence and that the inventory report itself would disclose about the innocence of the petitioner. He would further submit that the perusal of the charge sheet as well as the documents and records annexed to do not disclosed any material against the petitioner regarding the allegations that the petitioner criminally conspired with the other accused for obtaining wrongful or illegal gains. He would further submit that the investigation has taken place during July 2015 and the final report was filed on 29.12.2016, after a long gap of more than one and half years and that the respondent failed to carefully perused the materials regarding the petitioner/A-3 and when especially, the respondent had deleted similarly placed persons viz., Vuda Satya Siva and Umakanthan from the list of the accused persons. He would further submit that the petitioner cannot be vicariously held liability for the criminal acts committed by the others and would submit that based on the available materials charge cannot be framed against him and would seek for discharge.

4. The learned Additional Public Prosecutor appearing for the respondent would submit that the discharge petition filed by

the petitioner/A-3 neither maintainable in law nor on facts. He would further submit that the case was registered on 25.06.2015 by the respondent based on a source information and the allegations in brief in the FIR is that during the year 2014, the accused persons who are working at the Food Storage Depot of Food Corporation of India, Arakkonam, have entered into a criminal conspiracy with unknown persons and other places to cheat the Food Corporation of India (FCI) in the matter of receipt and issue of food grains and in pursuance of criminal conspiracy, they have manipulated the truck weighment details and tampered the weighment details and caused missing of 8147 bags of rice and 4014 bags of wheat, totally weighing 499.37 MT which resulted wrongful loss of Rs.1.42 Crores to FCI and corresponding wrongful gain to the accused persons and that the petitioner who was then working Assistant Grade-I (Depot) at Food Storage Depot, FCI, Arakkonam was named as A-3 and final report was filed before the Trial Court on 29.12.2016 for the offences under Sections 120(B) r/w 409 IPC and Sections 13(2) r/w 13(1) (c) of Prevention of Corruption Act, 1988.

5. The learned Additional Public Prosecutor would further submit that there are available materials proving the complicity of the petitioner in this case and the Trial Court taking into consideration all the materials available on record by a detailed order dismissed the petition for discharge. He would also submit that as per Section 239 of Cr.P.C, the accused can be discharged only when the Trial Court considering the police report and the documents sent with it under Section 173 and thinks if necessary examine the accused and after giving the prosecution and the accused an opportunity of being heard considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing. Whereas in this case, after going through the materials available on record and after hearing the parties the learned Trial Judge finding that there are materials and grounds for framing charges had by a detailed order had dismissed the petition for discharge. He would further submit that at the time of considering the petition for discharge, the learned Trial Judge cannot conduct a roving or fishing enquiry or conduct a mini trial and after analysing the materials against the petitioner/A-3 and hearing both sides, the learned Trial Judge had rightly dismissed the petition for discharge.

6. Heard both sides.

7. I have carefully perused the documents on record, the learned Trial Judge after finding that there are materials for framing of charges had dismissed the petition for discharge.

8. At this Juncture, the learned counsel for the petitioner would submit that during the course of the investigation, the account of the petitioner was freezed and the house search was also conducted and nothing incriminating has been found against the petitioner and that he has been unnecessarily prosecuted. He would further submit that the innocence of the petitioner may be taken into consideration.

9. This Court is of the opinion that the grounds raised by learned counsel for the petitioner are all matters for defence to be raised by way of letting in evidence during the trial at the appropriate stage. This Court does not find any infirmity in the order passed by the learned Trial Judge dismissing the petition for discharge.

(*)10 The personal appearance of the petitioner before the Trial Court, shall be dispensed with on condition that he shall be duly represented by a counsel on all hearing dates and he shall be present for answering the charges, at the time of questioning under section 313 Cr.P.C., and passing of judgment.

11 The petitioner is further directed to give an undertaking in the form of affidavit that the learned counsel representing him will cross-examine the prosecution witnesses on the day they are examined in chief. The petitioner shall not dispute the identity of the witnesses. The petitioner shall appear before the Court in the event if his presence is insisted by the Trial Judge for the purpose of identification and progress of trial. If the petitioner adopts any dilatory tactics, it is open to the Trial Court to insist for his appearance and deal with the petitioner in accordance with the judgment of the Hon'ble Supreme Court of India, reported in 2001 [4] SCC 667 [State of Uttar Pradesh V. Shambunath Singh].''

12. In the result, the Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)
(21.03.2019)

(*)Corrected as per order dated
13.06.2019 made in CRL RC No.312/2019

sd/-

Assistant Registrar(CCC)
(02.07.2019)

//True Copy//

Sub Assistant Registrar

kv

To

1. The Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai.
2. The Deputy Superintendent of Police, Special Police Establishment, Central Bureau of Investigation, Anti-Corruption Bureau, Chennai.
3. The Public Prosecutor, High Court of Madras.

(*)To be substituted
the order copy
already despatched
on 12.06.2019

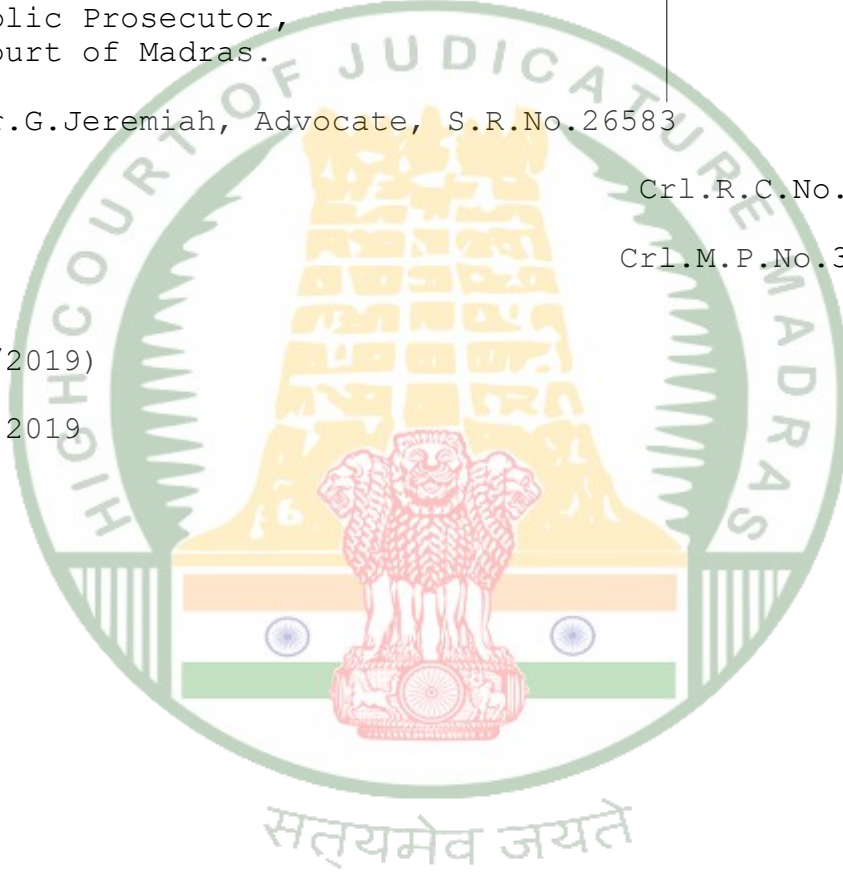
+1cc to Mr.G.Jeremiah, Advocate, S.R.No.26583

CrI.R.C.No.312 of 2019
and
CrI.M.P.No.3736 of 2019

SR(CO)

RRS (03/05/2019)

CSL/02.07.2019



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