

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :05.03.2019

Pronouncing orders on : 07.03.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.1960 of 2019 and Crl.MP No.2025 of 2019

S.Kumarasamy

...Petitioner /Accused
-Vs-

State rep. by
Inspector of Police,
City Crime Branch II,
Chennai 600 007.

... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 438 of Cr.PC to enlarge this petitioner on Anticipatory Bail in the event of his arrest connected in Crime No.227 of 2018, pending investigation before the respondent CCB-Team-II Vepery Chennai.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.M.Prabhavathi
Additional Public Prosecutor

For Intervenor : Mr.S.Rajendrakumar
Mr.S.Sivakumar

ORDER

The case of the prosecution is that the defacto complainant companies are manufacturers and Exporters of Electrically Calcined Anthracite Coal of (ECA) and Gas Calcined Anthracite Coal (GCA). The 1st and the 3rd accused company are the importers of the above coals. The coals are imported from China through containers on the basis of a written contract for each shipment. It is exported through vessels belonging to M/s.MSC and Hyundai Merchant Marine. On arrival at the Madras port, the containers will be stacked at the Container Freight station. In the present case, A6 acted as the Container Freight Station and the containers were stored in their warehouse. The goods will be allowed to be taken delivery by the importers only after the issuance of delivery order from the liners and charge orders

issued by the Customs Authority. As per the contract, the delivery of the goods is against payment. The importers will have to make payments to Union Bank of India and obtain the title documents. Thereafter, it must be submitted to the Custom Authorities and the bill of entry through their Customs House clearing Agent. On arrival, the liner will submit the Import General Manifest (IGM) to the customs authority. Based on the same, the duty will be assessed and on payment of duty, the customs authority will issue the charge order.

2. It is essential to produce before the Container Freight Station. The charge order and the delivery order for the purpose of taking physical delivery of goods.

3. In the instant case, the foreign supplier had sent totally 250 containers and all the containers were warehoused with A6, who is the custodian of the goods. The importers namely A1 represented by A2 and A3 represented by A4 without making any payment to the bank, is said to have forged the delivery order as though it was issued by the liner and they had taken away the goods in 60 containers with the connivance of A6. The above said company had engaged the service of A7 (the present petitioner herein) as their custom house agent. It is the custom house agent who has to lodge the title documents and the bill of entry to the Customs Authority and obtain delivery order and out of charge order from the liner and Customs Authority, respectively.

4. It is the case of the defacto complainant that A7 has forged the delivery order and also the out of charge order and had acted hand in glove with the importers, who had taken away 60 containers worth Rs.4.5 Crores.

5. The learned counsel for the petitioner submitted that the petitioner was not aware about the goods taken away by A1 and A3 companies and this petitioner is not involved in the paper work on behalf of the importers. The learned counsel further submitted that the petitioner at no point of time requested for delivery of goods to A6 and it is A6, who has wilfully delivered the containers to A1 and A3 company without receipt of actual and final delivery order. The learned counsel further submitted that A6 company in order to escape from the liability is intentionally roping in this petitioner and trying to throw the blame on this petitioner. The learned counsel submitted that the entire case is borne out by records and there is no requirement for custodial interrogation of the petitioner.

6. The learned Additional Public Prosecutor submitted that there is sufficient materials to show that this petitioner is involved in creating false and fabricated documents. The learned counsel further submitted that it is this petitioner who is

responsible for the entire paper work relating to the delivery order and out of charge order and more than 60 containers have been removed without payment of a single pie as duty to the customs. The learned counsel submitted that there is a clear case of conspiracy between the accused persons and the importer could not have removed the goods without the help of this petitioner.

7. The learned counsel appearing for the intervenor apart from adopting the arguments made by the learned Additional Public Prosecutor submitted that the Customs House Agent is the one who handles the entire paper work on behalf of the importers. Therefore, this petitioner cannot feign ignorance of the genuineness or otherwise of the documents handled by him. A6 is trying to throw the blame on A7 and A7 is now throwing the blame on A6. Ultimately, it is the defacto complainant who have now lost goods worth Rs.4.5 Crores. The learned counsel further submitted that the customs department has also been cheated by non payment of duty.

8. It is clear from the above that this case requires thorough investigation by the respondent police. Obviously, there is a clear conspiracy that has taken place between the accused persons who not only cheated the defacto complainant but also the Customs Department, in this case by non payment of duty. Documents have been fabricated for the purpose of removing the goods from the Container Freight station. The custodial interrogation of the accused person is very much required in order to unearth the entire truth. This Court, therefore, is of the considered view that the petitioner cannot be granted Anticipatory Bail in this case. In the result, this Criminal Original Petition is dismissed. Consequently, the connected petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

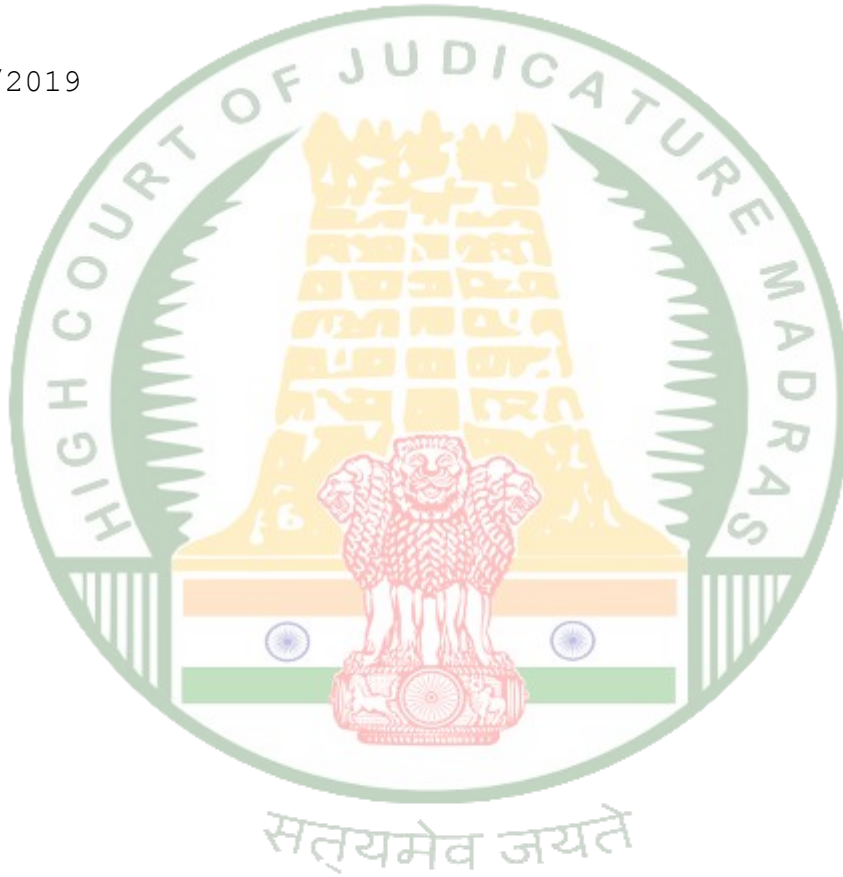
1. Inspector of Police,
City Crime Branch II,
Chennai 600 007.

2.The Public Prosecutor,
High Court of Madras.

+1cc to M/S.R.C.Paul Kanagaraj, Advocate Sr.24256 [25/03/2019]
+1cc to M/S.S.Rajendrakumar, Advocate Sr.24257[25/3/2019]

Cr1.O.P.No.1960 of 2019 and Cr1.MP No.2025 of 2019

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srg 21/03/2019



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