IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.OP.No.4889 of 2019

K.Rajkumar ... Petitioner/A1

Vs

State by Inspector of Police
CBI:ACB, Chennai ... Respondent

Prayer:- This Criminal Original Petition is filed under Section 482 of Cr.PC, to call for the records in CC.No.22 of 2017, on the file of the XII Additional Special Judge for CBI Cases, Chennai and to quash the same, as against the Petitioner.

For Petitioner : Mr.K.Shankar

For Respondent : Mr.K.Srinivasan, SPP-CBI

ORDER

1. This Criminal Original Petition is filed, under Section 482 of Cr.PC, to quash the proceedings, against the Petitioner/A1, in CC.No.22 of 2017, on the file of the XII Additional Special Judge for CBI Cases, Chennai.
2. The facts, leading to filing of this Criminal Original Petition, are as follows:-
   a) On the basis of source information, a case in RC52(A)/201 was registered on 19.12.2015, by the Respondent/ CBI, ACB, Chennai, for the offences under Sections 120B read with 420 IPC and Section 13(2) 13(1)(d) of the Prevention of Corruption Act, 1988, against (1) K.Rajkumar (A1), Senior Divisional Manager, New India Assurance Company Limited (NIACL), Purasawakkam Divisional Office, Chennai, the Petitioner herein, (2) B.Shanmugam (A2), Divisional Manager (Retired), New India Assurance Company Limited (NIACL), Alwarpet Branch, Chennai, (3) P.Kayalvizhi (A3) (Private Person) and (4) S.Chindambaram (A4), Insurance Agent, alleging that the Petitioner/A1 and A2, had entered into a criminal conspiracy with A3 and A4, to cheat NIACL and that in pursuance of such a criminal conspiracy, the Petitioner/A1 and A2, knowing fully well that the Banker's Indemnity

Insurance were taken directly by the India Bank, which is a Public Sector Undertaking, Government of India, during the financial years 2008-2009, 2009-2010, 2010-2011, with NIACL, not through any Agent, had fraudulently inserted the names of A3 and A4 as Agents in the agents column of the above said Policies and thereby, facilitated A3 and A4 to receive purported Agent's Commission through their Bank Accounts and thus, caused a wrongful loss to the tune of Rs.22,80,000/- to NIACL and corresponding wrongful gain to themselves.

b) It is further alleged in the Final Report that during the investigation, G.P.Jeyakumar, the former Deputy Manger of NIACL, Alwarpet Division Office and G.Chinnappa, Assistant at NIACL Audit Section, Alwarpet Division Office were arraigned as A5 and A6. A3 became approver and her statement was recorded under Section 164(1) of Cr.PC and A3 had given conditional tender of pardon under Section 306 of Cr.PC.

c) It is further alleged in the Final Report that the Petitioner/A1, while working as Divisional Manager, NIACL, Alwarpet Divisional Office, Chennai, during the period 2008-2010, had processed four policies, knowing fully well that they were directly obtained from the Indian Bank and in collusion with the other accused, dishonestly released fraudulently the agent's commission in favour of A3 and A4, as if it was brought by the Agents.

d) It is further alleged in the Final Report that the Petitioner/A1, while functioning as a Public Servant, in the capacity of the Divisional Manager, New India Assurance Company Limited, Alwarpet Divisional Office, Chennai, had entered into a criminal conspiracy with the other accused, to cheat the New India Assurance Company Limited and that in pursuance of the said conspiracy, A1 and A2, knowing fully well that the Banker's Indemnity Insurance were taken directly by the Indian Bank, a Public Sector Undertaking, Government of India, during the financial years 2008-2009 and its subsequent renewal during the financial years 2009-10 and 2010-11, with the New India Assurance Company Limited, not through any Agent, fraudulently inserted the names of A3 and A4 in the agent's column of the above said Policy and thereby facilitated A3 and A4 to receive purported Agent's Commission through their Bank Accounts.

e) It is further alleged in the Final Report that during the year 2009-10, the Indian Bank had taken two more policies, namely, Standard Fire Policy and Electronic Equipment Policy, directly from the New India Assurance Company Limited and that the Petitioner/A1, in collusion with the other accused, facilitated A3 to receive fraudulently the amount under the pretext of agent's commission and thereby, the accused had caused a total wrongful loss of

Rs.26.46 lacs (including the TDS amount) to NIACL under the guise of agent's commission and corresponding wrongful gain to themselves. Sanction orders were obtained from the Competent Authority under Section 19(1)(c) of the Prevention of Corruption Act, 1988, to prosecute the Petitioner/A1. The aforesaid acts constitute commission of cognizable offences punishable under Sections 120B read with Sections 409, 420, 467, 468, 471 of IPC and Section 13 (2) read with 13(1)(d) of the Prevention of Corruption Act 1988 and substantive offences thereof.

f) The final report was taken on file in CC.No.22 of 2017, by the XII Additional Special Judge for CBI Cases, Chennai. As against the same, this Criminal Original Petition has been filed, by the Petitioner/A1.

3. This court heard the submissions of the learned counsel on either side.

4. The Petitioner/A1, in order to quash the impugned charge sheet, has raised the following grounds:-

a) The impugned final report, the 161 statements and the documents annexed with the final report do not disclose any prima facie evidence, warranting the Court to frame charge against the Petitioner/A1 and also do not disclose any iota of evidence to show that the Rules and Regulations of the New India Assurance Company Limited prevent any consumer either private person or an Organisation of the Government, to engage an Insurance Agent for smooth and better service to the consumers.

b) The interpretation given by the Respondent that the request for quotations were directly received by the Branch and the quotations were sent to the Indian Bank, directly by the Branch, based on the "addressee" particulars, is erroneous.

c) The four Indemnity Policies issued by the Petitioner/A1, listed as LD16, LD17, LD22 and LD23, contain the name of the Agent, Kayalvizhi (Approver) and that if the Indian Bank did not engage her as their Agent, they must have protested the same with the Company.

d) With regard to the Indemnity Policy for the financial year 2008-2009, the Petitioner/A1 had treated this Policy as agent code business and issued agent's commission of Rs.7,40,199/- to LW26, Kayalvizhi, after deducting the tax at source for the year 2008-2009 and similarly, issued agent's commission of Rs.7,21,582/- to her for the Indemnity Policy for the year 2009-2010. Likewise, for two policies,namely, Standard Fire and Special Perils Policy and Electronic Equipments Insurance Policy, they had been issued in the Agent Code, instead of direct Code and a sum of Rs.3,21,263/- as agent's commission was paid to Kayalvizhi.

e) Apart from the New India Assurance Company Limited, formulated under the General Insurance Business

(Nationalisation) Act, 1972 and governed by the said Act, three other Companies, namely, United India Insurance Company Limited, Oriental Insurance Company Limited and the National Insurance Company Limited, were also formulated and governed by the same Act. Subsequent to the Act, 1972, the General Insurance Conduct, Discipline and Appeal Rules, 1975, had been framed to govern all the said four Insurance Companies, including the New India Assurance Company Limited. In 2003, the NIACL Conduct, Disciplinary and Appeal Rules, were framed, replacing the Rules formulated in 1975. At last, in 2014, the NIACL Conduct, Disciplinary and Appeal Rules, 2014, came to be framed, replacing the Rules 2003. However, all the said Rules, formulated in the years 1975, 2003 and 2014, respectively, were not notified in the Official Gazette. Since as per Section 17A of the General Insurance Business (Nationalisation) Act, 1972, the said Rules, regarding terms and conditions of services of Officers and Employees, were not placed before both the Houses of Parliament and consequently, were not notified in the Official Gazette, so far, the sanction order is null, void and illegal.

5.The learned counsel for the Petitioner/A1 would submit that though several grounds have been raised on merits in the petition to quash, he would restrict his argument only relating to validity of sanction accorded to prosecute the Petitioner/A1. He would further submit that the Petitioner is an Employee of the New India Assurance Company Limited (hereinafter called as NIACL) and that NIACL was incorporated pursuant to the General Insurance Business (Nationalisation) Act, 1972 and that no separate rules regarding the terms and conditions of service of the Officers and other Employees, have been framed for the New India Assurance Company Limited. He would further submit that as per Section 17A of the General Insurance Business (Nationalisation) Act, 1972, the Central Government has got powers to regulate the terms and conditions of the services of the Officers and other employees and that as per Section 39, the Central Government has got powers to make Rules to carry out the provisions of the Act and that every rule made under this Section and every notification issued under Section 35 shall be laid, as soon as may be after it is made before each House of Parliament and after getting approval of the Parliament, is to be notified and thereby, since the rules have not been notified, they cannot be enforced and thereby, the sanction order granted, placing reliance on the above invalid and ineffective rules, is illegal.

6.In support of his contentions, the learned counsel for the Petitioner/A1 would rely on the decision of the Honourable Supreme Court reported in AIR 2010 SC 259 (Rajendra Agricultural University Vs. Ashok Kumar Prasad and others) and an unreported judgement of the Karnataka High Court, dated

01.03.2012 made in Crl.A.Nos.933 C/W 835 of 2010 (K.T.Uthappa and another Vs. State of Karnataka) and the Order of the Honourable Supreme Court, dated 3.11.2015, made in Crl.A.Nos.1872-1873/2014. He would also rely on the legal provisions contemplated under the General Insurance Business (Nationalisation) Act, 1972, particularly, Section 17A, which provides Power to Central Government to regulate the terms and conditions of service of officers and other employees and Section 39, which provides Power to make Rules.

7. On the other hand, the learned Special Public Prosecutor for the Respondent, by filing a counter against the present Criminal Original Petition to quash, would submit that there is no illegality in the sanction order and that the history of the Indian Insurance Industry is necessary to decide this issue. He would further submit that the entire general insurance business in India was nationalised by the General Insurance Business (Nationalisation) Act, 1972, whereby the Government of India, through Nationalisation, took over the shares of 55 Indian Insurance Companies and the Undertakings of 52 Foreign Insurers, carrying on general insurance business and that pursuant to Section 9(1) of the General Insurance Business (Nationalisation) Act, 1972, the General Insurance Corporation of India (GIC) was formed and it was incorporated on 22.11.1972, under the Companies Act, 1956, as a private Company Limited, by shares. He would further submit that GIC was formed for the purpose of superintending, controlling and carrying on the business of general insurance and as soon as GIC was formed, the Government of India transferred all the shares it held to GIC and simultaneously, the nationalised Undertakings were transferred to Indian Insurance Companies and that after a process of mergers among Indian Insurance Companies, four Companies, viz. National Insurance Company Limited, New India Assurance Company Limited, Oriental Insurance Company Limited and United India Insurance Company Limited, were left, as fully owned subsidiary Companies of GIC and thereafter, the Government of India introduced the General Insurance Business (Nationalisation) Amendment Act, 1985 and once again, on 21.3.2003, the General Insurance Business (Nationalisation) Amendment Act, 2002, was introduced and till the amendment in 2003, the General Insurance Corporation of India was the holding Company of four subsidiary insurance companies mentioned above, which are carrying on general insurance business.

8. The learned Special Public Prosecutor would further submit that in view of the liberalization, necessary changes were effected in the Insurance Act, 1938 and that after the enactment of the IRDA Act, 1999, the Central Government decided to entrust re-insurance business to GIC and delinked the said four Companies, carrying on general insurance business from GIC by incorporated Section 10A and also other amendments in the

Insurance Act and thereby, the private players were permitted to enter and transact the insurance business and with this enactment, the share capital of the insurance companies were transferred back to the Central Government, from GIC and the four Companies were wholly owned by the Government of India as separate entities and they are no longer subsidiaries of GIC.

9.The learned Special Public Prosecutor would further submit that in view of the New India Assurance Company Limited having been formed as a separate Company, the power of the Board, as per the Articles of Association, will prevail in regulating the affairs of the Company as per the Companies Act and that the backdrop of the said amendment is due to the judgement of Honourable Supreme Court reported in AIR 1984 SC 1130 (Ajay Kumar Banerjee Vs. Union of India) and thereby, the Government was advised to frame any appropriate legislation or make any appropriate amendment, giving power to the Central Government to frame any scheme as it considers fit and proper and based on that, subsequent legislations have been brought in by the Central Government. He would further submit that in view of the new amendments having been brought in and in view of service rules having been brought under the New India Assurance Company Limited (Conduct, Discipline and Appeal) Rules, 2003, by the resolution of the Board, the Board of Directors of the New India Assurance Company Limited, with the powers conferred under the Articles of Association, as envisaged under the Companies Act, had formulated the Conduct, Discipline and Appeal Rules for its employees and the New India Assurance Company Limited (Conduct, Discipline and Appeal) Rules, 2014, came into force with effect from 01.04.2014 and that the present Rules are in supersession of the earlier Rules of the year 2003 and thereby, the claim of the Petitioner to bring him within the ambit of the General Insurance Business (Nationalisation) Amendment Act, will not be applicable.

10.The learned Special Public Prosecutor would further submit that Section 17A definitely specifies that the Central Government has the authority to bring out a notification, regulating service conditions of the employees of the Insurance Companies, but it does not provide a definite mandate as is clear by the words employed viz. “Central Government may by notification in the official Gazette”, meaning that during the relevant time, the Central Government was given power to make rules. He would further submit that now that much water has flown and that in so far as Section 39 is concerned, the Central Government has got powers to make rules to carry out the provisions of the Act and none of the specific matters dealt with under sub clause (a) to sub clause (f) of sub section (2) of Section 39 refer to the service conditions of the employees and thereby, the prescription in sub section 3 of Section 39 that the Rules so framed under Section 39 shall be placed before both the Houses of Parliament, is not applicable in the case of Conduct, Discipline and Appeal Rules, regulating the service conditions of the employees of the Respondent Company and he would submit that there is no requirement at this stage when the case of the Petitioner/A1 has been dealt under the New India Assurance Company Conduct, Discipline Rules, 2014 and non placing of the Rules, 1972 before both the Houses of the Parliament, will not be applicable.

11.The learned Special Public Prosecutor would rely on decision of the Honourable Supreme Court reported in AIR 1984 SC 1130 (Ajay Kumar Banerjee Vs. Union of India) and an unreported judgement of the Kerala High Court, dated 7.1.2014, made in WP (C)No.26520 of 2012 and refer to the General Insurance (Emergency Provisions) Act, 1971, General Insurance Conduct, Discipline and Appeal Rules, 1975, General Insurance Business (Nationalisation) Amendment Act, 1985, General Insurance Business (Nationalisation) Amendment Act, 2002 (March 21, 2003), New India Assurance Company Conduct, Discipline and Appeal Rules, 2003, which came into force by the Resolution of the Board and New India Assurance Company Conduct, Discipline and Appeal Rules, 2014. and also the provisions of the Companies Act, 2013 and the Central Vigilance Commission Act, 2003.

12.I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire materials available on record and the relevant provisions of law and the judgements cited by both sides.

13.The unreported judgement of the Karnataka High Court made in Crl.A.Nos.933 C/W 835 of 2010 (K.T.Uthappa and another Vs. State of Karnataka) had been passed on 01.03.2012. The said judgement relates to the employees of the United India Insurance Company Limited. The Karnataka High Court, apart from allowing the appeal on other grounds, relied on the evidence of PW.1, wherein he had deposed that he was not specifically authorised by the Board to issue sanction and that the Memorandum of Articles of Association placed on record by the accused, as per Ex.D1, indicates that Board's Authorisation is a must. Further, the Karnataka High Court had rendered a finding that the second defect in the case of the Prosecution with regard to the sanction order is that the witness, PW.1 has stated in his evidence that there is no separate Rules for the United India Insurance Company Limited and the Rules, which were applied, were the General Insurance Conduct, Discipline and Appeal Rules, 1975 (CDA Rules) and that the CDA Rules were not placed before the Parliament and no gazette notification was issued and thereby, held that the sanction to prosecute was invalid in the absence of General Insurance Conduct, Discipline, Appeal Rules, 1975, being not notified and no separate Rules having been made. Thereafter, the State of Karnataka had went on appeal before the Honourable Supreme

Court in Crl.A.Nos.1872-1873/2014, wherein the Honourable Supreme Court, finding that no sanction was granted by the Board of Directors, had dismissed the appeals, by order dated, 03.11.2015.

14.While so, after the pronouncement of the judgement of the Karnataka High Court, dated 01.03.2012, in Crl.A.Nos.933 C/W 835 of 2010 (K.T.Uthappa and another Vs. State of Karnataka), the same issue regarding the non notification of the Rules under the General Insurance Business (Nationalisation) Act, 1972, came to be agitated before the Kerala High Court in WP (C)No.26520 of 2012, wherein, the Kerala High Court, after carefully considering the issue and on examination of the provisions of the General Insurance Business (Nationalisation) Act, 1972, found that there is no mandatory requirement for placing the matter before the Parliament for notification and finding that the Respondent Insurance Company had framed the Rules to regulate the service conditions of the employees under the inherent powers vested in it, after being incorporated as a Company under the Statute and based on its legal status, as validly registered Company, had dismissed the petition.

15.Now coming to the case on hand, the Petitioner/A1 is an employee of the New India Assurance Company Limited and he along with the other accused have been charged for the offences under Sections 120B read with Sections 409, 420, 467, 468, 471 of IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act 1988. The allegation is that the Petitioner/A1 had, during the period 2008-2010, while working as the Divisional Manager in the New India Assurance Company Limited, Alwarpet Divisional Office, Chennai, had entered into a criminal conspiracy with the other accused to cheat NIACL and in pursuance of such conspiracy, the Petitioner/A1 and the other accused, knowing fully well that the Banker's Indemnity Insurance were taken directly by the Indian Bank, with the New India Assurance Company Limited, not through any Agent, had fraudulently inserted the names of the Agents in the agents column of the above said policies and thereby, facilitated the Agents to receive purported agent's commission through their Bank Accounts and thus, caused a wrongful loss of Rs.22,80,000/- to NIACL and corresponding wrongful gain to themselves.

16.The Petitioner/A1 was working in the cadre of Senior Divisional Manager and the sanction has been accorded by LW.24, Rakesh Kumar, General Manager, New India Assurance Company Limited, as per the New India Assurance Company Limited (Conduct, Discipline and Appeal) Rules, 2014. LW.24 is the Sanctioning Authority/Disciplinary Authority and thereby, sanction has been accorded by him. In such view of the matter, this Court is of the firm opinion that the judgement of the Karnataka High Court, dated 01.03.2012 made in Crl.A.Nos.933 C/W 835 of 2010 (K.T.Uthappa and another Vs. State of

Karnataka) relied on by the learned counsel for the Petitioner/A1 will not be applicable to the facts on hand since in this case, the Insurance Company, where the Petitioner was employed, has framed separate Rules, as per Law, to regulate the conditions of service.

17.Further, as stated earlier, in K.T.Uthappa's case, the Karnataka High Court acquitted the accused, rendering a finding based on the evidence of PW.1 that there are no separate rules for the United India Insurance Company Limited and the Honourable Supreme Court, finding that no sanction was granted by the Board of Directors, had dismissed Crl.A.Nos.1872-1873 of 2014 by order dated, 3.11.2015. Whereas in this case, sanction to prosecute the Petitioner/A1 has been granted pursuant to the New India Assurance Company Limited (Conduct, Discipline and Appeal) Rules, 2014, which came into force on 1.4.2014. Further, this Court finds no valid grounds to quash the impugned proceedings against the Petitioner and accordingly, this Criminal Original Petition is liable to be dismissed.

18. In the result, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1.XII Additional Special Judge for CBI Cases,
Chennai

2.The Public Prosecutor,
High Court, Madras

3.The Inspector of Police,
CBI:ACB, Chennai

+1cc to Mr.K.Shankar, Advocate, S.R.No. 61583

Crl.OP.No.4889 of 2019

SSD(CO)
GN(20/08/2019)