IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.09.2019

DELIVERED ON: 03.10.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl. Rev. No.783 of 2019 & Crl.M.P. No.11220 of 2019
Crl.O.P. No.3903 of 2019 and Crl.M.P.Nos.2417 and 2419 of 2019

Crl.R.C. No.783 of 2019:

Sanjay Bhandari ... Petitioner/A4

vs.

The Inspector of police
CBI/ACB
SPE, Chennai
R.C.M.A.1.2015.A.00001 ... Respondent/Complainant

Crl.O.P. No.3903 of 2019:

1 SPR & RG Constructions Pvt. Ltd.
represented by its Managing Director
Hitesh Kumar Kawad
Devi Parasakthi Nagar
Porur
Chennai 600 116

2 Hitesh Kumar Kawad ... Petitioners/A2 & A3

vs.

Union of India
represented by the Inspector of Police
CBI/ACB/SPE/Chennai
... Respondent/Complainant

Prayer in Crl.R.C. No.783 of 2019:

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to call for the records in Crl.M.P. No.2180 of 2017 in C.C. No.25 of 2016 and set aside the order passed by the IX Additional Sessions Special Judge for CBI Cases, Chennai dated 13.02.2019.

Crl.O.P. No.3903 of 2019:

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in C.C. No.25 of 2016 on the file of the IX Additional Sessions Judge-cum-Special Court for CBI Cases, Chennai and quash the same insofar as the petitioners are concerned.

For petitioner in Crl.R.C. No.783/2019 :Mr. R. Shanmugasundaram, Sr. Counsel for M/s. Kumarpal R. Chopra

For petitioners in Crl.O.P. No.3903/2019 :Mr. I. Subramaniam, Sr. Counsel for K.P. Ananthakrishna

For respondent in both the cases :Mr. K. Srinivasan Special Public Prosecutor for CBI Cases

COMMON ORDER

Since the instant cases emanate from the same FIR and final report and the consequential commonality of issues involved, they are considered and decided by this common order.

2 The events in this case had taken place from September 2014 to 10.01.2015 when the FIR in RR MA 1 2015 A0001 was registered by the respondent police.

3 For the sake of convenience, the dramatis personae in this case will be referred to by their name and for better appreciation of the facts at hand, a brief introduction of them is necessary.

4 Sallong Yaden-A.1 (for short "Yaden") was the Joint Commissioner, Income Tax, Range-VI, Chennai. Hitesh Kawad-A.3 (for short "Kawad") was the Managing Director of SPR & RG Constructions Pvt. Ltd.(A.2) which was into real estate business. Sanjay Bhandari (A.4) is the father of Shreyans Bhandari (A.5) and they are partners of S.H. Bhandari & Co., Chartered Acountants, Chennai.

5 The vignette of the facts leading to the filing of the cases at hand are as under:

5.1 In September 2014, the Income Tax Department, searched the premises of one Praveen Kumar Jain in Mumbai and found that the latter had made certain accommodation entries in respect of capital infusion into SPR & RG Constructions (A.2) of Kawad

(A.3). Muthu Shankar, DDIT, Investigations, Mumbai, conducted a survey on 05.09.2014 at the office of Kawad (A.3) and found certain irregularities in their accounts. He submitted his preliminary survey report dated 08.09.2014 to the department, which came to the hands of Yaden (A.1).

5.2 While so, the Income Tax Department in Chennai was independently probing into the affairs of SPR & RG Constructions (A.2) of Kawad (A.3) since the said company had purchased the land of Binny Ltd. for a sum of Rs.120 crores in December 2013. Jaiganesh, I.R.S., Deputy Commissioner of Income Tax, Range-VI, Chennai, who was working under Yaden (A.1), put up a satisfactory note dated 11.12.2014 to Yaden (A.1) seeking his permission for conducting a survey. On 11.12.2014, Yaden (A.1) permitted the survey, though he knew that Muthu Shankar of Mumbai Income Tax Department had already submitted a preliminary survey report on 08.09.2014. However, Jaiganesh, Deputy Commissioner, proceeded with the survey armed with the warrant of authorisation issued by Yaden (A.1) and conducted search of the premises of SPR & RG Constructions (A.2) on 11.12.2014. During the search, incriminating materials were recovered.

5.3 While these activities were going on in the Income Tax Department in Mumbai and Chennai, the C.B.I. obtained permission from the Ministry of Home Affairs, to intercept two mobile numbers, viz., 98410 19190 of Sanjay Bhandari (A.4) and 98842 18840 of Shreyans Bhandari (A.5) from 01.11.2014. The conversations of the Bhandaris were tapped by the C.B.I. sleuths and they were put under surveillance. The conversations were with regard to the affairs of SPR & RG Constructions (A.2) group and the problems faced by them with the Income Tax Department.

5.4 To cut a long story short, the C.B.I. mounted surveillance around the house of Yaden (A.1) on 10.01.2015 (Saturday) with two independent witnesses. They saw Shreyans Bhandari (A.5) coming by a Maruti Ertiga car bearing Regn. No.TN 01 AR 8779 to Yaden's (A.1's) house around 12.45 hrs. They also saw Shreyans Bhandari (A.5) entering Yaden's (A.1's) house with a black and orange polythene bag captioned “Manyavar” and after some time, they saw him coming out of the said house without the said bag. So, when they intercepted him at the entrance, he told them that he came to meet Yaden (A.1) and took them there. The sleuths, along with the independent witnesses and Shreyans Bhandari (A.5), entered the house of Yaden (A.1) and found him with the bag. On checking the bag, it had cash of Rs.8 lakhs. When questioned, Yaden (A.1) was not able to give any satisfactory explanation, but, stood perplexed and started sweating profusely. He said that he had taken a loan of Rs.8 lakhs from the Bhandaris. Hence, the C.B.I. registered a case in RC MA1 2015 A0001 on 10.01.2015 under Sections 120-B IPC and

Sections 7,12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (for short "the PC Act") against Yaden (A.1), Kawad (A.2), Sanjay Bhandari (A.3) and Shreyans Bhandari (A.4).

5.5 After completing the investigation, the C.B.I. filed a final report in C.C. 25 of 2016 before the Special Court for CBI Cases, Chennai (for short "the Special Court") for the offences under Sections 120-B IPC read with Sections 7,12 and 13(2) read with Section 13(1)(d) of the PC Act against Yaden (A.1), SPR & RG Constructions (A.2), Kawad (A.3), Sanjay Bhandari (A.4) and Shreyans Bhandari (A.5).

5.6 While Sanjay Bhandari (A.4) filed Crl.M.P. No.2180 of 2017, Kawad (A.3) filed Crl.M.P. No.5396 of 2017 before the Trial Court, both under Sections 239 Cr.P.C., seeking discharge from the prosecution in C.C. No.25 of 2016.

5.7 After hearing either side, the Trial Court, by common order dated 13.02.2019, has dismissed the discharge applications, assailing the correctness of which, Sanjay Bhandari (A.4) has preferred Crl.R.C. No.783 of 2019 under Section 397 read with Section 401 Cr.P.C. and SPR & RG Constructions (A.2) and Kawad (A.3) have preferred Crl.O.P. No.3903 of 2019 under Section 482 Cr.P.C., seeking quashment of the very prosecution against them.

6 Heard Mr. I. Subramaniam, learned Senior Counsel representing Mr. K.P. Ananthakrishna, learned counsel on record for SPR & RG Constructions (A.2) and Kawad (A.3), Mr. R. Shanmugasundaram, learned Senior Counsel representing Mr. Kumarpal R. Chopra, learned counsel on record for Sanjay Bhandari (A.4) and Mr. K. Srinivasan, learned Special Public Prosecutor for CBI Cases.

7 The sum and substance of the allegations in the final report is that Yaden (A.1) knew that the Mumbai Income Tax Department has begun investigation into the affairs of SPR & RG Constructions (A.2), despite which, he (Yaden-A.1) gave his nod for Jaiganesh, Deputy Commissioner, to conduct a survey of SPR & RG Constructions (A.2).

8 The allegation against SPR & RG Constructions is that SPR & RG Constructions (A.2) was building up share capital and unsecured loans from the assessment year 2010 onwards through shell companies based at Mumbai and Kolkata in the form of accommodation entries. As the tax noose was getting tightened around Kawad (A.3), he is said to have engaged the Bhandaris to wriggle him out of the imbroglio.

9 Tapped conversations showed that Yaden (A.1) had suggested that Kawad (A.3) should make a disclosure of about Rs.10 crores and pay the tax for it, thereby settling the matter, whereas, Kawad (A.3) was resisting the offer. On 15.12.2014, Sanjay Bhandari (A.4) made arrangements for Kawad (A.3) to meet Yaden (A.1) with regard to the survey in the office of Yaden (A.1). After meeting Yaden (A.1), Kawad (A.3) called Sanjay Bhandari (A.4) and told him that Yaden (A.1) is demanding a disclosure of Rs.12 crores. Bhandaris (AA 4 & 5) assured Kawad (A.3) that they will take care of the matter and so on and so forth. The conversations between Sanjay Bhandari (A.4) and Kawad (A.3) are on record and along with the final report, the transcripts have also been furnished with their English translations.

10 It is Kawad's (A.3's) concern that the disclosure should be less than Rs.10 crores, so that he does not pay tax for such a huge amount, whereas, Yaden (A.1) wants a huge disclosure, since he had promised his senior Sailendra Mammidi, Chief Commissioner, of the same.

11 Mr. I. Subramaniam, learned Senior Counsel representing Mr. K.P. Ananthakrishna, learned counsel on record for SPR & RG Constructions (A.2) and Kawad (A.3) submitted that there are no credible materials against Kawad (A.3) to show that he had instructed the Bhandaris to give a sum of Rs.8 lakhs to Yaden (A.1). He further contended that Kawad (A.3) was not willing to show a disclosure of Rs.10 lakhs, because, he was confident that there was nothing hanky-panky in his accounts, whereas, it was Yaden (A.1) who was insisting a disclosure of Rs.10 crores, since he (Yaden-A.1) had promised his superior that he would get such a disclosure.

12 It is true that there is no direct evidence to show that Kawad (A.3) had given a sum of Rs.8 lakhs to the Bhandaris (AA 4 & 5) for giving it to Yaden (A.1). However, the conversation between Sanjay Bhandari (A.4) and Kawad (A.3) recorded on 16.12.2014 goes like this:

Sanjay	Hello
Kawad	Yes Sir

Sanjay	Had a nice talk. Told that I will not go beyond 3.5. He told I have committed 5 crores to Commissioner. I told that we will not go beyond 3.5. crores and that we can pay a tax of one crore only. If required you can take the remaining from RG group. The RG group is not part of us. RG is a different group and not in ours. If you want to make it 5 crore, then make it as 3:2 or 31/2:1 ½ between us. He is saying that he had given a commitment of 5 crores to the Chief Commissioner. You don't talk about this. Yesterday, I had spoken to Yaden. He said that you have agreed and that I am only interfering and asking it to be reduced. I said to him that when one goes to the doctor, while meeting him, we will forget some thing and after returning back only, we will remember it. I said that you are a big officer and the assessee will not say no before you. He accepted it.
Kawad	This is to be seen whether he will accept it, only 10 minutes back, I came to know from the other persons that they are no accepting. They are saying that they don't have any money to disclose.
Sanjay	They need not disclose only in money they can disclose in gold, silver, etc. Actually, they had sent a report to the Commissioner that there would be a disclosure of 5 crores. That is the problem. They want disclosure of 5 crores, since they have already said it the Commissioner. I said to keep quiet for two days and be cool. He also accepted to keep cool for 2 days. You wait for 2 days.

Kawad	Sir, then the systems of my office have been taken by these people. My office cannot function. For the past two days my people are sitting in the office without any work.
Sanjay	You wait for two days. Let us wait for the settlement and then proceed. You wait for 2 days. You wait till Monday.
Kawad	Ok

13 Mr. I. Subramaniam, learned Senior Counsel, contended that even in the aforesaid conversation, Kawad (A.3) was only haggling for reducing the disclosure to less than Rs.10 crores

and there is no material to suggest that he had instructed the Bhandaris (AA 4 & 5) to pay bribe to Yaden (A.1).

14 The tenor of the conversation between Kawad (A.3) and Sanjay Bhandari (A.4) on the one hand, and the Bhandaris (AA 4 & 5) and Yaden (A.1) on the other, show that the Bhandaris (AA 4 & 5) came into the picture only to bail out Kawad (A.3) from the tax raids since they claimed proximity with Yaden (A.1). The documents, viz. D.43 and D.44 filed along with the final report shows that Sanjay Bhandari (A.4) was appointed as the authorised person to appear before the Income Tax authorities on behalf of Kawad (A.3). In the conversation dated 16.12.2014 between Sanjay Bhandari (A.4) and Kawad (A.3), Sanjay Bhandari (A.4) is heard telling Kawad (A.3) that he has met Yaden (A.1) and has discussed the issues with him and has finalised that the disclosure would be only Rs.3.50 crores. Thus, when Yaden (A.1) was wanting a disclosure of not less than Rs.10 crores, he suddenly scaled down and agreed for a disclosure of Rs.5 crores less, obviously because, he has struck a deal for a bribe amount of Rs.8 lakhs. To say that without the knowledge and instructions of Kawad (A.3), the Bhandaris had given a sum of Rs. 8 lakhs from their pocket to Yaden (A.1) appears to defy credulity.

15 Mr. Shanmugasundaram, learned Senior Counsel appearing for Sanjay Bhandari (A.4), submitted that there is no material to show the involvement of Sanjay Bhandari (A.4) in the transactions between Shreyans Bhandari (A.5) and Kawad (A.3). He further contended that Shreyans Bhandari (A.5) had contacted his friend Balaji for money, which only shows that the payment of Rs.8 crores was not with regard to the ongoing income tax investigation against Kawad (A.3).

16 This Court perused the conversation between Balaji and Sanjay Bhandari (A.4) on 24.12.2014 and the conversation between Balaji and Shreyans Bhandari (A.5) on 09.01.2015. A reading of the conversations shows that Balaji is a common friend of both Bhandaris (AA 4 & 5) and Kawad (A.3), because, Balaji is asking Sanjay Bhandari as to what happened to Kawad's (A.3's) matter. On 09.01.2015, Shreyans Bhandari (A.5) was desperately trying to raise Rs.8 lakhs, but, Balaji was not able to oblige and somehow, on 10.01.2015, Shreyans Bhandari (A.5) was able to hand over Rs.8 lakhs to Yaden (A.1) at his residence and was caught.

17 Mr. Shanmugasundaram contended that there is no material to show that there was demand of bribe by Yaden (A.1) and in the absence of that, mere recovery of a sum of Rs.8 lakhs from the residence of Yaden (A.1) will not attract the provisions of Section 7 of the PC Act. In support of this contention, he placed strong reliance on the judgments of the

Supreme Court in (i) Banarsi Dass vs. State of Haryana[1], (ii) B. Jayaraj vs. State of Andhra Pradesh[2], (iii) N. Sunkanna vs. State of Andhra Pradesh[3] and (iv) Mukhtiar Singh (since deceased) vs. State of Punjab[4].

18 The aforesaid cases emanated after a full-fledged trial and in the peculiar circumstances obtaining in those cases, the Supreme Court held that demand has not been proved and had acquitted the accused. As held by the Supreme Court in Bir Singh vs. Mukesh Kumar[5], the judgments of the Supreme Court should not be treated as Euclid's theorem. This is more so in criminal cases, where, the factual matrix between two cases will not be akin to each other. Thus, criminal cases cannot be put in a strait jacket. Though there may be similarity between the facts of some cases, there would always be shades of difference and quite often, that difference may prove to be crucial. (See Charan Singh and others vs. State of Punjab[6]).

19 Mr. Shanmugasundaram placed reliance on P.Vijayan vs. State of Kerala[7] and another and submitted that for framing charge, mere suspicion is not sufficient, but, there should be a grave suspicion which is absent in this case. This Court is unable to countenance the submission that there is only mere suspicion in this case, for, the evidence collected by the C.B.I., projects a different picture altogether. P. Vijayan (supra) arose in a case under Section 302 IPC where Section 227 Cr.P.C. was the subject matter of discussion, whereas, in a case arising under the PC Act, Section 239 Cr.P.C. would be the appropriate provision. A person can be discharged under Section 239 Cr.P.C. only when the Court considers the charge against him to be groundless. In this case, the conversations that have been recorded are relevant under Section 7 of the Evidence Act. These conversations were recorded during the subsistence of the conspiracy amongst the accused. Under Section 10, ibid, when the Court has a reasonable ground to believe that there is conspiracy amongst the accused, then, whatever is said and done by one in reference to their common intention, will be relevant against the others. In this case, the conspiracy ended on

1 (2010) 4 SCC 450

2 (2014) 13 SCC 55

3 (2016) 1 SCC 713

4 (2017) 8 SCC 136

5 (2019) 4 SCC 197

6 (1975) 3 SCC 39

7 (2010) 2 SCC 398

10.01.2015 when the C.B.I. intercepted and arrested Yaden (A.1) and Shreyans Bhandari (A.5). All conversations that happened before 10.01.2015 between the Bhandaris (AA 4 & 5) and Kawad (A.3) will not only be relevant under Section 7, ibid, but would also be admissible under Section 10, ibid. Conspiracy is hatched in secrecy and seldom will there be direct evidence to nail all the conspirators [See Kehar Singh and others vs. State-Delhi Administration[8]]. In P. Vijayan (supra), the Supreme Court has, in fact, eventually dismissed the petition filed by the accused to discharge him from the prosecution by holding that the question as to whether the materials at the hands of the prosecution are sufficient or not, is to be decided at the time of trial.

20 In State of Tamil Nadu vs. N. Suresh Rajan and Others[9], the Supreme Court has discussed threadbare, the law governing discharge of an accused from a prosecution under Section 239 Cr.P.C. and the facts of this case are not predicated merely on suspicion or grave suspicion, as argued by Mr. Shanmugasundaram, but, is on much concrete and authentic materials like conversations amongst the accused for over a period of time, which cannot be slightly wished away and which ultimately culminated in payment of Rs.8 lakhs on 15.01.2015 to Yaden (A.1) by Shreyans Bhandari (A.5).

21 As regards the contention of Mr. Shanmugasundaram that there is no material to fortify the demand of bribe, this is not a case where a trap was laid based on the grievance of a person that the Government servant was demanding bribe from him. This is a case where the bribe-giver and the bribe-taker were caught. It is beyond the ken of this Court as to why a Chartered Accountant should go to the house of an Income Tax Commissioner, that too, on a Saturday, with a bag containing cash of Rs.8 lakhs.

22 While closing his submission, Mr.Srinivasan, Special Public Prosecutor for CBI Cases, lamented that though the final report in the case was filed in 2016, till date, the Trial Court is unable to frame even the charges. This Court is reminded of the following sapient passage from the judgment of the Supreme Court in Ganesh Narayan Hegde vs. S.Bangarappa and Others[10].

> "18. ... ... As observed by Krishna Iyer, J. in Special Courts Bill, 1978, Re [(1979) 1 SCC 380] at p. 442: (SCC para 15)

8 AIR 1988 SC 1883

9 (2014) 11 SCC 709

10 (1995) 4 SCC 41

"It is common knowledge that currently in our country criminal courts excel in slow motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions…."

(emphasis supplied)

The slow motion becomes much slower motion when politically powerful or rich and influential persons figure as accused. FIRs are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll: the witnesses are won over; evidence disappears; the prosecution loses interest — the result is an all too familiar one. We are sad to say that repeated admonitions of this Court have not deterred superior courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it; it cannot be a matter of course. In the circumstances, we cannot accede to the said contention."

23 What is the profile of the accused in this case? They are not some poor telephone linemen caught receiving Rs.500/- for giving a telephone connection. Therefore, little wonder that with all the wherewithal at their command, they are not naïve to subject themselves to the process of trial that easily.

In view of the foregoing discussion, this Court is of the view that the cases at hand lack merit and they are accordingly dismissed. It is made clear that whatever is observed by this Court in this order is only for the limited purpose of deciding the plea of discharge raised by the accused and the Trial Court shall proceed with the trial uninfluenced by any of the observations made in this order. Connected Crl.M.Ps. are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Inspector of police,
CBI/ACB,
SPE,
Chennai.

2 The IX Additional Sessions Special Judge for CBI Cases,
Chennai.

3 The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

4 The Deputy Registrar (Crl.)Side
High Court of Madras
Chennai 600 104
with a direction to transmit the original records to the Trial Court.

+1cc to M/s.K.P.Ananthakrishna, Advocate Sr.84912
+1cc to M/s.Kumarpal R Chpra, Advocate Sr.84316

Crl. Rev. No.783 of 2019 &
Crl.O.P. No.3903 of 2019

cp[co]
srg 21/10/2019