IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1218 of 2019

Shri Rabindra Kumar Bhalotia ... Petitioner/2nd Accused

Vs.

State, Represented by,
Inspector of Police,
CBI, ACB, Chennai ... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the impugned order dated 29.03.2019 passed by the Principal Special Judge for CBI Cases, Chennai in M.P.No.1011 of 2016 in C.C.No.17 of 2015, as being contrary to law.

For Petitioner : Mr.Vishnu Mohan

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor
for CBI Cases

******

ORDER

This Criminal Revision has been filed to set aside the impugned order dated 29.03.2019 passed by the learned Principal Special Judge for CBI Cases, Chennai in Crl.M.P.No.1011 of 2016 in C.C.No.17 of 2015.

2.The learned counsel for the petitioner would submit that in the revision petition, all points could not be raised for the reason that the lower Court had dismissed his discharge petition in Crl.M.P.No.1011 of 2016 by one line order. Hence, he requested that he may be permitted to raise all the grounds available to him.

3.The learned counsel for the petitioner submitted that the petitioner is a manufacturer of Phosphoric Iron (Medium Phosphorous) Brake Blocks and is one of the very few manufacturers of brake blocks which is widely used in Indian Railways. The petitioner participated in the public open tender and thereafter, his technical bid and price bid were accepted and the product is tested prior and after supply. As per the purchase order, 98% of the payment were made against the supply. This payment is made on Inspection Certificate and Receipt Challan. The railways carry out random check.

4.In this case, the petitioner who is in Kolkata, had supplied to three railways sheds Perambur, Arakkonam and Erode. This case pertains to supply at Arakkonam shed. The case of the petitioner is that A1 was a Depot Material Superintendent, Electric Loco Stores Depot, Arakkonam, who received the Blocks/Stocks, made entry in the hand book and thereafter forwarded to the authorities. He further submitted that A1 is not in a position to take decision and hence there is no case of abuse of his position at the instance of A2. The other allegations is that one of the employee of A2 namely Mohammed Imran Ali, had made deposit of money and the beneficiary is A1. The said Mohammed Imran Ali though cited as witness No.28, no statement has been recorded. Mohammed Imran Ali is said to have made a cash deposit in his bank account to LW23/N.Babu the approver, a close associate of A1. The said Babu/Vendor of old tyre sales and he has been receiving as well as making payment to the various persons from various places in connection with the business. One such business dealing has been projected as though at the instance of the petitioner money was paid to A1 through LW23.

5.The learned counsel for the petitioner further submitted that the processing of bill is of 6 stages. Once the goods are supplied and bills submitted by the vendor. It goes to the distribution wing and to bill paying clerk and it is verified by Section Officer and later to the Financial Department and then payments are made either through cheque or bank transfer. The witnesses from purchase department LW2 & LW3, from finance department LW4 & LW5 had given 164 statement and categorically stated that all the supply and payments, were made in the routine and normal manner. The purchase was ordered during January, 2013 and supplied during June 2014. The case came to be registered on 20.06.2014, nearly after a year.

6.The learned counsel for the petitioner/A2 submitted that in this case there is no demand as could be seen from the F.I.R in Crime No.RC MA1 2014 A 0026 and in the charge sheet there is no averment to that effect. In the absence of the same, the petitioner/A2 could not be prosecuted for the offence punishable under Sections 120-B IPC r/w Section 7, 12 & 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Further, there is no material to show that LW28/Mohammed Imran Ali is an employee of the petitioner and no statement has been recorded for the same. It is an admitted fact that the challans and receipts were verified and forwarded by the 1st accused, LW22, LW25 and other officers, who have also signed. In their statements it is admitted that the bills and challans were processed in the normal course. LW25 stated that he had verified all the bills and thereafter, on satisfaction he signed. The signature of LW25 is found in both receipts and challans. In view of the receipt and challan being processed at different stages, it cannot be said that the 1st accused had committed the offence and further to it the petitioner/A2 conspired with him for the same. The prosecution ought not to have adopted pick and choose attitude in fixing the accused in this case when the receipts, bill are processed at different level by various persons. The similarly placed persons are cited as witnesses.

7.As regards the recording of telephonic conversation, LW7 admitted that it is only a recorded DVD. When the dump files have not been produced, it cannot be relied upon. The telephonic conversation are recorded in the hard disk and thereafter using software it was converted into sound recordings and sound waves and then burnt into DVD. Hence, DVD produced in this case are secondary evidence, which cannot be relied upon.

8.The learned counsel for the petitioner further submitted that LW14 and LW15 are bank officials, who have transcribed the audio recordings and on what basis, transcriptions was carried out is not explained. Earlier, the petitioner/A2 had filed a petition under Section 91 Cr.P.C., before the lower Court to produce the original Telephonic conversation recordings. At that time it was submitted by the Public Prosecutor in the lower Court that it is not available. In such circumstances, no reliance could be placed on conversation in DVDs. According to the prosecution, this conversation is the foundation for the initiation of the entire case. On 19.03.2014, 21.03.2014, 22.03.2014 and 25.03.2014 the conversation is said to be between 1st accused and the petitioner/A2. It is submitted that as could be seen from the statement of LW21, even prior to these dates major portion of consignments have been supplied and challans and receipts have been verified. If that being the case, there is no necessity for the petitioner to make a payment for subsequent consignment as alleged by the prosecution. It is to be seen that once the materials are supplied/received, challans are prepared, 98% are to be paid as per the tender condition. Apart from the 2nd accused, there are other officers who had processed the bills and challans. Further, on a mere suspicion a case cannot be proceeded. Taking into consideration the entire records produced by the prosecution no materials are found to proceed against the petitioner/A2. Hence on mere suspicion, the petitioner cannot be made to undergo the rigor and ordeal of trial. The petitioner is an aged sick person hailing from Kolkatta, a far off place.

9.The learned counsel for the petitioner relied upon the following citations:-

i) State through the Inspector of Police Versus A.Arun Kumar and another reported in (2015) 2 SCC 417.

(ii) A.Subair Versus State of Kerala reported in (2009) 6 SCC 587.

The citations referred by the petitioner are not applicable to the facts of the case.

10.The learned counsel for the petitioner further submitted that though the order in Crl.O.P.No.3316 of 2019 was passed on 28.09.2010, the order was obtained by him only during the end of May 2019 and thereafter he had filed the petition before the lower Court to recall on 19.07.2019. In the meanwhile, the lower Court had dismissed the discharge petition.

11.The learned Special Public Prosecutor appearing for the respondent would submit that this case proceeds mainly on recordings of telephonic conversations, bank records, call detail records and approver evidence. The contention of the petitioner as regards to the admissibility of documents and materials, the same cannot be gone into at this stage. The transcription of the telephonic conversation as well as the original DVD have been produced, as could be seen from LD71 and LD73. The call detail records, statement of bank accounts of the petitioner as well as the other accused, would clearly prove that the accused were in constant touch. Hence, criminal misconduct and other offences are committed. The petitioner using his employee/LW28 had made a cash payment of Rs.30,000/- through his bank account and traces are clearly established. Further, from the statement of approver it is seen that he had withdrawn the money and handed over to the 1st accused in this case. Hence, the money which was deposited at the instance of the petitioner had been paid to the 1st accused. With the available records, the case is complete, the grounds raised cannot be looked into at this stage. For the purpose of charge framing, enough and sufficient materials are available, as could be seen from the statement of witness as well as on the document produced.

12.Further, the approver is cited as witness LD23, LD24 is the another witness, who had given 164 Cr.P.C. statement, LW37 and LW38 are the call detail records of the petitioner and LD39 is a certificate under Section 65-b of the Evidence Act, LD40 is the letter of the Ministry of Home Affairs granting permission to intercept and to record the calls of the petitioner, LD60 is the Call Detail Records of the 1st petitioner along with certificate under Section 65-B of Indian Evidence Act, LW70 and LW71 are the certified copy of 164 statement of LD24 and LD23 and the Original transcription of telephonic audio conversation available in DVD is LD73. These materials are more than sufficient to proceed against the petitioner.

13.The trial Court had issued Non Bailable Warrant against the petitioner for his non-appearance on 30.01.2019. Thereafter, the petitioner filed a petition in Crl.O.P.No.3316 of 2019 before this Court to recall the NBW in absentia of the petitioner. This Court by order 28.02.2018 allowed the same. Thereafter, the petitioner failed to recall Non Bailable Warrant by adopting delaying tactics on one reason or other after the discharge petition, which was filed on 29.02.2016 for which the prosecution filed the counter on 22.03.2016 and the petitioner was kept pending and the petitioner was dragging the proceedings. Thereby charges could not be framed and trial was stalled. After giving sufficient opportunity, discharge petition came to be dismissed on 29.03.2019 after three years. Thereafter, on 19.07.2019 the petitioner had recalled the Non Bailable Warrant. In the meanwhile on 08.07.2019 the petitioner had filed petition to transfer another connected case, which was pending before CBI Coimbatore to the Court at Chennai, which was ordered by this Court on 12.09.2010. Thus the petitioner at each stage had been playing the game of waiting and watching of each proceedings and thereby, stalling the progress of the case and dragging the case.

14.Further, the learned Special Public Prosecutor relied on the decision of the Hon'ble apex Court in the case of Amit Kapoor Versus Ramesh Chander and another reported in (2012) 9 SCC 460.

15.This Court considered the rival submissions and perused the materials available on records.

16.The petitioner raised all his points, countered by the Special Public Prosecutor. It is seen that at the stage of discharge rowing enquiry is not contemplated. As could be seen from the records that the petitioner was given sufficient opportunity to advance his arguments, but citing one reason or other, he had not done so and he had been filing one petition or other. Since the petitioner in the discharge petition was given sufficient time and opportunity by the lower Court. Hence, no prejudice is caused to the petitioner. Further the petitioner was permitted to raise all the grounds, the petitioner failed to avail the opportunity and was delaying the progress of the trial, remanding back the discharge petition for fresh consideration would only further cause delay.

17.Considering the materials available in the case on the broad probabilities of the case this Court finds that there is no basic infirmity. Further the probative value of the materials need not be gone into. On the valuation of materials and documents and records taken into consideration constitute prima facie case against the petitioner.

18.In view of the above this Court finds prima facie material against the petitioner. There is no merits in the petition. Accordingly, this Criminal Revision is dismissed.

19.It is made clear that the observations made herein is for the purpose of the disposal of the revision case and the trial Court uninfluenced by the observations made herein to decide the case on merits on the evidence received during trial in accordance with law.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The Principal Special Judge for CBI Cases,
Chennai.

2.The Inspector of Police,
CBI, ACB, Chennai

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Vishnumohan Advocate sr99876

Crl.R.C.No.1218 of 2019

aa06/01/2020