BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.08.2019
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.10154 of 2019
and
Crl MP(MD)No.6402 & 6403 of 2019

The RAMCO Cements Ltd,
Rep.by C.Ravichandran,
Assistant Vice President (Admin),
Ariyalur, Tamilnadu. ... Petitioner/Accused No.4

Vs.

The Union of India,
The Deputy Superintendent of Police,
SPE : CBI : ACB : Chennai,
No.26, "Shastri Bhavan", III Floor,
Haddows Road, Chennai - 600 006. ... Respondent/Complainant

(RC MAI 6(A) of 2015)

Prayer : This Criminal Original Petition is filed under Section 482 of Cr.PC to call for the records and quash the charge sheet filed in C.C No.2 of 2016 under Sections 406, 420 r/w. 120 B IPC, presently pending trial on the file of the Chief Judicial Magistrate, Tiruchirappalli and so far as the petitioner (A4) is concerned and thus render justice.

For Petitioner : Mr.I.Subramanian, Senior Counsel
for V.Meenakshi Sundaram
For Respondent : Mr.N.Nagendran,
Special Public Prosecutor for CBI

ORDER

The respondent herein received source information on 17.12.2015 that certain officials of southern railways have conspired with certain unknown persons and caused loss to the tune of almost a crore of rupees by inducing a fault in the functioning of the In-motion weigh bridge installed at Tiruchirapalli. The case was taken up for investigation and after examining the relevant witnesses, the respondent filed final report before the learned Chief Judicial Magistrate, Tiruchirappalli naming as many as five accused as having committed the offences punishable under Sections 120 B r/w. 420, 406 IPC and Section 65 of the Information Technology

Act, 2000. A1, A2 and A3 are the officials working in M/s.Senlogic Automation Private Ltd which had installed the said In-motion Weigh Bridge. A5 is the company itself. The petitioner herein has been named as the fourth accused. Cognizance of the offence was taken by the learned Chief Judicial Magistrate, Tiruchirappalli and the case has been taken up for trial in CC No.2 of 2016. To quash the prosecution insofar the petitioner company is concerned, the fourth accused has filed this quash petition.

2.Heard the learned Senior Counsel appearing for the petitioner and the learned Special Public Prosecutor for the prosecution and perused the materials on record.

3.The procedure with regard to the operation and functioning of the electronic weigh bridge system is found in the statement of LW.7 Smt.B.Nirmala Bridget, Chief Goods Supervisor, Southern Railway, Trichirappalli. It read as follows :

> "This electronic weigh bridge system is installed by M/s.Senlogic Automation Pvt.Ltd, Chennai. This machine was installed by M/s.Senlogic Automation Pvt. Ltd., Chennai since 17.06.2012. Once the weigh bridge is ready, the Yard Master would be asked to pass the rake over the track which is connected with the weigh bridge. The rake will pass over the track at an average speed between 6 to 10 kmph. As the rake passes over the track, the system would display the gross weight of each wagon. Usually, a rake consists of one engine, 59 wagons and one guard van. The monitor of the weigh bridge system would record and show weight of each wagon and there when it passes over. Once the last wagon is passed over then a print command would be given and a print out containing weigh of all the 59 wagons would be taken out. The weights shown in this print out would be in accordance with the serial number of the wagon counted from engine and the print out does not show the wagon number. The exact wagon number would be noted down by the train Clerk at the Yard Master Officer and handed over through the TPGY Office. The staff at TPGY Office, while entering the data FOIS (Freight Operating Information System) would type the actual wagon number in accordance with the sequence seen in the computer print outs received from weigh bridge room.
>
> When these weights received from the weigh bridge system is fed in the FOIS System, it would show the gross weight, Tare, net weight, underload, overload status of each wagons automatically. After keeping a printout of the same, the same data would be sent to Ariyalur (originating station) through

FOIS message system for generating RRs. After receiving this message, the booking office staff at Ariyalur would prepare RRs(Railway Receipts) in the same FOIS. These RRs would show the 'from station, to station, wagon number, gross weight, tare weight, net weight, permissible carrying capacity, overload, freight' and other miscellaneous charges and if overload, then the punitive charges would also be shown. The RRs would be taken out in 4 sets out which one is for record copy, one is for consignor, one for accounts office at Chennai and one known as through invoice will be sent to the destination station. The sender/consignor will collect the consignor copy of the RR and would pay the freight charges and punitive charges at the Ariyalur Station itself. The payment is made either through cheques or through e-cheques."

4.The case of the prosecution is that the petitioner company is a major transporter. The petitioner company is having their manufacturing unit at Ariyalur. The goods are to be transported from Ariyalur to Thuluckkupatti. Admittedly, the petitioner has been availing the transport services of the Southern Railways for doing so and they have to pay freight charges. The petitioner is not supposed to load the weight and send beyond certain ceiling limit (92 Metric Tonnes per wagon). If the ceiling limit is exceeded, the petitioner will have to pay punitive charges. The case of the prosecution is that the software of the said weigh bridge has been so manipulated that even though the actual freight is recorded in the system, it would display a lesser weight. Even before the registration of the FIR, a surprise test run was conducted by Railway Vigilance Wing and it noticed that the display weight was erroneous.

5.The investigation agency proceeded on the basic premise that since the petitioner was the major transporter, obviously, the manipulation must have been engineered only by the petitioner for obtaining wrongful gain. During the investigation, apart from investigation officers, as many as 32 persons were examined. But, the petitioner's counsel stated that they were served with copies of only 13 witnesses. The statements of these witnesses have been enclosed in the typed set of papers.

6.Shri.Dinesh Kumar was the Service Engineer working in the fifth accused company. He stated that he had seen the first and third accused telephonically contacting with the railway officials in code words and that he later realised that the same is nothing but code words for executing manipulation of wagon's weights. Shri.A.Mohammed Iqbal is another witness examined by CBI. He also stated that he had seen A1 Ravichandran talking many times to the officials of Ramco cements telephonically about weight manipulation. Shri.R.Santhana Krishnan is a railway employee. He had worked as Chief Commercial Clerk in the Southern Railway, Trichy Division. He stated that Ramco cements is the major bulk transporter, having transported 63 rakes out of total 82 during the period in question. He had further stated that during the period in question ie., 2012-2014, as many as 362 rakes were weighed by the said system and that only 82 were found over loaded while the remaining 280 rakes were found either "not overloaded" or "zero error". Out of the 82 rakes which carried overloaded wagons, 63 rakes were booked by M/s.Ramco Cements, Ariyalur and remaining 19 rakes were meant for various other parties or government organisations. Thiru.Santhana Krishnan would claim that the other transporters got benefited by this default without their knowledge. The statement of Shri.V.Hariharan, Chief Goods Clerk is also on the same lines. The statement of Shri.A.Sivaraman, Sr.Commercial Clerk is to the effect that since M/s.Ramco Cements is the major Bulk Transporter having transported 63 rakes out of total 82, it is evident that the EIMWB Company M/s.Senlogic Automation Pvt Ltd has programmed the Software for manipulation to favour M/s.Ramco Cements and by default the 19 other small transporters also got the benefit without their knowledge. Shri.M.Manoharan, who was the Chief Goods Supervisor in the said yard stated that the Electronic In-motion Bridge was installed by the fifth accused company and that after the installation they used to visit regularly for servicing. He further claimed that he had seen A3 U.Prakash, A2 Thamilarasan talking to the officials of the petitioner company in code words and that he realised later that those words actually meant the manipulation of the system. The statement of Shri.S.Raja Sundaram, the Assistant Commercial Manager is also on the same lines.

7.It is relevant to note here that both Manoharan and Shri.S.Raja Sundaram were originally named in the FIR as accused and later they were shown as witnesses. The learned Special Public Prosecutor appearing for the prosecution would submit that the power of this Court available under Section 482 of Cr.PC is to be sparingly exercised. He referred to the decision of the Hon'ble Supreme Court reported in ***(2008) 1 SCC 474 (Hamida and Rashid & ors).*** The Hon'ble Supreme Court held as follows :

> "7.*It is well established principle that inherent power conferred on the High Courts under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power under Section 482 Cr.P.C. were examined in considerable detail in Madhu Limaye v. State of Maharashtra 1978 Cri LJ 165 and it was held as under:*
>
> *The following principles may be stated in relation to the exercise of the inherent power of the*

High Court -

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

8.In State v. Navjot Sandhu : (2003)6SCC641 , after a review of large number of earlier decisions, it was held as under:

"29. ...The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."

8.I am however not persuaded by the objections raised by the learned Special Public Prosecutor appearing for the respondent. As already pointed out by the learned Senior Counsel for the petitioner, from a reading of the final report and the list of witnesses annexed to it, not even a single person from Ramco Cements Limited was examined. It is not in dispute that the petitioner company had nothing to do with the installation or functioning of the Electronic In-motion Weigh Bridge. It was under the exclusive control of the Southern Railways. It was installed by the fifth accused company through its men and agents and it was serviced by its own officials. The petitioner herein did not have any access to its running or functioning. If the said system had developed some default and did not display weight correctly, I fail to understand as to how the penal liability can be fixed on the petitioner company which was only a customer under the Southern

Railways. Of course, if the prosecution can show that there was conspiracy among the officials of the petitioner, the officials of the southern railways and the persons in-charge of the actual maintenance of the system, then certainly the petitioner and its officials can be arrayed as accused. But then, not even a scrap of material has been placed before the court below to sustain the charge of conspiracy under Section 120 B of IPC.

9.The statements recorded under Section 161 of Cr.PC merely claim that the witnesses have seen the accused A1 to A3 talking to the officials of Ramco Cements in code words. There is no further reference to the code words employed and those witnesses claim that they have realised later that those code words only refer to the manipulation of the wagon's weights. This is too farfetched a theory. The petitioner is only a corporate company. The petitioner is a juristic entity. It has to necessarily operate through its men and agents. No officials of Ramco has been arrayed as a witness or accused. It is true that even a corporate entity can be prosecuted for the offences involving mens rea. But then, for conspiracy simpliciter a corporate company cannot be prosecuted.

10.The learned Senior Counsel appearing for the petitioner company drew my attention to the decision of the Hon'ble Supreme Court reported in ***(2012) 4 MLJ (Crl) 420 (SC) (Central Bureau of Investigation, Hyderabad vs. K.Narayana Rao)***. In paragraph 20, the Hon'ble Supreme Court held as follows :

> *"20.The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or*

inference which are not supported by cogent and acceptable evidence."

11.The learned Senior Counsel drew my attention to yet another decision of this Court reported in ***(2015) 4 MLJ (Crl) 147 (P.K.M.Selvam vs. State through, Inspector of Police).*** Paragraph No.51 of the said decision reads as under :

"51.Learned senior counsel also placed reliance on decision of this Court in K.S. Narayanan and others v. S. Gopinathan : 1982 Cri.L.J. 1611] wherein the following observations stand made:

"12.... Merely levelling a charge of conspiracy, without mentioning how, where, when and which of the conspirators hatched the conspiracy and for what purpose, or circumstances warranting an inference of existence of a conspiracy, is not enough to bring persons like A-8, retired Reserve Bank of India Governor, and A-9, retired I.C.S. officer to face the trial in a criminal court....

14. The case was fully argued on both sides and after giving my best consideration, I am of the opinion that this is a fit case where I ought to interfere under Section 482 Cr.P.C. It is not easy to measure the injury likely to be inflicted on persons of the status of the petitioners by the vexatious and protracted criminal trial. It may be ultimately the accused will be acquitted. But that is not a sufficient ground for not rescuing them from what I consider to be a groundless and vexatious prosecution. Since prevention is better than cure, I quash the proceedings pending against the petitioners in C.C. Nos. 23771 and 23772 of 1978 on the file of the II Additional Metropolitan Magistrate, Egmore, Madras. In the result, Cr.MP 4496 and 4498 of 1978 are allowed."

Quoted in the said decision also is the observation made by the Supreme Court in Delhi Development Authority v. Lila D. Bhagat, MANU/SC/0442/1974 : AIR 1975 SC 495, which reads thus:

"In an appropriate case, it may be rather, is, permissible to protect a person from illegal and vexatious prosecution by grant of an appropriate writ or in exercise of the inherent or revisional powers of the High Court."

12.Applying the aforesaid principles, I have to necessarily come to the conclusion that all the materials placed by the prosecution even taken at their face value will not in any way establish the culpability on the part of the petitioner company. As rightly pointed out by the learned Senior Counsel, the materials relied on by the prosecution are awfully inadequate for connecting the petitioner company with the crime in question. As already pointed out, it is not as if the Electronic In-motion Weigh Bridge was installed for the exclusive use of the petitioner. Apart from the petitioner company, other customers of the Souther Railways were also using the services and paying freight charges. Merely because the petitioner herein happened to be a bulk transporter, the authorities cannot come to the conclusion that it is the petitioner who must have induced the fault. The conclusion of the prosecution is based on conjectures and surmises.

13.The petitioner is having their manufacturing plant at Ariyalur. Obviously the petitioner is having their own in-house weigh bridge system. This Court posed a specific question to the prosecution as to whether the data was collected from the petitioner's company and whether it was compared with the one shown by the Southern Railway. But then, it appears that the hard disc and other data were only seized from the petitioner on 21.03.2015 under cover of mahazar was not produced before the court below. I can only conclude that probably it is not convenient for the prosecution to bring those data on record. That alone could have established if the petitioner was actually culpable.

14.Therefore, in the absence of material to connect the petitioner company with the crime in question, I am of the view that the petitioner ought not be prosecuted in C.C No.2 of 2016 on the file of the Chief Judicial Magistrate, Tiruchirappalli. The impugned prosecution stands quashed insofar as the petitioner is concerned. It is made clear that this Court has only pronounced on the penal liability of the petitioner. If there has been overloading and the petitioner is still having any dispute with Southern Railways, it will have to be worked out independently and in separate proceedings. The petitioner will not be entitled to claim the benefit of this order while advancing their case those proceedings. This criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Deputy Superintendent of Police,
SPE : CBI : ACB : Chennai,
No.26, "Shastri Bhavan", III Floor,
Haddows Road, Chennai – 600 006.

2.The Chief Judicial Magistrate,
Tiruchirappalli

+1 CC to Mr.V.MEENAKSHISUNDARAM, Advocate (SR-84426[F] dated 30/08/2019)

Crl OP(MD)No.10154 of 2019
and
Crl MP(MD)No.6402 & 6403 of 2019
29.08.2019

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