IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.03.2021
CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.2840 of 2021
and
Crl.M.P.Nos.1581 & 1583 of 2021

M.Dhamodaran ... Petitioner/A-35

Vs.

The State of Tamil Nadu,
rep. by the Superintendent of Police,
CBI, Anti-Corruption Branch, Shastri Bhavan,
Nungambakkam, Chennai - 600 034. ...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records of the respondent pertaining to charge sheet in C.C.No.10 of 2020 in RC MA 1-2019-A-0008 dated 31.08.2019 on the file of the XIV Additional Special Judge for CBI Cases, Chennai and quash the same.

For Petitioner : Ms.S.Yogalakshmi
For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (CBI Cases)

ORDER

This Criminal Original Petition has been filed by the Petitioner/A35, seeking to call for the records in C.C.No.10 of 2020 on the file of the XIV Additional Special Judge for CBI Cases, Chennai and quash the same.

2. The facts of the prosecution case in brief:

"This case was registered on 31.08.2019 against Smt.V.Sangamithra (A1), Appraiser, Calyx Container Freight Station at No.28, GNT Road (NH-5), Puzhal Junction, Kathirvedu Village (Near Rettai Eri), Chennai, Shri.N.Murugan (Approver), Clerk in M/s.Southern Clearing & Forwarding Agencies Private Ltd., Chennai and Shri.R.Darvin (A3), Clerk in M/s. Freight Link Logistics, Chennai, after a Joint Surprise Check was conducted by the CBI team headed Smt.M.Sasirekha, Inspector of Police, CBI, ACB, Chennai and CBI team along with independent witnesses Shri.S.Babu, Junior Engineer (C)/Vigilance Department, Chennai Port Trust, Chennai and independent witnesses namely Shri.M.Srikanthan, Administrative Officer, P & IR Department, LIC Of India, Divisional Office, Anna Salai, Chennai, Shri Alexander Devadass, Administrative officer, OS Department, LIC of India, Divisional Office, 1, Anna Salai, Chennai on the allegation that Smt.V.Sangamithra, Appraiser of Customs, Calyx CFS, Puzhal, Chennai was demanding and accepting an undue advantage from Customs

House Agents for clearing their consignments and also facilitated them to get Out of Charge Order/Let Export Order pertaining to the bills of Import/Export.

That, Smt.V.Sangamithra, Appraiser attended M/s. CAYX CFS along with Shri.Shiv Raj Meena, Examiner & Shri.Kalash Dev, Examiner on 30.08.2019. Smt.V.Sangamithra, Appraiser, Shri.N.Murugan (Approver), Clerk in Southern Clearing & Forwarding Agencies Pvt. Ltd., and Shri.Darvin (A3), who is working as Clerk in Freight Link, having offices at Parrys, Chennai entered into criminal conspiracy at M/s. CALYX CFS, Puzhal, Chennai on 30.08.2019 at about 12.00 hrs to indulge in corrupt practices in Customs area in the matter of clearing the consignments pertaining to imports & Exports.

In pursuance of said conspiracy Smt.V.Sangamithra (A1) demanded Rs.300/- for 20 feet container, Rs.600/- for 40 feet container, Rs.100/- from the employees of CHAs for LCL Bill for performing public duty improperly in respect of Bill of Entries pertaining to the import goods and also Smt.V.Sangamithra (A1) induced Shri.R.Darvin (A2) to collect the said amount on behalf of her.

In pursuance of said conspiracy Smt.V.Sangamithra (A1) induced Shri.N.Murugan (Approver), who was acted as collection agent to Smt.V.Sangamithra (A1) to collect Rs.900/- for 20 feet container for on wheel inspection, Rs.1800/- for 40 feet container for on wheel inspection, Rs.100/- for Ware House Bill and Rs.200/- for Draw Back Bill for the clearance of goods pertaining to the Bill of Exports.

In pursuance of the said conspiracy Shri.Murugan (Approver) had collected an undue advantage of Rs.48,900/- from the employees of 19 Customs House Agents (including himself) for giving Let Export Order for 37 Shipping Bills pertaining to Exports as demanded by Smt.Sangamithra (A1).

In pursuance of said conspiracy Smt.V.Sangamithra (A1) induced Shri.Darvin (A2), who was acted as collection agent to Smt.V.Sangamithra (A1) to collect Rs.300/- for 20 feet container & Rs.600/- for 40 feet container. Otherwise to collect Rs.100/- for LCL (Less Container Load) bill for the clearance of goods pertaining to the Bill of Imports.

In pursuance of the said conspiracy Shri.Darvin (A2) had collected an undue advantage of Rs.20,800/- from the employees of 13 Customs House Agents for giving Out of Charge Order for Bill of Entry pertaining to the Imports of aforesaid 13 Customs House Agents as demanded and instructed by Smt.Sangamithra (A1). As per the instruction of Smt.V.Sangamithra (A1), Shri.Darvin (A2) had handed over the undue advantage of Rs.20,800/- to Shri.Murugan (Approver).

In pursuance of the said conspiracy Shri.Murugan (Approver) had written the said undue advantage which was collected from the employees of the 19 Customs House

Agents on one sheet and also Shri.Murugan (Approver) noted the said undue advantage as "Export-48,900/- & Import-20,800/-.

On 30.08.2019 at about 19.40 hrs, after collecting the undue advantage of Rs.69,700/- from the authorized persons/employees of various Customs House Agents by Shri.Murugan (Approver) & Shri.Darvin (A2) in respect of clearing the bills pertaining to Import & Export went to the cabin of Smt.V.Sangamithra (A1) and handed over the undue advantage of Rs.69,700/- to Smt.V.Sangamithra (A1) and the same was kept in her right side table drawyer.

On 30.08.2019, a Joint Surprise Check was conducted at CALYX CFS, Puzhal, Chennai by the CBI team along with independent witnesses at about 19.45 hrs, a cash of Rs.81,550/- in different denominations i.e., Rs.2000X14 notes = Rs.28,000/-, Rs.500 X 94 notes = Rs.47,000, Rs.200 X 9 notes = Rs.1,800, Rs.100 X 45 notes = Rs.4,500, and Rx.50 X 5 nots = Rs.250 was seized from the table drawyer of Smt.V.Sangamithra (A1) cabin and Rs.3,100/- was seized from her hand bag ans also the CBI team recovered one loose sheet containing details of hand written information with regard to receipt of undue advantage from 19 various Customs House Agents from the possession of Shri.N.Murugan (Approver). The loose sheets contains the following details;"

Sl. No.	*Name of the CHA*	*Descriptions*	*Bribe amount in Rs.*
1.	Marine Container	W/H 1XW	100.00
2.	Right Way Logistics	W/H 1XW	200.00
3.	Evergreen	O/W 3X20	2,700.00
4.	Seabird	O/W 2X20	1,800.00
5.	Pearl Logistics	O/W 2X20	1,800.00
6.	Bhuvaneswari	O/W 8X20	7,200.00
7.	Insoorya Express Cargo	O/W 1X40	1,800.00
8.	Universal	O/W 1X20	900.00
9.	OPMS	W/H 1XW	900.00
10.	G.Masilamani	W/H 2Xw	200.00
11.	Blueway	O/W 3X20 2X40	1,800.00 900.00 3,600.00
12.	Aspinwall	O/W 1X20	900.00
13.	Southern Clearing	O/W 1X20	900.00
14.	Lotus	O/W 4X20	3,600.00
15.	Balachandiran	O/W 1X40	1,800.00
16.	Freight Field	W/H 4XW	500.00
17.	S.Vaidhyanatha Iyer	O/W 1X40	1,800.00
18.	Hari & Co	W/H 1XW	200.00

15.	Balachandiran	O/W 1X40	1,800.00
19.	P R Logistics	O/W 1X20	900.00
			36,300.00
21.	Pearl Logistics		12,600.00
			48,900.00
		Rs.48,900 - Export Rs.20,800 - Import	
			69700 -4600
			65100 -2
			32,500
			16,200

3.Further, investigation was conducted with regard to the payments made out by the employees of various Customs House Agents and based on the out come of the investigation, the Customs House Agents and the authorised signatories were arrayed as accused in this case. Since the petitioner was stated to be one of the authorised signatory of M/s.G.Masilamani Company, which was arrayed as A-12, the petitioner was also arrayed as A-35 in this case. The respondent had relied on the Customs House Agent Licence bearing No.R-615, issued to A-12/M/s. G.Masilamani Company. After filing of the final report, summons was issued to the petitioner and the present petition has been filed, seeking to quash the proceedings.

4.Learned counsel for the petitioner would submit that it is true that the petitioner was initially nominated and authorised to represent A12/M/s.G.Masilamani Company as an authorised signatory by Licence No.R-615, dated 28.02.2003 issued by the Licensing Authority and the petitioner was operating on behalf of the said Company. Whereas, later, during the year 2013, he has resigned from A12/M/s.G.Masilamani Company and the authority given to him by the Company was also withdrawn with effect from 07.03.2017. Thereafter, the petitioner was not authorised either to represent the company or to sign in any document as authorised signatory and he had never represented A12/ M/s.G.Masilamani Company and the same is also reflected in Document No.104 relied on by the prosecution. However, due to inadvertence placing reliance on the licence (Document No.146) the petitioner has been wrongly cited as an accused as if he is an authorised signatory of A12/M/s.G.Masilamai Company. He would submit that the petitioner is innocent and he has nothing to do with the alleged offence as stated in the complaint, when he had left the services of the company and relieved as authorised signatory as early as 2013 and that the entire proceedings against him is nothing but an abuse of process of law. The petitioner for no fault of him is unnecessarily made to face the trial on account of an inadvertent mistake and the proceedings against him have to be quashed invoking the inherent powers of the Court to prevent abuse of process and to secure the ends of justice.

5.Mr.K.Srinivasan, learned Special Public Prosecutor (CBI Cases), would submit that the prosecution has relied on two documents on its side viz., Document No.146 relating to the licence granted to A12 / G.Masilamani Company. As per the Document No.146, one G.Masilamani/A-34 and the petitioner/A-35 are shown to be the authorised signatories of A12/M/s.G.Masilamani Company and basing reliance on the same that the petitioner was implicated as an accused in this case. However, he would fairly concede that later it had been brought to notice that the petitioner had been relieved from A12/ M/s.G.Masilamani Company and his name had also been deleted as an authorised signatory with effect from 07.03.2017, however, due to inadvertence, his name has been wrongly implicated as an accused in this case. He would further submit that on the date of surprise check, the petitioner was not an authorised signatory of A12/M/s.G.Masilamai Company and he has nothing to do with the offences.

6.Taking into consideration the fact that the petitioner is not an authorised signatory of A12/M/s.G.Masilamai Company on the date of occurrence and he has no role in the offences charged, this Court is of the opinion that the further proceedings against the petitioner is an abuse of process of law and thereby the proceedings as against the petitioner has to be quashed to secure the ends of justice.

7.In view of the above, the Criminal Original Petition stands allowed and the proceedings in C.C.No.10 of 2020, on the file of the learned XIV Additional Special Judge for CBI Cases, Chennai as against the petitioner alone stands quashed. Consequently, the connected miscellaneous petitions also stands closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The XIV Additional Special Judge for CBI Cases,
Chennai.

2. The Superintendent of Police,
CBI, Anti-Corruption Branch,
Shastri Bhavan,
Nungambakkam,
Chennai - 600 034.

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

+1cc to Mr.R.Mansoorillahi, Advocate SR.No.14262
+1cc to Mr.K.Srinivasan, Advocate, SR.No.14096

akm/15.04.21 /6P-6C/

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