IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.10.2021
PRONOUNCED ON : 21.10.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.R.C.NOS.225 & 401 OF 2021
AND
CRL.M.P.NO.6494 OF 2021

1.Shanmugam ...Petitioner / A2
(in Crl.R.C.No.225 of 2021)

2.G.Chinnappa ...Petitioner / A5
(in Crl.R.C.No.401 of 2021)

Vs.

1.State Rep.by
The Inspector of Police,
CBI / ACB / Chennai.
RC MAI-2015-A-0052 ...Respondent / Complainant
in Crl.R.C.No.225 of 2021

2.The Superintendent of Police
CBI – ACB,
Shasthri Bhavan,
Chennai – 600 034. ...Respondent / Complainant
in Crl.R.C.No.401 of 2021

Prayer : These Criminal Revision Cases filed under Sections 397 (1) read with 401 Cr.P.C., to call for the records in respect of the orders in Crl.M.P.Nos.8819 of 2019 and Crl.M.P.No.2586 of 2017 in C.C.No.22 of 2017 passed by the XII Additional Special Judge for CBI Cases, Chennai dated 05.04.2021 and set aside the same.

For Petitioner : Mr.K.Shankar
(in Crl.R.C.No.225 of 2021)

For Petitioner (in Crl.R.C.No.401 of 2021) : Mr.S.Thiruvengadam

For Respondent : Mr.K.Srinivasan
Special Public Prosecution for CBI

COMMON ORDER

Crl.R.C.No.225 of 2021 had been filed by A2 in C.C.No.22 of 2017 now pending on the file of the Special Judge, XII Additional CBI Court Chennai, questioning the order dated 05.04.2021 dismissing Crl.M.P.No.8819 of 2019 which was filed under Section 239 Cr.P.C seeking discharge.

2.Crl.R.C.No.401 of 2021 had been filed by A5 in C.C.No.22 of 2017 now pending on the file of the Special Judge, XII Additional CBI Court Chennai, questioning the order dated 05.04.2021 dismissing Crl.M.P.No.2586 of 2017 which was filed under Section 239 Cr.P.C seeking discharge.

3.C.C.No.22 of 2017 had been taken cognizance by the learned XII Additional Special Judge for CBI Cases, Chennai pursuant to final report filed under Section 173 (2) Cr.P.C against A1, K.Raj Kumar who was Senior Divisional Manager, New India Assurance Company Limited, Purasavakkam Divisional Office, Chennai, A2, B.Shanmugam who was Divisional Manager (Rtd), New India Assurance Company Limited, Alwarpet Divisional Office, Chennai, A3, S.Chidambaram who was Insurance Agent, New India Assurance Company Limited, Alwarpet Divisional Office, A4, G.P.Jeyakumar who was Deputy Manager (Rtd), New India Assurance Company Limited, Alwarpet Divisional Office and A5, G.Chinnappa who was Assistant, New India Assurance Company Limited, Velacherry Divisional Office, charging them with commission of offences punishable under Sections 120 (B) r/w Section 409, 420, 467, 468, 472 IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

4.In the final report, the Investigating Officer had stated that a First Information Report in FIR No. RC MA1 2015 A 0052 was registered on 19.12.2015 by CBI / ACB Chennai, on the basis of source information that the named accused persons therein had entered into a criminal conspiracy with an Insurance Agent, P.Kayalvizhi, who was also named as an accused in the

First Information Report, but who subsequently turned Approver and with A4, S.Chidambaram who was also an Agent of New India Assurance Company Limited and in pursuance of such conspiracy, A1 and A2 had inserted the names of the agents in Banker's Indemnity Insurance taken directly by Indian Bank, though they could not act as agents as the Indemnity Insurance had been taken directly by Indian Bank and owing to such inclusion of the names of the two individuals as agents, they also received commission through their bank accounts during the financial years 2008-2009, 2009-2010 and 2010-2011 and thereby had caused wrongful loss of Rs.22,80,000/- to New India Assurance Company Limited and wrongful gain to themselves.

5.During the course of investigation, it had come to light that Indian Bank was taking Indemnity Policies every year for all branches in the country directly with insurance companies to cover cash on the premises and in the ATMs for any loss. In accordance with such policy, then Deputy General Manager (Accounts) of Indian Bank Head Office, Chennai had addressed New India Assurance Company Limited, Alwarpet Divisional Office, Chennai directly through an official letter seeking Indemnity Policy for Indian Bank for the financial year 2008-2009. The policy was issued. But however, even though Indian Bank had directly dealt with the Alwarpet Divisional Office, the accused had inserted the name of an agent Kayalvizhi, in the Indemnity Policy, as if the policy was bought by her and therefore released the commission payable to the agent to a sum of Rs.7,40,190/-. Thereafter, the agent Kayalvizhi issued blank cheques with her signature to A4, G.P.Jeyakumar and through A5 G.Chinnappa, the accused encashed the commission for a sum of Rs.6,41,000/- on five separate occasions and out of that, amount of Rs.2,00,000/- was transferred to the SB account of A4, G.P.Jeyakumar.

6.It had been stated in the final report that similar offence continued to be committed for the financial years 2009-2010 and 2010-2011. In both the said financial years Indian Bank had directly approached the Alwarpet Divisional Office for Indemnity Policy. But while issuing the policy the accused are stated to have inserted the names of agents so as to facilitate payment of commission and thereafter, the agent had issued blank cheques and the amounts were encashed / transferred by the accused for the personal gain.

7.On receipt of summons, the accused entered appearance before the trial Court. Thereafter, A2, B.Shanmugam, Formerly Divisional Manager (retired) New India Assurance Company Limited Alwarpet Divisional Office, filed Crl.M.P.No.8819 of 2019 under Section 239 Cr.P.C seeking discharge. Similarly, A5, G.Chinnappa, Formerly Assistant New India Assurance Company Limited, Velacherry Divisional Office, filed Crl.M.P.No.2586 of 2017 under Section 239 Cr.P.C seeking discharge. Both the petitions were dismissed on 05.04.2021 by separate orders. Questioning those orders, the present Criminal Revision petitions has been filed.

8.Heard arguments advanced by Mr.K.Sankar, learned counsel for the petitioner / A2 in Crl.R.C.No.225 of 2021 and Mr.S.Thiruvengadam, learned counsel of the petitioner / A5 in Crl.R.C.No.401 of 2021 and Mr.K.Srinivasan, learned Special Public Prosecutor for the respondent.

9.It has been the contention of Mr.K.Sankar, learned counsel that A2 had joined as Divisional Manager in Alwarpet Divisional Office during 2010 – 2011, after the transfer of A1 and that he had issued one Indemnity Policy to Indian Bank for the year 2010-2011 treating that policy as an Agent Code Policy instead of Direct Code Policy and had paid a commission of Rs.6,59,632/- to A3, Chidambaram after deducting tax at source. The learned counsel stated that no other allegations are found in the final report as against A2. The learned counsel further stated that Indian Bank authorities were aware that the policy issued to them was an Agent Code Policy and they had not protested that particular fact. It had also been stated that a charge memo had been issued to A2 containing the same facts as stated in the final report and the charge memo was quashed by a learned Single Judge of this Court in W.P.No.1256 of 2017, by order dated 16.04.2018, and the appeal filed by New India Assurance Company Limited in W.A.No.478 of 2019 was also dismissed on 27.07.2020.

10.The learned counsel placed reliance on a judgment reported in (2020) 4 MLJ (Crl) 108 (SC), Ashoo Surendranath Tewari V. Deputy Superintendent of Police, EOW, CBI and Another. In that particular case, the Hon'ble Supreme Court had interfered with the judgments of the High Court and of the

Special Judge who had both refused to discharge the appellant / accused therein of charges even though, the Central Vigilance Commission had opined that the chance of conviction in criminal trial involving the same facts appear to be bleak.

11.Mr.K.Shankar, learned counsel therefore argued that the principles will apply for this case also, since the charge memo had been quashed by the High Court and therefore, the petitioner / A2 should not undergo the ordeal of trial on the same set of facts.

12.Mr.S.Thiruvengadam, learned counsel for the petitioner/A5 in Crl.R.C.No.401 of 2021 stated that the petitioner was only an Assistant who carried out the command of his superiors. He had only collected a cheque and presented the cheque in the bank. The learned counsel pointed out that, as Assistant, the petitioner / A5 was under an obligation to carry out the orders of his superior officers, which is part of his routine duty. It was stated that the petitioner was not involved in any criminal conspiracy and therefore, it was urged that the petition should be allowed and the petitioner / A5 should be discharged.

13.Mr.K.Srinivasan, learned Special Public Prosecutor for the respondent, on the other hand, strongly disputed the contentions of both the learned counsels. The learned Special Public Prosecutor pointed out that A2 had been instrumental in issuing Indemnity Policy to the Indian Bank for the financial year 2010-2011 and in that particular financial year, commission of Rs.6,59,632/- had been paid to A3 / Chidambaram, after deducting tax at source. The learned Special Public Prosecutor also pointed out that A5 had been given blank signed cheques and thereafter, the amounts had been filled up and A5 had presented the cheques before the bankers and had also collected amounts. The learned Special Public Prosecutor therefore stated that complicity of A5 was writ large on the face of those particular facts.

14.The learned Special Public Prosecutor also pointed out that A2 as senior officer, should have known the terms under which the Indemnity Policies have been issued, particularly when, Indian Bank, also a Nationalized Bank, had approached New India Assurance Company Limited directly for issuance of

Indemnity Policy and that it should have been issued as Direct Code Policy and not as Agent Code Policy. The learned Special Public Prosecutor, therefore, urged that both the petitions must be dismissed.

15.I have given my careful consideration to the arguments advanced and perused the materials on record.

16.The petitioner in Crl.R.C.No.225 of 2021 is A2 in C.C.No.22 of 2017 pending on the file of the XII Additional Special Judge for CBI cases, Chennai and the petitioner in Crl.R.C.No.401 of 2021 is A5 in the same calendar case.

17.It is the case of the prosecution that A2, Divisional Manager of New India Assurance Company Limited at Alwarpet Branch during 2010-2011, had issued Indemnity Policy to Indian Bank which is also a Nationalized Bank. Such policy had been issued when directly contacted the Indian Bank and therefore, it should have been issued under the head of Direct Code Policy. However, it had been issued as Agent Code Policy and the name of A3 / Chidambaram had been inserted along with his Agent Code namely 20577.

18.A perusal of the policy shows that just above that name, the previous information was Biz. Source Code and it had been given as 60/Direct Business. This policy had been issued by A2 who, hold a very senior position and must have know about the procedure involved for issue of such a policy, particularly when it is issued directly to the customer.

19.In the judgment referred by the learned counsel for the petitioner / A2, Ashoo Surendranath Tewari referred supra, the facts are totally different.

20.In that case, the Central Vigilance Commission had examined the nature of charge and had passed a detailed order stating that no offence under IPC had been made by the appellant. It was under those circumstances that the Hon'ble Supreme Court held that the High Court and the Special Court should have taken that particular order into consideration and should have entered a finding that chances of conviction were bleak. The Hon'ble Supreme Court discharged the accused.

21.In the present case, the charge memo was quashed, only because it had been issued four years after the retirement of A2. Both the learned Single Judge and the Division Bench in the writ petition and in the writ appeal focused on that particular aspect and quashed the charge memo. There was no discussion on the merits and therefore I hold that the judgment of the Hon'ble Supreme Court is distinguishable on facts.

22.A perusal of the charge sheet also shows that the prosecution has recorded the statements of the Assistant General Manager (Accounts), Indian Bank, Corporate Office, Chennai / LW-5, Assistant General Manager (Retired) Indian Bank, Corporate Office, Chennai / LW-6 and Assistant General Manager (P & E), Indian Bank, Corporate Office, Chennai / LW-7.

23.It is thus seen that those witnesses can be cross-examined as to why Indian Bank did not protest at the nature of policy issued, which clearly indicated that they were Agent Code Policy and not Direct Code Policy. The contention in this regard advanced by the learned counsel can be answered only during the trial.

24.The contention on behalf of A5 that he was only working according to the commands of his superior officer cannot be accepted, primarily because he had been given possession of a blank signed cheque in which, subsequently the amount was entered and he presented the cheque for payment and collected the amount. He therefore cannot claim innocence or ignorance of the nature of job entrusted to him. It was not his official duty. The cheque was not issued in favour of New India Assurance Company Limited. It was a cheque signed by a private individual to be paid to another private individual. It was not part of his official duty to present for payment, such a cheque and to encash it.

25.In view of the above reasons, I hold that both A2 and A5 should participate in the trial proceedings and the petitions for discharge have been rightly dismissed by the learned Trial Judge. Hence, the present Criminal Revision Cases are dismissed. Consequently, the connected miscellaneous petition is closed.

26.I would also add a caveat that observations made herein are only for limited purpose of examining the arguments advanced by the learned counsels and I am confident that the learned Trial Judge, would weigh the evidence adduced during the course of trial and then pass a considered judgment.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1.The Inspector of Police,
CBI / ACB / Chennai.

2.The Superintendent of Police
CBI – ACB,
Shasthri Bhavan,
Chennai – 600 034.

3.The XII Additional Special
Judge for CBI Cases,
Chennai.

4.The Public Prosecutor
High Court of Madras.

+1cc to Mr.S.Thiruvengadam, Advocate SR.No.54401

+1cc to Mr.K.Shankar, Advocate SR.No.53820

Crl.R.C.Nos.225 & 401 of 2021
and Crl.M.P.No.6494 of 2021

GMR(CO)
RVM(08/11/2021)