IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 07.06.2022	Date of Pronouncing Order 10.06.2022

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.RC.No.179 of 2022
and
Crl.M.P.Nos.1713 & 1714 of 2022

1.M/s.ETK Softech Pvt. Limited,
Represented by its Managing Director
Dr.Raghavan,
Flat No.97, Phase II,
SIPCOT Industrial Complex,
Ranipet, Office at No.6 and 9, Parson Manor,
Gemini, Chennai 4.

2.Dr.P.Ragavan (Aged 78 years)
Son of Late Rajagopalan
Flat No.8, TANUSRI Apartments,
29, Devanathan Street,
Mandaveli, Chennai 600028.

3.S.Kannan (Aged 63 years)
S/o.S.Srinivasan,
48/42, Saidharsan Apartments,
4th Floor, 2nd Main Road,
K.B.Nagar, Adyar,
Chennai 20. ... Petitioners

Vs.

State by Inspector of Police,
SPE CBI Economic Offence Wing,
Chennai.
(Crime No.RC 6(E)/2000/CBI/EOW/Chennai.) ... Respondent

Prayer: Criminal Original Petition filed under Section 397 (1) r/w.401 of Cr.P.C., to set aside the order passed by the learned Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai passed in Crl.M.P.No.583 of 2021 in E.O.C.C. No.5 of 2004 and discharge the Petitioners.

For Petitioners : Mr.V.Krishnamoorthy

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

ORDER

This Criminal Original Petition has been filed to set aside the order passed by the learned Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai in Crl.M.P.No.583 of 2021 in E.O.C.C. No.5 of 2004 and discharge the Petitioners.

2.The Petitioners herein are the Accused No.9 to 11 in Crime in RC No.6(E)/2000/CBI/EOW/Chennai. They filed Petition under Section 239 of Cr.P.C for discharge them before the learned Additional Chief Metropolitan Magistrate, E.O.I., Egmore, Chennai, primarily on the ground that some of the accused viz., A1, A3 & A12 are died. Consequently, A2, A4 & A5 companies got dissolved and further as against A13 to A17 proceedings were quashed and hence they prayed for similar order of discharge in Crl.M.P.No.583 of 2021 in E.O.C.C. No.5 of 2004 and the same was dismissed by the learned Chief Metropolitan Magistrate, E.O.I., Egmore, on 14.12.2021, against which the Petitioners are before this Court.

3.Learned counsel for the Revision Petitioners would contend that the case is left with A9 company, A10 & A11 for others either the case was quashed or charges was abated on the death of the accused.

4.Heard the learned counsel appearing for the CBI/Respondent. He made submission based upon the counter affidavit filed before this Court.

5.A perusal of the records reveals that RC No.6(E)/ 2000/CBI/EOW/ Chennai, was registered by CBI/EOW/Chennai based on the complaint of the Directorate of Revenue Intelligence (DRI), New Delhi alleging that M/s.ORJ Electronic Oxides Ltd. Pudukkottai (A-6) and M/s.ETK Softech Pvt. Ltd., Ranipet (A-9) with dishonest and fraudulent intention, entered into a criminal conspiracy with other accused persons/companies to remit/transfer foreign exchange to the tune of several crores, outside the country. In pursuance of the said conspiracy, the said companies registered themselves as 100% EOU (Export Oriented Unit) and imported low value capital goods machineries by falsely over invoicing the same and foreign exchange was taken out of the country by showing payments for the imported machinery. In fact the imported machineries were manufactured within India and exported outside the country at a highly over invoiced value to be brought back at an even greater over invoiced value.

6.The Investigation further reveals that during 1995-98, Dr.N.M.Parthasarathy (A-1), Managing Director of M/s.ETK International Ferrites Ltd. (A-2 Company) along with Dr.K.Raghunathan (A-3) President of M/s.International Products Technology Exchange Inc. USA (A-4 Company), also President of M/s.ETK IF America INC (A-5 Company), M/s.ORJ Electronics

Oxides Ltd. represented by ORJ Jaffer Batcha (A-7) and by V.Sundaram (A-8), M/s.ETK Softech Pvt. Ltd. (A-9 Company) represented by R.Raghavan (A-10) and S.Kannan (A-11) entered into a criminal conspiracy along with Dr.K.M.Thiyagarajan (A-12) former Chairman of Bank of Madura Ltd., V.Nachiappan (A-13), M.Narayanan (A-14), M/s.Sundaram Finance Ltd. (A-15) represented by S.Srinivasan (A-16) & K.M.Shankar (A-17), with an intention to cheat the Government of India, by way of exporting sub-standard capital goods/machineries to Singapore, by falsely declaring the items exported as capital goods by over invoicing the value of the same, by submitting fabricated documents to the Chennai Customs. Thereby, suppressing the real facts and importing the same goods back to India via Tuticorin Port under 100% Export Oriented Unit (100% EOU) Scheme for manufacturing of Iron Oxide of electronic grade without paying Customs duty, by falsely declaring the capital goods as imported from USA instead of furnishing the real description and nature of machinery to Tuticorin Customs, by further over Invoicing the said capital goods and also evaded Customs duty and thereby caused a wrongful loss to Government of India to the tune of Rs.31.10 Crores (Approximately) and thereby, committed offences punishable under section 120 B r/w 420, 467, 468 and 471 IPC & 132 and 135 of Customs Act, 1962.

7.As per final report, the Petitioners/Accused viz. M/s. ETK Softech Pvt. Ltd. (A-9), Raghavan (A-10), Managing Director of the company and S.Kannan (A-11), Director of the company hatched a criminal conspiracy with other accused persons A-1, A-2, A-3, A-4, A-5, A-15, A-16, A-17 and others with an intention to remit/transfer foreign exchange to the tune of several crores outside the country and registered themselves as 100% (EOU) export oriented unit and imported low value capital goods/machinery by falsely/ heavily over invoicing the same and foreign exchange was taken out of the country showing payments for the imported machinery. In fact the imported machineries were manufactured within India and exported outside the country at a highly over invoiced value to be brought back at an even greater over invoiced value. Because of this overt act of the Petitioners/Accused, Customs Department sustained a wrongful loss in payment of customs duty to the tune of Rs.18,24,18,893/- and thereby, causing wrongful loss to the Government of India.

8.As per final report, the capital goods imported by M/s. ETK Softech Pvt. Ltd. (A-9) company from M/s.IPTE Inc. USA (A-4) company were nothing but junk materials and the same was worth not more than the scrap value, which were in fact manufactured by M/s.ETK International Ferrites Ltd. (A-2) company at their factory at SIPCOT Industrial Estate, Ranipet and while exporting the materials from India M/s.ETK International Ferrites Ltd. (A-2) company have stenciled in the machines/capital goods, "Made in USA", to give an impression that as if the machines were made in USA. During, Investigation it further came to light that the capital goods, which were imported by the EOU units were not capable of manufacturing the Electronic Grade Iron Oxides.

9.As per final report, the unit namely M/s.ETK Softech Pvt. Ltd. (A-9) company for getting the benefits of EOU scheme and avoiding the import duty payment did the whole exercise and in that process, they have moved huge foreign exchange out of the country in connivance with the Directors of the import and export companies and to accomplish their object of siphoning off the foreign exchange, lease finance was availed from the financial institution M/s.Sundaram Finance Ltd. (A-15)

10.The Petitioners/Accused earlier filed a discharge petition in Crl.M.P.No.583 of 2021 before the learned Additional Chief Metropolitan Magistrate, (E.O.I)., Egmore, Chennai. After analyzing the evidence both oral as well as documentary and after proper appreciation of the evidence, the learned Additional Chief Metropolitan Magistrate, E.O.I, Egmore dismissed the same.

11.It is also seen from the records that A1 to A5, A12, A13 to A17 were relieved as either the case against them stands abated or quashed in Crl.OP.Nos.22976 of 2004, 24250 of 2007, 25986 of 2012 & Crl.RC.No.348 of 2019.

12.The main ground contended by the learned counsel for the Petitioners is that an observation appears to have been made in connection with the accused A1 to A5 by this Court in earlier OP that the chain link at the beginning and at the end has been snapped.

13.The learned counsel appearing for CBI/Respondent invited my attention to the facts of this case as borne out from the final report.

14.The Part I of the allegations is centered around A1 that is in connection with the registration of the company as 100% Export Oriented Unit (EOU). Part II of the issue is the very same machinery which are exported was again imported which are manufactured within India, but exported out side the country on highly over invoicing value and thereby, the Customs Department sustained wrongful loss of Rs.18.24,18,893/- in the year 2000. These Petitioners are fall under the second part of the alleged fraud of importing machinery under 100% EOU scheme for manufacturing of Iron Oxide of electronic grade to fulfil the export obligation and claimed exemption from payment of customs import duty to the tune of Rs.18,24,18,893/- by filing false document showing inflated value of imported machinery under the bill of entry No.109. The documents seized during the investigation also indicates A10 & A11 were colluded with other accused and claimed duty drawback, thereby cheated the customs department.

15.The present Petitioners fall under the Part II of creating false document by showing inflated value of imported machinery under the bill of entry No.109 and the claiming duty drawback. In view of the specific document available in the file of charge sheet, for charge against the Petitioners and each charge is supported by documents collected during the investigation. The charge sheet was filed as early as on 15.12.2003. The action of all the accused, now the Petitioners herein in respect of charges viz., by falsely declaring the item exported as capital goods while over invoicing the value of the same and subsequently, falsely declaring the capital goods as imported from USA, instead of furnishing the real description and nature of the machinery to the Tuticorin Customs. I find that the case against A9 to A11 stands on different foot and the observation so made in the earlier OP will not come to the rescue of this Petitioners.

16.It is stated that at the stage of framing charges, the Court shall not embark on evaluating the evidences on the defense side alone, it should evaluate evidence on both sides. In the instant case the chain link is not cut due to the death or discharge of the co-accused and there is sufficient material available on record. Prima facie, each accused have played a role and therefore, finding of the trial Court that plea raised by the Petitioners cannot be considered and rejection of the Petition for discharge does not suffer from any irregularity or illegality, warrants interference.

17.In fine, the Crl.RC.No.179 of 2022 is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Chief Metropolitan Magistrate,
E.O.I, Egmore, Chennai

2.The Chief Metropolitan Magistrate,Egmore, Chennai-8.

3.The Special Public Prosecutor for CBI Cases
High Court, Chennai.

+1cc to Mr.V.Krishnamoorthy, Advocate SR. No. 33880

Crl.RC.No.179 of 2022
and
Crl.M.P.Nos.1713 & 1714 of 2022

PA (CO)
PR (28/06/2022)