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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM:

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

Crl.R.C.No.1097 of 2021
and
Crl.M.P.No. 14038 of 2021

M.Selvaraj,
S/o. Marimuthu ... Petitioner/Accused

Versus

State rep. by
Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai-600 028. ... Respondent/Complainant

PRAYER : Criminal Revision Case filed under Section 401 read with 397 of the Code of Criminal Procedure, to call for the records in Crl.M.P.No. 57 of 2018 in C.C.No.9 of 2017 pending on the file of the Special Court for the cases under Prevention of Corruption Act at Chennai and set aside the order dated 26.11.2021 and discharge the petitioner from the above case.

For Petitioner :Mr.S.Ashok Kumar

For Respondent :Mr.C.E.Pratap,
Govt. Advocate (Crl. Side)

ORDER

(This case has been heard through video conference)

Against the order passed in a petition filed under Sec.239 of Cr.P.C. seeking to discharge him from the charges in Crl.M.P.No.57 of 2018 in C.C.No.9 of 2017 on the file of Special Court for the cases under Prevention of Corruption Act Cases at Chennai, the present Criminal Revision Case has been filed.

2. The petitioner is the sole accused. He has been charged with for the offences under Sec.409, 465, 468, 471 I.P.C.

and Sec.13(2) r/w 13(1)(c) of the Prevention of Corruption Act.

3. The case of prosecution in brief is as follows :-

The petitioner was working as a Secretary in the Tamil Nadu Legislative Assembly and he was provided with staff car bearing Regn. No. TN-04 G-8448 for his official use. In the month of January 2008, since the car requires some repair work, a tender was called for from the Government approved workshops for a sum of Rs. 6,380/- for carrying out repair works. To that effect, a note file was also put up to the petitioner for approval. However, the petitioner has arbitrarily ordered in the note that an amount of Rs.25,000/- might be spent to carry out all the works and ordered to call for tenders, after getting approval from the finance department. But, the note does not contain the particulars of repairs to be done for the car. Thereafter, the quotations were received from three workshops and lowest tender offered by one Murugan Service Centre, which was a Government Approved workshop was accepted. After getting approval from the finance department, a sum of Rs.24,473/- was sanctioned and disposed to M/s.Murugan Service Centre.

4. The allegation is that, the petitioner has opted to get his staff car repaired at private workshop at his choice instead of getting repaired in the Central Workshop and while preparing the note for repair, he has arbitrarily ordered in the note that a sum of Rs.25,000/- might be spent to carry out all the repair works, for that, two bogus tenders were prepared and accepted. In the said circumstances, he has committed the offence under Sec.409, 465, 468, 471 of I.P.C. and under Sec.13(2) r/w 13(1)(c) of the Prevention of Corruption Act. Hence, the crime was registered and after investigation, a final report was filed and the learned Judicial Magistrate taken cognizance of offence. Thereafter, the petitioner has filed a petition under Sec.239 of Cr.P.C. before the court below to discharge him from the charges, that petition came to be dismissed. Challenging the said order, the present Criminal Revision Case has been filed.

5. Mr. S.Ashok Kumar, learned senior counsel appearing for petitioner would submit that, the petitioner was working as Secretary in the Tamil Nadu Legislative Assembly and admittedly, he has administrative power to sanction emergency expenses upto Rs.30,000/-. Admittedly, the staff car, which was allotted to the petitioner has got major repairs and hence, the Government decided to abandon the car, at that time, the petitioner intervened and using his discretion, requested the Government that, instead of abandoning the car, he would get the car repaired and use the same. So, a note file was prepared by the

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department, wherein the repair estimate made upto Rs.25,000/- and further directed to call for tenders and after getting approval from the Finance department, further action can be taken. In pursuant to the note file, the tender was called for by the department, thereafter, lowest tenderer was selected and the same was placed before the Finance department. The Finance department duly approved the proposal, thereafter, the car was repaired and the amount was also accordingly paid to a person, who repaired the car. Therefore, absolutely, no materials available on record to show that the petitioner has committed forgery or criminal breach of trust and everything was done as per the procedure. That apart, the trial court has accepted that there is no commission of forgery, however, the trial court has held that the petitioner has committed criminal breach of trust and dismissed the petition. The learned counsel would strongly rely upon the statement of L.W.4, one V.V.Rhama, under Secretary in the same department, has stated that everything was prepared by the department and not by the petitioner. Hence, according to learned counsel, no prima facie case is made out against the petitioner and no ground made available against him. Therefore, the petitioner is liable to be discharged from the charges.

6. Per contra, learned Government Advocate (Criminal Side) appearing for respondent reiterating the averments made in the counter affidavit would submit that, originally the estimate amount was only Rs.6,380/- and subsequently, the petitioner arbitrarily enhanced the estimate amount at Rs.25,000/- and he himself arbitrarily approved the note file. That apart, tenders were called for and quotations from three persons were received, in which two quotations were bogus quotations and the statement obtained from the person, who has given the quotation would show that there is no reason for fixing the estimate at Rs.25,000/-, when the earlier estimate was only for Rs.6,380/-. The petitioner, being a Secretary of Tamil Nadu Legislative Assembly, misused his official power, committed criminal breach of trust apart from committing forgery. Hence, the final report has been filed. The learned Judicial Magistrate, considering those materials, has rightly taken cognizance and the trial court has also considering the materials, has rightly dismissed the petition filed under Sec.239 of Cr.P.C. Hence, there is no reason to interfere with the same.

7. Heard and considered rival submissions made by learned counsel appearing for both sides and perused the records.

8. The charge against the petitioner is that, he was working as Secretary, in Tamil Nadu Legislative Assembly between

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15.05.2006 and 16.05.2011. During the year January 2008, he opted to get his staff car repaired at a private workshop at his choice instead of getting repaired in Central Workshop. While approving the note for repairing the car, he arbitrarily made a note file that, a sum of Rs.25,000/- might be spent to carry out all the repair works and he has also prepared false quotations as if the same were prepared by the concerned companies and used the same as genuine, thereby, misappropriated the said sum of Rs.25,000/-. Hence, he has committed an offence under Sec.409, 465, 468, 471 of I.P.C. The petitioner, being a public servant, having entrusted with the Government money and having control over the same, dishonestly and fraudulently misappropriated a sum of Rs.25,000/-. In the said circumstances, he has committed the offence under Sec.13(2) r/w 13(1)(c) of the Prevention of Corruption Act.

9. From the perusal of materials, it is seen that, a car was allotted to the petitioner for his official use and the engine of the car was highly damaged, hence, the department has decided to abandon the same. At that time, the petitioner intervened and wanted to get his car repaired instead of abandoning the same. In the said circumstances, L.W.4 V.V.Rhama, a under Secretary, working in the Tamil Nadu Legislative Assembly, has prepared a note file, and sent the same to a Central Workshop for getting estimate amount for carrying out repair works. However, the Central Workshop has given a opinion that since the engine of car was highly damaged, it has to be abandoned. Once again, the section has prepared another note file by L.W.10 Tmt. P.Soundaravadivu, and the same was placed before a Under Secretary, one Gopalakrishnan and Joint Secretary Mr. Govindaraj. Thereafter, the file was placed before another Joint Secretary Mr. Ravindran and after verification, the file was placed before the petitioner. When the petitioner had approved the proposal and stated in the note that the estimate amount for carrying out repair works might be fixed at Rs.25,000/-, necessary tenders to be called for, and after obtaining proper approval from the Finance Department, further action can be taken. The file note made by the petitioner reads as follows :-

> "அனைத்து பழுதுகளையும் சரிசெய்ய ரூ.25,000/- வரை மதிப்பிடப்பட்டுள்ளது. ஒப்பந்தப் புள்ளிகள் பெறலாம், நிதித்துறையின் ஒப்புதலைப் பெற்றபின் நடவடிக்கை எடுக்கலாம்."

10. Thereafter, the concerned section called for tenders from three persons and one Murugan Service Centre, a Government Approved Workshop, submitted a lowest tender for Rs.24,473/-. The same was placed before the Finance department for approval and the finance department has also approved it. Thereafter, the car

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was repaired and the amount was also paid to the concerned person. Owner of Workshop one Panneerselvam was also examined as L.W.13, wherein he has clearly admitted that he only repaired the car and received a cheque for a sum of Rs.24,493/- vide Cheque No. 146311, dated 04.07.2008 after deducting TDS and also the tax to the tune of Rs.512/- on 04.07.2008. From the statement of L.W.4, under Secretary, it could be seen that except approving the note file, the petitioner did not play any role. That apart, the statements of Section Officer, Under Secretary, Joint Secretary and Deputy Secretary were recorded by the respondent. L.W.4, L.W.3 and 5 and Section Officer L.W.9, all of them have consistently stated that concerned section only prepared the note and everything was done by the department, the petitioner has no role to play in it.

11. From those statements, it is clear that, only the section has prepared the note and called for tender and the tender was also approved by the department, ultimately, they got approval from the finance department. Thereafter, the car was repaired and the person, who has repaired the car has also received the amount. Absolutely there is no materials available on record to show that the petitioner has misappropriated the fund and misused his power, thereby committed irregularity. The trial court also while dismissing the petition has clearly held that there is no material available for forgery or cheating, but the trial court has held that there is some materials to show that he has committed criminal breach of trust. From the materials available on record, it could also be seen that, while the department wanted to abandon the car, and it is the petitioner wants to get the car repaired and use it again instead of buying a new car. Proper tender was called for by the department and finally, lowest bid amount was accepted and it was also ultimately approved by the finance department, the car got repaired by a Government authorised workshop and amount also paid to him through cheque by the department and this court not able to find any illegality in it. Considering those circumstances, no prima facie case is made out against the petitioner for the alleged offences for which he was charged.

12. Considering the above circumstances, this Court is of the view that, the materials available on record do not make out any prima facie case against the petitioner and the charge made against him are groundless. Hence, the petitioner cannot be prosecuted based on the charges. Therefore, the petitioner is liable to be discharged from the charges. Accordingly, this Criminal Revision Case is allowed and the order passed in Crl.M.P.No. 57 of 2018 in C.C.No.9 of 2017 on the file of Special

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Court for the cases under Prevention of Corruption Act, Chennai is set aside and the petitioner is discharged from all the charges. Consequently, connected Crl.M.P.No. 14038 of 2021 is closed.

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Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The Special Judge,
Special Court for Prevention of Corruption Act cases
Chennai.

2. Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai-600 028.

3. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.S.Ashok Kumar, Advocate SR.No.4196

Crl.R.C.No.1097 of 2021

EV(CO)
CB(03/03/2022)

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