



Crl.R.C.Nos.1440 and 1441 of 2022

and

Crl.M.P.Nos.16033 and 16037 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12.07.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.1440 and 1441 of 2022

and

Crl.M.P.Nos.16033 and 16037 of 2022

Crl.O.P.No.1440 of 2022:

M/s G.Masilamani(A12)

Represented by its

Proprietor Shri.G.Masilamani,

Having office at No.11/6,

Krishnan Koil Street,

4th Floor, Mannady,

Near BSNL Telephone Exchange,

Chennai-21.

.. Petitioner/Accused No.12

/versus/

The State

represented by Inspector of Police,

CBI/ACB,

Chennai.

.. Respondent/Complainant



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Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the common order in Crl.M.P.No.2649 of 2021 in C.C.No.10 of 2020, dated 18.04.2022 on the file of the learned XVI Additional Special Judge for CBI Cases at Chennai and set aside the same by allowing the Criminal Revision Petition.

For Petitioner :Mr.Karthikeyan Anbazhagan

For Respondent :Mr.K.Srinivasan

Special Public Prosecutor for CBI

Crl.O.P.No.1441 of 2022:

M/s G.Masilamani(A34)

Aged about 63 years,

S/o Gajaraja Mudaliar

.. Petitioner/Accused No.34

/versus/

The State

represented by Inspector of Police,

CBI/ACB,Chennai.

.. Respondent/Complainant

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the common order in Crl.M.P.No.2649 of 2021 in C.C.No.10 of 2020, dated 18.04.2022 on the file of the learned XVI Additional Special Judge for CBI Cases at Chennai and set aside the same by allowing the Criminal Revision Petition.



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For Petitioner :Mr.Karthikeyan Anbazhagan
For Respondent :Mr.K.Srinivasan
Special Public Prosecutor for CBI

COMMON ORDER

These two Criminal Revision Cases filed against the common order of the XIV Additional Special Court for CBI Cases, Chennai dismissing the discharge petition.

2. The Revision Petitioners are arrayed as A12 and A34. A12 is the Proprietary concern represented by Masilamani. A34 is Masilamani as the individual.

3. Sum and substance of the Final Report laid by the prosecution is that on 30.08.2019, the CALYX, Container Terminals Private Limited, at No.28, GNT Road, (NH-5), Puzhal Junction was subjected to surprise check by the CBI, based on the information that custom officers posted in the said container terminal indulging in corrupt practices regularly by way of



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obtaining undue advantage in the form of illegal gratification as motive and reward of the Customs House Agents for clearing their consignment. As a result of the surprise check, incriminating materials were collected, particularly, bills containing names of Customs House Agents and money paid by them. Totally a sum of Rs.81,550/- was recovered from the office table of A1, the custom appraiser and Rs.3,100/- from her hand bag. A Loose sheet from one N.Murugan reveals receipt of money from 19 various Customs House Agents. As a consequence, First Information Report was registered on 31.08.2019. Murugan was granted pardon and treated as approver. The Customs House Agents whose name found in the shipping bills recovered from Murugan were shown as accused for the offence under Section 7 of the Prevention of Corruption Act, 1988 (as amended in 2018).

4. The learned counsel appearing for the petitioners submitted that the petitioner G.Masilamani is the proprietor of Customs House Agent in the name of G.Masilamani through his employee by name, N.Nithyanadam, two



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bills were sent for clearance on 30.08.2019. For expenses, Rs.500/- was given to him due to compulsion. Nithyanandam was forced to pay Rs.200/- for clearing the bills. That was reported to the office, when voucher was presented by Nithyanandam in the month of September. By no stretch of imagination, the payment of Rs.200/- as bribe due to compulsion will fall within the meaning of paying reward to a public servant for improper performance of public duty as expressed in Section 8 of the Prevention of Corruption Act.

5. Reading Sections 7 and 8 of the Prevention of Corruption Act, the learned counsel appearing for the petitioner forcibly submitted that even according to the prosecution, Rs.200/- was paid to Sangamithra, Appraiser, out of compulsion and the reason for paying the money also explained by Nithyanandam in his statement. While so, Masilamani the petitioner herein, who is the proprietor of the firm, was no way connected with the bribe and had no knowledge of payment of bribe and had no intention to pay the bribe



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or reward Sangamithra to discharge her duty will fall within the ambit of Sections 7 and 8 of the Prevention of Corruption Act.

6. The learned Special Public Prosecutor for CBI submitted that after reading the statements of the approver Murugan (LW-55), N.Nithyanandam (LW-18) and Sundaramoorthy (LW-34) submitted that payment of Rs.200/- as reward to A1 is admitted by LW-18 [Nithyanandam]. No doubt, he has stated that the money was given on compulsion. The proviso to Section 8 of the Prevention of Corruption Act clearly states that if any person is compelled to give undue advantage to the public servant, he has to report the matter to the Law Enforcing Agency, within a period of 7 days from the date of giving such undue advantage. Whereas in this case, the payment of undue advantage to A1 [Murugan] never reported to the Law Enforcing Agency. For the first time, Nithyanandam during the investigation on 24.09.2019 had disclosed about the payment of bribe on compulsion. However, V.Sundaramoorthy (LW-34), the other employee under the



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petitioner had stated that he came to know about the payment of Rs.200/- as bribe to the Appraiser soon after raid and registration of the case on 31.08.2019 and therefore, having not reported about the payment of undue advantage Section 8 of the Prevention of Corruption Act squarely attracts.

7. The learned counsel appearing for the petitioners begs his arguments on the following grounds:-

(a)The petitioners had no *mens rea*. The payment of Rs.200/- by Nithyanandam is not a pre-arranged activity. It was spontaneous decision taken by Nithyanandam. The payment was not brought to his notice immediately to report to the Law Enforcing Agency, within the time stipulated under the Act. In any event, Section 8 of the Prevention of Corruption Act will get attracted, only if the bribe giver induces a public servant to perform the public duty improperly or give reward to a public servant for the improper performance of public duty. Clearing the bill for export is not an improper performance of the public duty. Infact, it is the



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duty and responsibility of the appraiser. Therefore, even assuming the reward been paid to the public servant, since it is not for improper performance of the duty, Section 8 of the Prevention of Corruption will not apply.

(b)As far as Penal provisions are concerned, strict interpretation of law to be done and unless and until the prosecution has *prima facie* made out the case that bribe of Rs.200/- had given to A1 to perform her duty improperly, Section 7 of the Prevention of Corruption Act as amended by Act 16 of 2018 will not get attracted.

8. The learned counsel appearing for the petitioners relied upon few judgments which deals with Section 39 of Cr.P.C., which expose a person to inform any cognizable offence to the police and failure to inform and judgment regarding abettment.

9. This Court after giving anxious consideration to the submissions



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and the judgment, in the light of the provision of Prevention of Corruption Act as amended by 16 of 2018, clear in its mind that any bribe giver has given the money on collusion, consent or by compulsion cannot remain silent for more than 7 days, if he really wants to stay away from the mischief of Section 7 and 8 of the Prevention of Corruption Act. In this case, the payment of bribe admitted by the employee of the petitioner and he has shipping bills only during the investigation and not voluntary discloser. From the statement of the LW-34 and LW-18, payment of undue advantage though out of compulsion whether it was paid with consent of the petitioner or with knowledge of the petitioner are the matter for trial and Court under Sections 482 or 402 of Cr.P.C cannot infer and pre-conclude.

10. Regarding the expression 'improper performance of public duty', from the statement of the approver as well as LW-18 *prima facie* appears that to clear the export bills, money has been demanded and paid. Clearing the export bills is not empty formality but should be done meticulously and



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scrupulously. To avoid the duty of the appraiser as to ascertain, whether the goods declared tally with the goods found and whether there is no mis-declaration, wrong classification and/or under violation. In this case, LW-18 [Nithyanandam] had said that the money was given for speedy clearance and he has also stated that two bills cleared by A1 Sangamithra appraiser are warehouse bills and no on wheel inspection were conducted. If he do not pay the bribe amount to clear the shipping bill, the bill would not be cleared by Sangamithra. If she would raise any queries on that bills, the clearance of the said goods will not be cleared and will not be exported on time. This statement *prima facie* indicates that the reward of Rs.200/- though given on compulsion is for the improper performance of the public duty.

11. In fine, this Court finds the order of the trial Court dismissing the discharge petition deserves to be confirmed.

12. Accordingly, these Criminal Revision Cases are dismissed.



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The common order passed by the XVI Additional Special Judge for CBI Cases, Chennai in Crl.M.P.No.2649 of 2021 in C.C.No.10 of 2020, dated 18.04.2022 is hereby confirmed. Consequently, connected Miscellaneous Petitions are closed.

12.07.2023

Index:yes/no

speaking order/non speaking order

ari

To:

- 1.XVI Additional Special Judge for CBI Cases, Chennai.
- 2.The Inspector of Police,CBI/ACB,Chennai.
- 3.The Special Public Prosecutor for CBI, High Court, Madras.

DR.G.JAYACHANDRAN,J.



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