



Crl.O.P(MD)No.4216 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.07.2023

Pronounced on : 19.10.2023

CORAM:

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD)No.4216 of 2023

E.Ramesh

.. Petitioner/A5

Vs.

State represented by,

The Deputy Superintendent of Police,

SPE/CBI/ACB,

Chennai.

(Cr.No.RCMA1 2021 A 0007)

.. Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in C.C.No.5 of 2013 on the file of the II-Additional District Court for CBI Cases, Madurai and quash the charge sheet.

For Petitioner : Mr.K.Suresh Babu



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For Respondent : Mr.N.Mohideen Basha
Special Public Prosecutor for CBI

ORDER

The petitioner is arrayed as Accused No.5 in C.C.No.5 of 2013 on the file of the learned II-Additional District Judge, II-Additional District Court for CBI Cases, Madurai, who is facing the prosecution for the offences under Sections 120B r/w 420 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, filed this petition to quash the proceedings.

2. Case of the prosecution as per the final report:

The petitioner is the appraiser in the customs department. He and other officer is duty bound to ascertain the net weight of the imported items in order to arrive applicability of the customs notification No.147/2003 to claim the exemption from making the payment of anti-dumping duty. A1 imported 1,40,000 pieces of 3m x 12.5 mm Spectra brand steel measuring tapes and 1,00,000 pieces of



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3m x16mm Spectra brand steel measuring tapes in 600 cartons from M/s.Shangglu City Huaxin Electronic Measuring Tools Co., Ltd., China, vide Bill of Lading No.8715SHA04245 dated 23.07.2008. The gross weight of the said consignment was shown as 9850 kgs, whereas net weight was not declared in the said Bill of Lading. A2 the representative of M/s.Green Port Shipping Agency moved for customs clearance on 13.08.2008. A3 and A4 examined the same and made the first check of consignment as per the customs procedures. It is the allegation that without ascertaining the net weight of the imported items to ascertain the applicability of anti-dumping duty as per the customs procedure, they failed to appraise the same. Therefore, there was an evasion of anti-dumping duty to the tune of Rs.19,41,770/-. Thereafter, DRI conducted investigation and found that there is some discrepancy in the weight ascertained by the Shed Examination Officers and found that there is an evasion of Rs.19,41,770/- under the caption of Anti-Dumping duty. Hence, the prosecution agency filed the case and conducted investigation and filed the final report in C.C.No.5



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of 2013 on the file of the II-Additional District Court for CBI cases, Madurai.

3. The petitioner filed the quash petition earlier in Crl.O.P.No.7444 of 2016 and that the same was dismissed on 16.02.2018. Even though the said petition was dismissed, the petitioner filed this second petition on the ground that he did not raise the following question in the earlier quash petition:

“Whether the prosecution against the petitioner maintainable without obtaining sanction under Section 197 Cr.P.C or not?”

4. The learned counsel for the petitioner submitted that the act of the petitioner has nexus with the discharge of public duty and hence the prosecution against the petitioner without obtaining sanction is not maintainable. He made the following submissions:



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4.1. Section 19 of the Prevention of Corruption Act is entirely different from the language of Section 197 Cr.P.C. Section 197 Cr.P.C is coined with the words 'is' as well as 'was' and hence even in the case of the superannuation of the public servant, sanction under Section 197 Cr.P.C is required to prosecute various offences stated in the IPC. In this case, the prosecution filed the final report for the offences under Section 120 B r/w 420 IPC. To substantiate the same, he placed reliance of the judgement reported in **Crl.A.No.593 of 2021 [Indra Devi v. State of Rajasthan]**.

4.2. He also submitted that on the basis of the judgment of the Hon'ble Supreme Court reported in **AIR 1956 SC 44 [Matajog Dobey v. H.C.Bhari]**, the question of sanction can be raised at any stage of the proceedings.

4.3. The investigating agency originally registered one FIR and after completion of the investigation, they filed 9 final reports and



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the said 9 final reports were taken on file in various CC numbers including C.C.No.129 of 2013 on the file of the Special Court for CBI cases. In C.C.No.6 of 2013 for a similar appraiser, the investigating agency obtained sanction, but in this case, where the petitioner also is an appraiser, sanction has not been obtained and hence, the investigating agency acted contrary to Article 14 of the Constitution of India.

4.4. He further submitted that absolutely the petitioner's duty is having close nexus with the discharge of official duty and hence, the filing of final report without sanction under Section 197 Cr.P.C is not valid and cognizance taken against the provision of Section 197 Cr.P.C is illegal. Therefore, he filed this second quash petition to quash the C.C.No.5 of 2013.

4.5. He placed the following precedents:

1. Indra Devi v. State of Rajasthan [(2021) 8 SCC 768]



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2.Matajog Dobey v. H.C.Bhari[AIR1956SC44]

3.R.Balakrishna Pillai v. State of Kerala [(1996) 1 SCC 478]

4.State of Madhya Pradesh v. Sheetla Sahai and others
[(2009) 8 SCC 617]

5. Per contra, the learned Special Public Prosecutor for CBI, vehemently argued that the petitioner raised the similar contention before this Court in connected C.C.No.9 of 2013 along with the other accused in Crl.O.P.(MD)No.4421 of 2022 and this Court held as follows:

“13.Now, the third argument is that violation of Article 14(1) of the Constitution of India. According to him, when the equally placed Government Officer has been treated differently, since sanction order has been obtained in respect of that person, denial of the above said right is clear violation. So this is also a belated ground. Moreover, whether sanction is required under Section 197 Cr.P.C., is also matter for consideration by the trial Court, since now the trial process is underway. As stated above proper ground was made at the earliest opportunity. So I am of the considered view that the second attempt that has been made by Ramesh also not proper, in view of the belated and piecemeal grounds.



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14. Similarly, the ground that has been raised by K.S.Murugan also have to be rejected out right. Since most of the grounds is relating to the the offence alleged in the particular point of time. Whether it is an offence on the date of occurrence can also be considered by the trial Court. As mentioned above, this point was also not raised by way of cross examination of PW1, who accorded sanction to one of the Government officials. Again this ground also cannot sustained because of piecemeal application for quashment. Having obtained direction from this Court seeking speedy disposal after suffering dismissal of Crl.O.P(MD).No.5354 of 2013 batch, is not fair on the part of the petitioner to make out a new plea.

15.If such sort of piecemeal grounds and pleas are allowed to be entertained under Section 482 Cr.P.C. then there will be no limitation or limits for the trail to be concluded. There is every danger that in the course of the trial process, finding new pleas filing repeated petitions could be filed. Then the casualty will be the speedy trial process. So such sort of attempt should not be allowed and that too while exercising the jurisdiction under Section 482 Cr.P.C. So all the pleas that have been raised by these petitioners now can be raised during the course of trial. I find this is not fittest case to entertain the petitions. All the petitions are deserves to be dismissed and of course, since already a direction by the Co-ordinate Bench of this Court in WP.(MD).No. 7590 of 2021 batch, dated 03.09.2021, the trial Court is directed to comply the same without unnecessarily adjourning the matter either at the request of CBI or at the request of the accused. With the above said observation all the criminal original petitions are dismissed.”



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5.1. He also submitted that since all the cases have emanated from the single FIR, the finding in the similar cases regarding sanction under Section 197 Cr.P.C, has to be taken as precedent.

5.2. He further submitted that the conspired act of all the accused in evading the anti-dumping duty to the tune of Rs.19,41,770/- does not amount to discharge of their duty and hence he is not entitled to the protection under Section 197 Cr.P.C. Since in this case, after collecting abundant materials by the investigating agency, final report was filed and thereafter, the learned trial Judge was *prima facie* satisfied and framed charges against the accused. In the said situation, the heavy reliance placed by the learned counsel for the petitioner on the basis of the **Indra Devi case** is not applicable to the present case.

5.3.The learned Special Public Prosecutor further submitted that the act of the petitioner comes under the discharge of the official duty is not correct. The petitioner is facing the allegation of offence under Sections 120B r/w 420 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The Hon'ble Supreme Court in **2021(8)SCC**



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768 held that the alleged indulgence of the officer in cheating, fabrication of records or misappropriation cannot be said to be in discharge of the official duty and hence, the requirement of sanction under Section 197 Cr.P.C does not arise.

5.4. He further submitted that the trial is pending for more than 13 years and the petitioner is repeatedly filing the quash petitions and prolonged the trial and he seeks for dismissal with cost.

5.5. In this case, trial has already commenced and number of witnesses were examined. Therefore, as per the judgment of the Hon'ble Supreme Court reported in **1973 AIR (SC) 799 [Amar Chand Agarwalla v. Shanti Bose and another]**, the quash petition is liable to be dismissed at the threshold.

5.6. He placed reliance on the following judgements.

(1) **2015(13)SCC87[Inspector of Police and another v. Battenapatla Venkata Ratnam and another]**

(2) **2021 AIR(SC)5368[Shantaben Bhurabhai Bhuriya v. Anand Athabhai Chaudhari and others]**



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6. This Court has considered the rival submissions made by both parties and perused the records and the precedents relied by both parties.

7. From the above submission, the following questions arise for consideration:

“1. Whether the petitioner is entitled to the protection under Section 197 Cr.P.C.?

2. Whether the allegation made against the petitioner in the final report under Section 120B r/w 420 IPC required sanction under Section 197 Cr.P.C.?

3. Whether the second quash petition is maintainable?”

7.1. “1. Whether the petitioner is entitled to the protection under Section 197 Cr.P.C.?”:

7.1.1. It is not every public servant is entitled to claim the



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protection under Section 197 Cr.P.C. The public servant “*Removable by the Government*” alone is entitled to the protection under Section 197 Cr.P.C. In this case, the petitioner is appraiser. The authority to remove him from service is the Commissioner of the Department.

7.1.2. Similar question arose for consideration before the Hon'ble Three member Bench of the Hon'ble Supreme Court in ***Nagraj v. State of Mysore, reported in AIR 1964 SC 269***, wherein Court examined the scope of Section 197 Cr.P.C read with Sections 4(c), 8, 26(1) and 3 of the Mysore Police Act, 1908. Interpreting the above mentioned provisions, the Hon'ble Supreme Court held that an *Inspector General of Police can dismiss a Sub-Inspector and, therefore, no sanction of the State Government for prosecution of the appellant was necessary even if he had committed the offences alleged while acting or purporting to act in discharge of this official duty.*

7.1.3. The said law is followed by the Hon'ble Supreme Court in the latest decision reported in ***Fakhruzamma v. State of***



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Jharkhand, reported in (2013) 15 SCC 552 held as follows:

“7. Rule 824 of the Jharkhand Police Manual prescribes different departmental punishments, including the punishment of dismissal and removal, to be inflicted upon the police officers up to the rank of Inspector of Police. The relevant rule for our purpose is Rule 825, which is given below:

“825. Officers empowered to impose punishment.—(a) No police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him.

(b) The Inspector General may award to any police officer below the rank of Deputy Superintendent any one or more of the punishments in Rule 825.

*(c) ****

(d) A Superintendent may impose on any police officer subordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in Rule 824 except dismissal; removal and compulsory retirement in the case



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of Sub-Inspector or Assistant Sub-Inspector. It shall be kept in mind that if any enquiry has been initiated by the District Magistrate, a report of the result shall be sent to him for information. If required, the file of departmental proceeding shall also be sent with it.

*(e)-(f) ***”*

*Rule 825 clauses (a) and (b) confers power on the Inspector General of Police or the Deputy Inspector General of Police to pass orders for removal of police officers up to the rank of Inspector. **Before passing the order of removal, the Inspector General of Police or the Deputy Inspector General of Police need not obtain prior approval of the State Government.”***

7.1.4. By applying the above principle, in this case, the competent authority to pass the order of removal from service is not the Government and hence, he is not entitled to protection under Section 197 Cr.P.C. Accordingly, this question is answered against the petitioner.



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7.2. Whether the allegation made against the petitioner in the final report under Section 120B r/w 420 IPC required sanction under Section 197 Cr.P.C.?:

7.2.1. The allegation in the final report against the petitioner is that he and other accused conspired together to avoid the anti-dumping duty by reducing the gross-weight of the consignment in order to apply the exemption notification to the accused and thereby caused loss of Rs.19,41,770/- and thereby they cheated the Government. Therefore, they are said to have committed offence under Section 120B r/w 420 IPC.

7.2.2. It is well settled principle that Section 197 Cr.P.C is not a shield for the corrupt officials. In this case, as stated above, the petitioner reduced the weight of the consignment in order to get the benefit to the private accused. The same cannot come under the umbrella “*while acting or purporting to act in discharge of their official duty*”. The Hon'ble Supreme Court in the following cases held



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that in the case of the offence under Section 120B r/w 420 IPC, the protection under Section 197 Cr.P.C is not available to the public servant.

7.2.2(A). Hon'ble Constitution Bench of the Supreme Court

in AIR 1960 SC 266 [K.Satwant Singh v. State of

Punjab] held as follows:

“16. Under Section 197 no Court shall take cognizance of an offence committed by a public servant who is removable from his office by the Governor-General-in-Council or a Provincial Government, save upon a sanction by one or the other as the case may be, when such offence is committed by him while acting or purporting to act in the discharge of his official duty. Henderson was charged with intentionally aiding the appellant in the commission of an offence punishable under Section 420 of the Indian Penal Code by falsely stating as a fact, in his reports that the appellants claims were true and that statement had been made knowing all the while that the claims in question were false and fraudulent and that he had accordingly committed an offence under Section 420/109 of the Indian Penal Code. It appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official



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duty. For instance, acceptance of a bribe, an offence punishable under Section 161 of the Indian Penal Code, is one of them and offence of cheating or abetment thereof is another. We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences (vide Amrik Singh case [(1955) 1 SCR 1302]). The Act of cheating or abetment thereof has no reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty (vide Matajog Dobey case [(1955) 2 SCR 925] . It was urged, however, that in the present case the act of Henderson in certifying the appellant's claims as true was an official act because it was his duty either to certify or not to certify a claim as true and that if he falsely certified the claim as true he was acting or purporting to act in the discharge of his official duty. It is, however, to be remembered that Henderson was not prosecuted for any offence concerning his act of certification. He was prosecuted for abetting the appellant to cheat. We are firmly of the opinion that Henderson's offence was not one committed by him while acting or purporting to act in the discharge of his official duty. Such being the position the provisions of Section 197 of the Code are



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inapplicable even if Henderson be regarded as a public servant who was removable from his office by the Governor-General-in-Council or a Provincial Government.”

7.2.2(B). 2015(13)SCC87[Inspector of Police v. Battenapatla Venkata Ratnam]:

“11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue.”

7.2.2(C). Indra Devi v. State of Rajasthan, (2021) 8 SCC 768:

“10. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty.”

7.2.3. In view of the above allegation of the offence under Section 120B r/w 420 IPC, ie., the petitioner and other accused conspired together to cheat the Government to the tune of Rs.



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19,41,770/- by evasion of the payment of anti-dumping duty, does not come under the umbrella “*while acting or purporting to act in discharge of their official duty*”. Accordingly, the second question is answered against the petitioner.

7.2.4. The supplementary argument of the learned counsel for the petitioner that there is a violation of the Article 14 of the Constitution of India on the ground that for one of the co-accused, the investigating agency obtained the sanction under Section 197 Cr.P.C., to file the final report deserves to be rejected at the threshold on the principle that “*Parity in law can be claimed only in respect of action rightfully executed.*”

7.2.5. 2013(16)SCC728 [Ajoy Acharya v. State Bureau of Investigation]:

“25. It was the vehement contention of the learned counsel for the appellant, that sanction to prosecute another co-accused similarly situated as the appellant, having been obtained, it was not permissible to treat the appellant differently. We find no substance in the second contention advanced at the hands of the learned



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*counsel for the appellant. Having concluded on the basis of the law declared by this Court, that prior sanction for prosecuting the appellant was unessential, it is futile to suggest that sanction ought to have been obtained all the same. The instant submission needs no further consideration in view of the deliberations recorded by us hereinabove. **Parity in law can be claimed only in respect of action rightfully executed.** And not otherwise. Having concluded that sanction was not required in the case of the appellant, it is not possible for us to accept on the analogy of the submission advanced at the hands of the learned counsel for the appellant, that merely because sanction was obtained in respect of another co-accused, it needed to have been obtained in the appellant's case as well.*

7.2.6. In the case on hand, the co-accused is in service and hence, sanction was obtained under Section 19 of the Prevention of Corruption Act to prosecute that accused under Section 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act. Incidentally, Section 120B r/w 420 IPC also incorporated in the sanction order. The same was not interpreted as that he is entitled to the protection under Section 197Cr.P.C. So far as the petitioner is concerned, he was terminated from service and hence, there is no necessity to obtain the sanction. Eventhough, the word “**was**” incorporated in Section 197 Cr.P.C., in



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view of the above discussion, ie., he neither comes under the *umbrella of the public servant removable by Government* nor his act of committing conspiracy and cheating can be treated as “*while acting or purporting to act in discharge of official duty*”, he is not entitled to the protection under Section 197 Cr.P.C. Therefore, there is no violation of Article 14 of the Constitution of India.

7.3.1. Whether the second quash petition is maintainable?:

7.3.2. The learned counsel for the petitioner submitted that earlier he did not raise the question of sanction and he placed reliance on the earlier judgement and substantiated his stand vide new grounds, namely, absence of the sanction whether rendered the prosecution invalid one or not?.

7.3.3. This Court perused the grounds of the earlier quash petition and the judgements passed in the earlier quash petition in Crl.O.P(MD)No.7444 of 2016. Paragraph Nos.20 and 21 of the grounds are as follows:



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“20. The Petitioner submits that First Information Report was recorded on 20.02.2012 for the offences allegedly committed during the year October 2007 to October 2008 and the sanction to prosecute the public servant in this case was accorded on 28.09.2012 culminating to the prosecution of the Petitioner also in this case. The sanction is accorded after a period of FOUR years. The delay can be attributed as a lever to pressurise and harass the Petitioner. The Petitioner submits that the Hon'ble Apex Court has held in a number of cases that in cases of this nature the amount involved is not material but speedy justice is the mandate of the constitution being in the interests of the accused as well as that of the society. Cases relating to this nature are to be dealt with swiftly, promptly and without delay. In this case the prosecution has miserably failed to explain the delay of more than FOUR years, in granting the sanction for prosecution of the public servants culminating to the prosecution of the Petitioner. Therefore the Petitioner submits that this is a fit case to be quashed as permitting further prosecution would be the travesty of justice and a mere ritual or formality so far as the prosecution agency is concerned, and unnecessary burden as regards the Hon'ble Court.

21. The Petitioner submits that the sanction to prosecute the public servant in this case was accorded on 28.09.2012 culminating to the prosecution of the Petitioner also in this case, looks like a Xerox copy from two independent competent authorities, meaning, that there was no application of mind by the Competent Authorities and the said Sanction Orders looks as if it is prepared by some



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external agency and the sanctioning authority had merely signed on the sanction order without applying their mind thus making the sanction order defective.”

7.3.4. In the present case, the occurrence took place in the year 2008. FIR registered in the year 2012 and the final report filed in the year 2013 and the same was taken on file in the year 2013. The accused filed the quash petition in the year 2016 and the same was dismissed on 16.02.2018. Thereafter, the charges were framed and examination of witnesses has already commenced. Five witnesses were examined and the case was posted for the cross-examination of P.W-6. At this stage, this quash petition is filed. From the above sequence of events, it is clear that the petitioner, with intent to prolong the trial, filed the quash petition with piece meal grounds. Further, he also filed the another quash petition in C.C.No.9 of 2013 which emanated from the common FIR of this case. In the said case, this Court held that requirement of sanction is to be decided at the time of trial. The petitioner managed to number this case separately and brought to this



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Court after changing of roster and made the submission regarding the requirement of sanction. In all fairness, the petitioner ought to have submitted that since earlier this Court held that the requirement of sanction was to be decided at the time of trial, he should have sought permission to withdraw this quash petition with liberty to raise this issue before the trial Court. But, the learned counsel for the petitioner made a lengthy submission and made this Court to decide the issue by raising the above questions by wasting the precious time of this Court, that too, after the commencement of trial and examination of the number of material witnesses, more particularly, after examination of the sanctioning authority of the co-accused. The said attitude of the petitioner deserves to be dealt with appropriately. Now-a-days, the accused like the petitioner, who are facing the corruption charge, file petition after petition raising all the grounds in one petition and making the submission and confining his submission regarding the particular ground and file another petition stating that the second quash petition is maintainable cannot be accepted in the interest of justice and the same



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amounts to abuse of process of law and travesty of the criminal justice system. They intend to prolong the trial by filing these type of petitions. More particularly, in this case, this Court called the hearing details of the case from the Court below. From 15.02.2013 onwards, the diary entry of the Court below shows that the petitioner never intended to complete the trial. Even in the earlier quash petition, he raised the delay in obtaining sanction and also raised the ground finding fault with the granting of sanction. Even in the quash petition, just before this case came for admission in Crl.O.P(MD)No.4421 of 2022, this Court also observed that the petitioner has the habit of raising the peace-meal grounds in order to protract the trial. In all aspect, he has knowledge about the grounds raised in this case at the time of filing the earlier quash petition in Crl.O.P(MD)No.7444 of 2016. But, the learned counsel restricted the argument relating to some other point and got the dismissal on 16.12.2018. After that, this quash petition was filed in the year 2023, that too, after the examination of the witnesses and this deserves to be condemned. Allegation in this



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case is that, without collecting the anti-dumping customs duty to the tune of Rs.19,41,770/-, all the accused conspired together and cheated the Government. The conspiracy to do an illegal act is not an official act and hence the requirement of sanction for prosecute the petitioner under Section 120 B r/w 420 IPC does not arise. It is the duty of the petitioner to independently apprise the inspection conducted by A3 and A4. It is the duty of the appraiser that the collection of the anti-dumping duty is as per the requirement of law. The failure resulted in loss to the Government and the benefit to A1 and A2. The petitioner, without allowing the trial Court to render a judgment on either way filed this quash petition and the same is misconceived.

8. Accordingly, this Criminal Original Petition is dismissed with cost of Rs.25,000/-(Rupees Twenty Five Thousand only) payable by the petitioner to the “Environmental Committee Fund”, Madurai Bench of Madras High Court, Madurai. within a period of one month



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from the date of receipt of a copy of this order.

Post the case for compliance on 20.11.2023.

19.10.2023

NCC : Yes/No
Internet: Yes/No
Index : Yes/No
PJJ

To

1. The II-Additional District Court for CBI Cases,
Madurai.
2. The Deputy Superintendent of Police,
SPE/CBI/ACB, Chennai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

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K.K.RAMAKRISHNAN,J.

PJL

**Order made in
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