

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2022

CORAM

THE HONOURABLE Mr.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl. R.C. No.326 of 2022 and
Crl. M.P. No.3404 of 2022

Subramanian.P .. Petitioner

Vs.

State rep by the
Dy. Superintendent of Police
Crime Branch CID, Metro Unit
Chennai - 08 .. Respondent

PRAYER : Criminal Revision Cases filed under Section 397 r/w Section 401 of the Criminal Procedure Code, 1973 to dispense with the personal appearance in all further proceedings in C.C. No.5005 of 2018 till pending disposal of this quash petition in Crl.O.P. No. 2022 on the file of the Metropolitan Magistrate for CCB & CBCID cases, Egmore, Chennai.

For Petitioner : Mr.K.P.Anantha Krishnan

For Respondent : Mr.S.Vinod Kumar
Govt. Advocate (Crl. Side)

ORDER

The petitioner, who is the sole accused in C.C. No.5005 of 2018, which is taken on file for the alleged offences under Sections 466, 468, 471, 211, 420 r/w 511 of IPC and 465, 471 r/w 465 IPC, 420 r/w 511 of IPC and 201 of IPC filed Crl. M.P. No.17295 of 2021 to discharge him from the case. By an order dated 09.02.2022, the trial court found that there are *prima facie* materials against the accused to proceed by way of trial by framing charges and therefore, dismissed the discharge application, as against which the present revision is laid before this court.

2. Heard *Mr.K.P.Anantha Krishnan*, learned counsel appearing for the petitioner and *Mr.S.Vinoth Kumar*, learned Government Advocate (Crl.Side) appearing on behalf of the prosecution and also perused the materials available on record.

3. The learned counsel appearing for the petitioner by taking this court through the gist of allegations and the charge levelled against the petitioner would submit that the crux of the allegation is that the petitioner, who was acting on behalf of a Russian company, which submitted a bid in the tender called for by the Chennai Metropolitan Water Supply and Sewerage Board, Chennai, had submitted before the

court in a writ appeal before the Division Bench of this court. A letter alleged to have been given by ISRO stating that the said company is exempted from paying Earnest Money Deposit. Therefore, by a judgment dated 14.10.2004, the Hon'ble Division Bench of this court in W.A. No.4103 of 2003 held as follows:-

"66. We are, therefore, of the considered view that the allegations of mala fide or demand of bribe have absolutely no basis. Equally the contention of the petitioner that by making such illegal demands, the public interest was thrown to the winds by the second respondent can only be characterised as shedding of crocodile tears by the petitioner. The present litigation was perpetrated by the petitioner or for that matter to be precise by the deponent to the writ petition affidavit purely out of personal interest. Therefore, we strongly condemn the action and the attitude of the petitioner in this regard. We would therefore, recommend to the appropriate authority of the first respondent to make a thorough probe in the affairs of the deponent to the writ petition affidavit keeping in mind that the Authorities of ISRO have disclaimed the letter dated 6.8.2003 furnished by the petitioner through the deponent and in the event of finding any cognizable offence committed by him, both in respect of the allegation as regards the demand of bribe alleged against the second respondent as well as certain Ministers and also the so-called forgery committed in

regard to the letter dated 6.8.2003 said to have been issued by ISRO proceed against him as per law without any further loss of time."

Pursuant to the said direction, the case was registered and after completing of the investigation, the present final report is filed.

4. The learned counsel appearing for the petitioner would submit that even taking the materials produced by the prosecution on face value, there is no evidence that the petitioner had forged the actual letter and therefore, the offence under Sections 467, 468 and 471 are not made out in the absence of positive evidence of forgery against the petitioner. Once the petitioner cannot be punished for the offence of forgery, then without proving that the petitioner is the maker of the purported document, alleged offence of 420 r/w 511 IPC also should fail. In any event, the bid is made not by the petitioner individually but by the company, namely M/s.Khrunichev State Research and Production Space Centre, Moscow and it is the said company, who is the beneficiary and therefore, the petitioner who was only a Power of Attorney agent, cannot be prosecuted for the offence of attempting to cheat. Even a reading of the materials on record, the offence as to making of false charge i.e. 211 IPC is not made out. He would submit

that as far as the charge of destruction of evidence is concerned under Section 201 IPC there is absolutely no materials as to the destruction of the computer and the prosecution wants to prove the said offence by inference and presumption. Therefore, he would submit that none of the offences complained is made out even taking the materials on the face value and prays for the discharge of the petitioner.

5. Per contra, the learned Government Advocate (Criminal Side), appearing on behalf of prosecution, would submit that in this case, the photocopy of the letter alleged to have been forged is produced. The concerned person from ISRO was examined and cited as a witness. They have categorically denied issuing of the said letter. The allegation of the prosecution is that the letter is forged by the petitioner by lifting the logo etc. from the internet and concocting the document in his computer and after taking print out, he has destroyed the original as well as the computer which he used for the said purpose. Therefore, if this is a special case where the offence under sections 467, 468 and 471 is alleged coupled with the destruction of evidence and therefore, in this case once the prosecution has proved that the letter is a false document created with an intent to cheat CMWSSB and also this court, and when there is further evidence that in the manner in which the forgery was conducted is by using a computer and the said computer

is being destroyed by the accused, it cannot be said that the offences are not made out. In this case, clear-cut attempt is made to cheat CMWSSB and the petitioner has the audacity to produce the said letter even in the writ proceedings before this court and the entire case is taken on the direction of this court and therefore submitted that there is enough *prima facie* material to proceed in this matter.

6. I have heard the rival submissions on behalf of both sides and perused the material records in this case.

7. The following two questions arise for consideration to be decided in this case:

(1) Whether or not the petitioner is liable to be discharged for not arraying the company as an accused in this case?

(2) Whether or not there are prima facie materials to proceed against the petitioner by framing charges and conducting the trial?

8. It is the submission of the learned counsel for the petitioner that it is the company, which has bid in the tender and the tender was submitted through the embassy in a sealed cover and therefore, the alleged forged letter, which is submitted inside the cover a part of the

bid document clearly points out that the offence is alleged as against the company. The learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Sharad Kumar Sanghi vs. Sangita Rane***¹. A perusal of the facts of that case would reveal that the de-facto complainant purchased vehicle from the company and after purchase, he came to know that the engine itself has been changed. In that context, the Hon'ble Supreme Court of India held that the allegations are only against the company and there was no specific allegations the Managing Director. Therefore, when there were no allegations as against the Managing Director, there was no question of fastening the vicarious liability and when the company itself has not been arraigned as accused, the Managing Director cannot be prosecuted.

9. In the instant case, it is the specific case of the prosecution that it is only the petitioner who signed the affidavit and produced all the documents in the writ court. Even as per the evidence of the listed witnesses, the forged letter was not inside the cover along with the bid document but found outside the cover. Therefore, in this case, the prosecution are specifically making allegations against the Power of Attorney, who had tried to cheat CMWSSB. Therefore, the said

¹ (2015) 12 SCC 781

judgment is not applicable in the present case.

10. The learned counsel also relied upon the judgment of this court in ***K.S.Narayanan and others vs. S.Gopinathan***². It was a case wherein a company was alleged to have cheated the de-facto complainant company and all the accused who are shareholders of the company were prosecuted for misappropriation. In the said case, the finding in paragraph 15 of this court is that no offence is made out against the persons who are arraigned as the accused. Therefore, the said judgment is also not applicable in the instant case.

11. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in ***Sushil Sethi and Another vs. State of Arunachal Pradesh and others***³. That is again a case in which there was a contract between the Public Sector Company and the contractor company. The project was executed and in the course of the completion of the project, it was alleged that the contractor company cheated the complainant company. It is again held by the Hon'ble Supreme Court that when specific allegations are only as against the company, without adding the company, the Managing Director cannot

2 1982 Cri LJ 1611

3 (2020) 2 SCC (Cri) 38

be prosecuted for vicarious liability. As stated above, in the instant case, the petitioner is not prosecuted on the ground of vicarious liability and therefore, the principles laid down in the said judgment is not applicable to this case.

12. Even though in this case, though the bid was made on behalf of the company, it is the specific case of the prosecution that the petitioner who claims himself to be the Power of Agent of the said company had alone acted, forged and submitted the letter and he in fact signed the pleadings in the proceedings before this court. Therefore, I am of the view that the prosecution of the petitioner even in the absence of the company is maintainable and can proceed further and therefore, I answer the question accordingly.

13. With reference to the second contention, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court in ***Sheila Sebastian vs. R.Jawaharaj and Another***⁴, reported in for the proposition that there should be positive evidence on behalf of the prosecution to find out who is the maker of the false document and unless a person is alleged to be maker of the false document cannot be prospected for the offence of forgery.

4 (2018) 7 SCC 581

14. The learned counsel relied upon the judgment of this court in ***Additional Superintendent of Police, CBI vs. G.B.Anbalagan and others***⁵, for the proposition that at the stage of considering the present application and the material records of the case have to be taken into account by the learned Magistrate and the evidence on record should be weighed in toto.

15. It is useful to extract the judgment of the Hon'ble Supreme Court in ***Sajjan Kumar vs. Central Bureau of Investigation***⁶, wherein in paragraph 17 of the said judgment, the Hon'ble Supreme Court has laid down the law relating to the discharge.

"17. Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principle emerge:

*(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. The test to determine *prima facie* case would depend upon the facts of*

5 (2014) 2 LW (Crl) 345

6 (2010) 9 SCC 368 : MANU/SC/0741/2010

each case.

(ii) *Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.*

(iii) *The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

(iv) *If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*

(v) *At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

(vi) *At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as*

gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether trial ill end in conviction or acquittal.

16. A perusal of the above would submit that the exercise which is required by the court is to sift through the evidence on record and form an opinion and whether there is a strong suspicion as against the accused. In the instant case, the sifting through the materials, namely the statement of the witnesses from CMWSSB, a statement of witness from ISRO and the investigation officers evidence, *prima facie* discloses materials to proceed against the accused and therefore, the exercise is only through sifting of the materials and not a roving enquiry/deeper appreciation of the probative value or otherwise of the materials and the nitty-gritty of the law relating to the offences, at this stage of framing charges. Therefore, I am of the view that there is *prima facie* materials pointing out towards strong suspicion about the commission of the offences as mentioned in the final report and therefore, I answer the question accordingly.

17. In view thereof, the present revision is dismissed as without any merits. It is made clear that the observations made in the present judgment are for the purpose of deciding the discharge application and will not have a bearing on the merits of the case during trial and the petitioner is entitled to take all the defences during the course of trial and the same may be considered in accordance with law by the trial court on its own merits. Consequently, the connected criminal miscellaneous petition is closed.

14.07.2022

Index : Yes / No
Internet : Yes / No

Asr

To

1. The Metropolitan Magistrate for CCB & CBCID cases, Egmore, Chennai.
2. Dy. Superintendent of Police
Crime Branch CID, Metro Unit
Chennai - 08
3. The Public Prosecutor, High Court, Madras

D.BHARATHA CHAKRAVARTHY, J.

Asr

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