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Spl. Case ACB No.18/2011

CNR No.MHPU01-008764-2011

CBI/ACB, Pune

Vs.

R. Balasubramaniam+11

ORDER BELOW EXH. 189

This is an application filed by applicant/accused no. 7 **Vinay Bhardwaj** for discharge U/s.227 of Cr.P.C.

2] As per prosecution/CBI, Crime No. RC/Pune/2010/A/0008/2044 was registered on 26/07/2010 u/s. 120, 420, 465, 471 of IPC and section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 (as amended in 2018) against applicant/accused.

3] It is alleged in FIR that Delhi Transport corporation (DTC) had placed orders to M/s Ashok Layland Ltd.(ALL) for the supply of 500 CNG buses for Common Wealth Gains in New Delhi in the year 2010. As per the tender conditions, the manufacturing of buses was required to confirm to the specified standards. That random samples were drawn by the purchaser's representative and were sent to Central Institute of Road Transport (CIRT) for testing. However, the same failed inflammability test and they were not sent to M/s Ashok Layland Pvt. Ltd. or DTC New Delhi. The failed test reports were informed unofficially to Ashok Layland Ltd. by hatching criminal conspiracy. It is further alleged V.P. Gautam, representative of M/s. Ashok Layland Ltd. In his e-mail

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dated 12.01.2010 requested CIRT to conduct inflammability test by sending 9 more samples directly, without consideration of DTC of any independent officials of any agency. It further alleged that M/s. Ashok Layland Ltd. sent further samples without consulting DTC or any other officers and misguided DTC by obtaining test reports from CIRT. The official of CIRT Smt. M.H. Bavadekar informed unofficially to M/s. Ashok Layland Ltd. by way of hatching criminal conspiracy and in furtherance of the criminal conspiracy M/s. Ashok Layland Ltd. representative forwarded samples again without knowledge of DTC or any official of DTC. It is further alleged that Smt. M.H. Bavadekar, the then incharge Technical Director, CIRT forwarded the test report of second sample by giving reference of the first sample and induced DTC to accept the same while the test report in question were forged. It is alleged that the officials V.D. Chavan, Smt. D.N. Nande and Smt. M.H. Bavadekar by misusing their official position by preparing false and bogus test reports forwarded the same to DTC and M/s. Ashok Layland Ltd. with an intent to cause damage resulting into wrongful loss to DTC and corresponding wrongful gain to themselves as well as M/s. Ashok Layland Ltd.

As per charge-sheet R. Balasubramaniam (A-1) Smt. M.H. Bavadekar (A-2), Smt. D.A. Nande (A-3), Achyut Medhekar (A-4), Ved Prakash Gautam (A-5), Ashok Kumar Chopra (A-6), Vinay Bhardwaj (A-7), Vikas Verma (A-8), Vivek Gupta (A-9) and M/s. Pragati Hightech Products (Pvt.) Ltd. (A-10), conspired with each other by hatching criminal conspiracy and committed offence u.s.

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511 of I.P.C. r.w. 120-B, 420, 465, 467, 471 of IPC r.w. sec. 13 (2) r.w. section 13 (1) (d) of Prevention of Corruption Act.

4] It is argued on behalf of applicant/accused that there are no averments whatsoever that clearly spell out ingredients of any of the offences, much less the offences complained of. Even taken on face value, the complaint and charge sheet simply make bald and unsubstantiated assertions of there being tests on some samples not conducted as per the procedure prescribed, whereas a plain reading of the charge sheet itself establishes that the process was followed up by both ALL and CIRT in letter and spirit except it seems a lot of samples were tested with old stickers without DTC being marked a copy, which in itself may not establish any wrong doing which attracts criminal proceedings. The essential ingredients of cheating, forgery and conspiracy are completely absent in both FIR and charge sheet. Even the essential ingredients of attempt and conspiracy are missing and vaguely made out by only spelling out the sections of Indian Penal Code.

5] Further submitted that the accused i.e. Ashok Leyland and others were required to supply 500 CNG buses to DTC for Common wealth Game 2010. The DTC has not filed any complaint with CBI or any agency about wrongful loss caused to them. The offence in pursuance of section 420 is compoundable with the permission of this Hon'ble Court. However, the said offence cannot be compoundable with complainant i.e. source information relying upon ***Vijaya N. Rizwani Vs. Dilip @ Dhanraj and others, 1995 SCC online Bom. 283***) submitted that the

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complaint made by third party for offense punishable under section 420 of IPC is not maintainable.

6] It is further submitted that CBI has charged the accused under section 511, 120-B, 420, 465, 471 of IPC r.w. section 7, 13(2), 13(1)(d) of P.C. Act. But, the CBI in reply to discharge application filed by Vivek Gupta stated that, it is admitted fact that there is no wrongful loss or gain as in this case section 511 of IPC has already been mentioned in the charge-sheet that this was an attempt of other offences. As per the admission there was no wrongful loss or gain, hence, the argument that there was an attempt of other offenses under sections 420, 465, 471 of IPC will not hold good. With regards to conspiracy, section 120-B there cannot be an attempt to commit conspiracy as the conspiracy itself unattempted and as admitted by CBI there is no motive present.

7] Further submitted that to constitute offense u.s. 120-B there should be motive, meeting of minds of the accused persons. If the FIR or charge-sheet is read together, there is not even an iota of evidence to show that there was any meeting of minds between any of the accused persons. There was no event or evidence to suggest that there was meeting to even remotely suggest that there was meeting of minds. After admission by CBI that there was no wrongful loss or gain and as there is no evidence to prove the meeting of minds between the accused persons to constitute the offense of conspiracy, this is a fit case to discharge the applicant on merit as this will not take to any conclusion and only result in further harassment of accused persons. Therefore, if there is no

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wrongful loss caused to DTC then no offence under section 120-B of IPC will be attracted and therefore, also applicant/accused entitled for discharge.

8] Further submitted that in the final charge-sheet, the company Ashok Leyland has not been made an accused, hence, as such, accused No. 4, 5, 6, 7 and 8 cannot be meet accused merely in their capacity of being employees of Ashok Leyland as there is no vicarious liability in criminal law. In absence of company being made an accused the charges cannot be fasten on the employees as they were acting in course of the official duties. Further submitted that this case even after prolong trial would be an exercise in futility as it will not render in any conviction in the final stage as company is not made an accused. Therefore, the charge-sheet itself suffers from contradiction and is fallacious. In the light of all averments prayed to discharge the applicant/accused No.7.

9] On the other hand, the CBI filed its say vide Exh. 259-B and resisted the discharge application. Ld. P.P./CBI submitted that in the investigation it disclosed that accused Ashok kumar Chpra, applicant/accused Vinay Bhardwaj and accused Vikas Varma of M/s. Ashok Leyland through accused Achyut Medhekar and accused Ved Prakash Gautam were well aware of the fact that samples of Marine Gold were failing at CIRT, Pune. The passed sample reports dt. 8/2/2010 from CIRT was released for same lots which were declared unfit earlier on the ground of dimensional variation by M/s. Ashok LeylandLtd. vide their letter dt. 26/12/2009 to DTC. To cover of the situation applicant/accused

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Vinay Bhardwaj wrote a letter No. ALWAR VB : DTC: SC-NAC-2016 dt. 8/2/2010 to DTC, New Delhi that they have taken up the matter of dimensional variation with supplier, who visited Alwar and they have segregated and rectified the pieces where dimensional variation were observed and also that they have done trial and found them OK. Actually, M/s Ashok Leyland Ltd had already manufactured the buses with inferior Marine Board.

10] Further submitted that investigation further disclosed that 63 Non AC buses were handedover to DTC. These buses were brought back to M/s. Ashok Leyland Ltd, Alwar after being received complaint by DTC for the use of inferior quality material marine board used in these 63 buses was swapped with new marine board and swapped marine board were kept near Shop 5 in the factory premises of M/s. Ashok Leyland Ltd. Invesetigation also disclosed that fire broke out in low floor of bus No DLIPC 8155 on 31/12/2010 supplied by M/s. Ashok Leyland. The complete back portion of the bus was burned within 20 minutes inspite of best efforts to save the same with available fire-fighting equipments. As per standards, time for second ignition is 30 minutes. Thus, there is evidence on record against the present applicant/accused and co-accused that the accused officers of CIRT entered into criminal conspiracy with officials of M/s. Ashok Leyland Ltd. including the present applicant, accused Achut Medhekar, V.P. Gautam and M/s. Pragati Hitech Products Pvt. Ltd and inpursuence thereof got prepared false and misleading laboratory reports in the matter of testing of marine board (Plywood) supplied by M/s. Ashok Leyland Ltd. to be used in the

CNG buses meant for common wealth games 2010 at New Delhi and thereby attempted to cheat DTC by way of supplying sub-standard buses. Hence, prayed that the application be rejected.

11] In views of the argument advanced on both sides and perusal of record, it is evident that applicant/accused No.7 Vinay Bhardwaj was the Assitant General Manager (Quality) of M/s. Ashok Leyland Ltd., Alwar (Rajasthan). The entire case is regarding marine board used in the buses which was supplied by M/s. Ashok Leyland Ltd. to DTC. The main ground of discharge application is that the applicant/accused was only an employee of M/s. Ashok Leyland Ltd. and whatever transactions taken place were between M/s. Ashok Leyland Ltd. and DTC and he has nothing to do with that. However, there is evidence on record that the applicant/accused was Asst. General (Quality) of M/s. ALL and accused Achyut Medhekar was deputed to CIRT, Pune along with accused V.P. Gautam as representative of M/s. Ashok Leyland Ltd. to cordinate during the course of testing of marine board at CIRT. The investigation papers also shows that applicant/accused was having knowledge that the samples of marine board had failed in inflammability test and that along with co-accused officials of M/s. Ashok Leyland Ltd. conspired with the co-accused officials of CIRT and in pursuence thereof suppressed the fact that the samples had failed in inflammability test and replaced the failed samples with fresh samples without stickers of DTC at CIRT and thereby facilitated manipulation in the test report resulting into supply of sub-standard marine board (Plywood) DTC.

12] Investigation papers shows that accused No. 4 Achyut Medhekar and accused No. 5 V.P. Gautam both representatives of M/s. ALL were deputed to CIRT to maintain liaison with the officers of CIRT from time to time. They used to visit CIRT and its lab with an intention to observe the progress and the result of samples tested by CIRT. It also reveals from record that accused No.2 Smt. M.H. Bavadekar, accused No.3 Smt. D.A. Nande and Shri. V.D. Chavan got prepared false and misleading laboratory reports in the matter of testing of Marine Board (Plywood) supplied by M/s. ALL to be used in the CNG buses meant for Common Wealth Games at New Delhi in 2010 by hatching criminal conspiracy with applicant, accused No.4 and accused No.5 V.P. Gautam the representatives of M/s. ALL. Thus, there appears sufficient evidence on record against applicant/accused and accused No. 4 and 5.

13] The other ground for discharge is that the instant case has not been registered on the basis of complaint filed by aggrieved party i.e. DTC. No doubt, the instant case has been registered on the basis of source information report. But Delhi Transport Corporation is a public undertaking under the Central Government and CBI has full mandate to su-moto registered and investigate any case involving wrongful loss caused to any public undertaking under the Central Government. Therefore, the stance taken by applicant in this respect is not sustainable. As such, the material placed on record shows sufficient evidence against the applicant/accused No.7 about his involvement in the present crime

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with co-accused persons of CIRT and officials of M/s. Ashok Leyland Ltd.

14] While dealing with discharge application, at this interim stage, the specific overtact of accused and his role cannot be appreciated in detail. The material in charge-sheet shall have to be appreciated through prima facie angle in order to find out whether the charge is groundless. The aforesaid material clearly shows that there appear grave suspicion and sufficient ground to proceed against applicant/accused No.7. The charge against applicant/accused specially under section 120-B and other sections of IPC does not appear groundless. So also sanction is accorded by competent authority to prosecute against public servants, officials of CIRT, Pune. The other contentions raised by applicant/accused are matter of trial. Therefore, with due respect, the authorities relied upon by the applicant / accused are not helpful to him in the present case in hand. Hence, I do not find it to be fit case to discharge applicant / accused. Hence, the order :-

ORDER

Application Exh.189 is rejected.

(A. S. Waghmare)

Date : 22/08/2023 Special Judge (CBI, ACB cases), Pune.

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CERTIFICATE

I affirm that the contents of this PDF file order are same word for word as per original order

Name of Steno : Smt. S. R. Shaikh, Stenographer (Grade-I)
Court Name: : Shri. A. S. Waghmare
Special Judge (CBI-ACB), Pune.
Date of order : 22/08/2023
Order signed by PO : 05/09/2023
Order uploaded on : 05/09/2023