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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. 227

This is an application filed by applicant/accused no. 2 **Medha Bavadekar** for discharge under section 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 and others.

3] It is alleged in FIR that Delhi Transport corporation (DTC) had placed orders to M/s Ashok Leyland 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 Leyland Pvt. Ltd. or DTC New Delhi. The failed test reports were informed unofficially to Ashok Leyland

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Ltd. by hatching criminal conspiracy. It is further alleged that V.P. Gautam, representative of M/s. Ashok Layland Ltd in his e-mail dated 12.01.2010 requested CIRT to conduct inflammability test by sending 9 more samples directly, without consideration of DTC or any independent officials of any agency. It is 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 in collusion with R,. Balsubramanian and D. A. Nande 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. Balasubramanian (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

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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. 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 she was incharge of Technical Department CIRT and she has no decision making power as the Director of CIRT is the only person to make decision. She was subordinate to accused no. 1 R. Balsubhrmaniam. In his absence, she was authorized to sign only on his behalf till he joins by circular dated 26.02.2008. The representative of M/s. Ashok Layland Ltd. V.P. Gautam was allowed to reside in the guest of CIRT with the permission of Director. He was posted for monitoring the result of the test. He was allowed to enter the office and lab of CIRT with the permission of Director. Hence, she was conversant with the result of the testing. The applicant has never disclosed such facts to any person. Further submitted that the Director i.e. accused no. 1 R. Balsubhramaniam was the only authorized person to sign the test report. The applicant was appointed as in-charge of Technical Directorate on 12.02.2009. All the reports signed by her on behalf of the Director are approved by the Director because said were signed by her as per the prior directions of Director.

5] Further submitted that it is totally false that she has unofficially disclosed the facts to M/s. Ashok Layland Ltd., as

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during tests the officials of M/s. Ashok Layland Ltd. were present in the lab and the same is informed by lab to the applicant. She is nowhere related with the lab department. The facts describing offence in FIR have been exaggerated for portraying involvement of the present applicant. The entire investigation papers are silent on the role of present applicant in the said incident. There is not even any prima-facie material in the investigation papers to frame charge against the present applicant. Further submitted that there is no direct or indirect act of the applicant attributed to the other co-accused in the alleged crime. The investigating machinery ought to not have filed final report against the present applicant. Therefore, the present applicant has preferred this discharge application and prayed that it be allowed.

Applicant/accused relied upon following judgments:

- (i) *Abdulla Mohammed Pagarkar etc. Vs. State (Union Territory of Goa, Daman and Diu), AIR 1980 Supreme Court 499.***
- (ii) *Manish Dosal Barot Vs. The State of Maharashtra, 2015 ALL MR (Cri.) 1787.***
- (iii) *Surendra Nath Satpathy Vs. The State , 1958 CRI. L.J. 1071. and Circular issued by Head ASD dt. 26/02/2008.***

6) On the other hand the prosecution/CBI filed its say vide Exh. 235 and resisted the discharge application filed by applicant/accused. The Ld. P.P., CBI submitted that during the relevant period applicant/accused Smt. Medha Bavadekar was

posted and functioning as Head of Technical Directorate, CIRT, Pune. The applicant was responsible to receive all samples in her division, allotting job numbers, issuing samples to concerned labs and sending the samples to concerned labs. It is also her duty to prepare final test report approved by QMC and after final submission of test annexure for the concerned labs. There is evidence against applicant on record that she received 1st lot of plywood samples from M/s. Ashok Layland Ltd., which were without any DTC sticker and on her instructing no fresh job numbers were issued to those plywood samples. The reports prepared were sent with reference to 1st lot of job numbers issued. There is also evidence on record that she pressurized Shri. V.D. Chavan and other staff of Automobile lab 1 through co-accused D.A. Nande on the direction of co-accused Director R. Balsubramaniam. She also signed sample testing reports on behalf of Director, CIRT, which were false, with malafide intention to cheat DTC (Government).

7) Further submitted that, therefore, there is prima-facie material against the applicant/accused to establish the charge that she while posted and functioning as Head of Technical Directorate, CIRT, Pune along with co-accused No.1, R. Balsubramaniam, the then Director and accused No.3 D.A. Nande , the then Head Engineering Division of CIRT, Pune entered into criminal conspiracy with the officials of M/s. Ashok Leyland Ltd. (M/s. ALL) and M/s. Pragati-High tech Products Pvt. Ltd. and in pursuance thereof got prepared false and misleading laboratory

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reports in the matter of testing Marine Board (Plywood) supplied by M/s. ALL to be used in CNG buses meant for Common Wealth Games at New Delhi in 2010 and thereby cheated DTC by way of supplying sub-standard buses. On the basis of findings of investigation, sanction for prosecution against applicant/accused and co-accused public servants was obtained and charge-sheet came to be filed. There is sufficient evidence against applicant/accused No.2 to frame charge in this case and proceed further. Hence, Prayed that the discharge application is devoid of merit and liable to be rejected.

8) In view of submission on both sides and perusal of reord, it is evident that accused No.1 R. Subramanium, the then Director, accused No. 2/applicant Medha Bavadekar, the then Head Technical Directorate, and accused No.3 D.A. Nande, the then Head, Engineering Division, CIRT, Pune are public servants as per the sub clause (iii) Section 2 (c) of PC At. So also sanction is accorded against accused No. 1 to 3 to prosecute against them in the present crime. It is also not disputed that applicant/accused No.2 was the Head of Technical Directorate, CIRT, Pune. There appears evidence that it was well within the knowledge of applicant/accused that the samples of (plywood) Marine Boards from M/s. Ashok Leyland Ltd. have been failed in tests. However, with the malafide intention to favour M/s. Ashok Layland Ltd. she deliberately suppressed this fact and did not sent the test reports regarding failed samples to DTC and allowed M/s. Ashok Layland Ltd. to submit fresh samples without stickers of DTC to

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facilitate manipulation in the test reports.

9] Further, the witness N.R. Kachare Scientist E, CIRT, Pune in his statement confirmed that applicant/accused initiated a note for Director's approval for change of samples and pasting of old sticker numbers on new test annexures. It is also on record that she pressurized V.D. Chavan, Scientist/Auto lab-1, CIRT, Pune through co-accused Smt. D.A. Nande to conduct fire retardant test on new samples received without DTC stickers. This fact was stated by witness Farukh S. Makhdoom, Scientist B, CIRT, Pune in his statement. Due to the act of applicant/accused reports of new samples without DTC stickers were sent on 8/2/2010 by CIRT with reference to the sample received with DTC stickers and which have already failed in the fire retardant test. On 31/12/2010 in one of the buses fire broke out and the back portion of the bus was completely burnt in 20 minutes.

10] So far as present applicant is concerned the main ground of discharge application is that the applicant/accused was not having decision making power and she has signed the test reports on behalf of accused No.1 Director. However, at the relevant time she was posted and functioning as Head of Technical Directorate, CIRT Pune. She was responsible to receive all the samples in her division, allotting job numbers, issuing and sending samples to concerned labs etc. It was also her duty to prepare final testing report as approved by QMC and after final submission of test annexure from concerned labs. As such it cannot be said that

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she was having no authority and she signed the test reports on behalf of accused No.1.

11] Investigation papers shows that 6 more sample of Marine Board also failed during the period of accused No. 3 Smt. D.A. Nande as head of Engineering Division I, CIRT, Pune. The M/s. Ashok Layland Ltd. Alwar had already started manufacturing of buses with reference to 9 samples of Marine Board using inferior quality of Marine Board in the same. Nine new samples of Marine Board with DTC stickers were sent by M/s. All to CIRT for fire retardancy test vide e-mail 12.01.2010 which was in the knowledge of accused No.2 applicant and she directed Shri. Sonavane to receive without making entry in the inward register and further forwarded to the lab with earlier job number issued to 9 failed samples of Marine Board having DTC stickers. The above mentioned facts attributed to accused No.2 and other accused prima-facie show that there was conspiracy between them in result of which the buses supplied by M/s. ALL with the sub-standard Marine Board supplied by accused No.10 M/s. Pragati Hightech Product (Pvt.) Ltd. were supplied to DTC. Accused No.2 along with accused No. 1 and 3 thus breached the trust posed in them by DTC. Thus, there appears sufficient evidence on record against applicant/accused and accused No. 1 and 3.

12] While dealing with discharge application, at this interim stage, the specific overt-act of accused and his role cannot be appreciated in detail. The material in charge-sheet shall have to

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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.2. The charge against applicant/accused does not appear groundless. So also sanction is accorded by competent authority to prosecute against her. 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 her 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.227 is rejected.

Date : 22/08/2023 (A. S. Waghmare)
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