

**P.S.Murthy, and ors. Vs. the State Represented by Inspector of Police,**

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**Court :** Chennai

**Decided On :** Jul-30-2010

**Judge :** T.Sudanthiram, J.

**Acts :** [Code Of Criminal Procedure \(CRPC\), 1973](#) - Sections 397, 401

**Appeal No. :** CRL.R.C.No.88 to 90, 107, 173 to 175, 260, 420, 489, 581 and 801 of 2004, Crl.R.C.Nos.691 and 711 of 2010

**Appellant :** P.S.Murthy, and ors.

**Respondent :** The State Represented by Inspector of Police,

**Advocate for Def. :** Mr.N.Chandrasekaran, Adv.

**Advocate for Pet/Ap. :** Mr.AR.L.Sundaresan; Mr.A.V.Somasundaram; M/s.Lakshmipriya Associates; M/s.Kurien Associates; Mr.V.Balasubramanian; Mr.A.Raghunathan; Mr.M.Kempraj; Mr.S.Subbulakshmi; Advs.

**Judgement :**

1. The final report was filed by the Inspector of Police-CBI, Chennai, totally against 15 accused for offences under Sections 120-B r/w 420 IPC and 13(2) r/w 13(1)(d) of the Prevention of the Corruption Act.

2. The Accused 1 to 14 filed petitions before the trial Court seeking discharge, but the petitions were dismissed. Aggrieved by the said order, the petitioners have preferred the above criminal revision petitions before this Court.

3. It is brought to the notice of this Court now that P.C.Shaw(A.1) and BMN.Rao (A.10) have died.

4. The case of the prosecution in brief is that crude oil produced by ONGC at Ravva 10 and 17 Offshore platforms were required to be transported from Surasanyanam to H.P.C.L refinery at Vizag. Since the oil coordination committee recommended for the transport of crude oil by sea route to avoid pollution and road congestion, ONGC invited open tenders to transport the crude oil by sea route. For this tender, a minimum experience of two years of sea transportation of petroleum products was fixed. The fifteenth accused Victoria Marine Base Limited company was one among the companies responded the said tenders. But, it was not having required minimum experience of two years. Accused 11 to 14 represented M/s. Victoria Marine Base Ltd.,. Pending the said tender process, the first accused-General Manager of ONGC, second accused-General Manager (Finance and Administration) ONGC, third accused General Manager (Maintenance) ONGC, 10th accused -Group General Manager, ONGC recommended and awarded a short term contract for sea transportation of crude oil to 15th accused VMBL company without following any tender procedure or consolidating other prospective bidder in the open tender. The fourth accused, V.K.Ahuja, Regional Director ONGC approved the recommendation of the tender committee to award the contract. A.1 to A.4 and A.10 also allowed 0.68% transportation loss to the VMBL company against the standard transportation loss of 0.3%. The detailed work order dated 05.02.1994, issued by the company was faxed to the 15th accused but it was replaced by letter of indent antedated 05.02.1994. The 15th accused company did not commence the transportation work within 20 days from 05.02.1994 as condition stipulated in the letter of indent and the delay was condoned and the time was extended.

5. Due to inexperience of the accused company in operating Barge in uncharted river and due to overloading of Barge, the vessel which was going on the river carrying crude oil ran aground. The ministry of petroleum and natural gas directed ONGC to transship and evacuate the crude oil to avoid pollution with the assistance of Coast Guard at the expense of ONGC contractors. The salvage work was handed over to 'M/s.Essar shipping company'. Post dated cheques for

Rs.12 lakhs instead of bank guarantee was obtained from VMBL company towards its responsibility for payment towards Salvage operation. A stop payment of post dated cheque of Rs.12 lakhs was given and ONGC had to pay Rs.3,29,00,000/- to the Coast Guard to evacuate crude oil from the grounded barge of VMBL. ONGC had to pay Rs.11 lakhs to ESSAR for salvage of grounded Barge. By the act of the accused, ONGC incurred wrongful loss.

6. All the learned Senior counsel and other counsel appearing for the petitioners made their submissions and Mr.N.Chandrasekaran, learned Special Public Prosecutor for CBI Cases was also heard.

7. The arguments on behalf of the petitioners/accused are summarised hereunder:

Even taking the prosecution case as it is and accepting the documents submitted along with the final report, absolutely there is no material to show that the accused with a criminal intention acted in any manner to cheat anyone or conspired together for any pecuniary advantage of the 15th accused. No pecuniary loss was caused to the ONGC by any criminal intention of the accused. There was no malpractice in awarding the contract to the company for transporting the crude oil by sea route and it was only under the compulsory situation which necessitated awarding of short term contract to the accused company. There is no prima facie material to show any dishonest intention on the part of the accused Officers in awarding the contract. Only in urgent situation, the accused- Officers acted with a bona fide intention. Only because the vessel had grounded, the situation had become worse, otherwise everything would have been normal and there would not have been any possibility of saying any pecuniary gain or loss to anyone.

8. It was further submitted on behalf of the petitioners that there are three stages in this case: (i) before awarding contract (ii) the execution of the contract (iii) Salvage operation after the mishap, i.e., vessel grounding. All the accused before the court are not parties to the awarding of short term contract. It is only A.1 to A.4 and A.10 are concerned with the awarding contract to accused company A.15. Already 400 TPD crude oil was transported by road tanker and HPCL did not agree to transport more by road and as plan was worked out to produce oil 600 TPD to 700 TPD, there was urgent necessity for transportation of oil by sea route.

A decision was also taken by task force committee. Only in emergency situation, the short term contract decision was taken to similar contract being for HPCL. As the HPCL declined, the contract was awarded to another company. There is no procedural illegality and the steps were taken only on public interest and certainly not against any public interest. The steps were taken as an immediate measure to examine the possibility of transport by sea route.

9. It was submitted on behalf of A.5, that he had nothing to do with the awarding of contract and at latter stage he only condoned the delay in commencing the operation. The contract was 45 days, and the operation to be completed within 45 days. Further he received post dated cheques instead of bank guarantees after mishap. It was only an interim arrangement and subsequently the bank guarantee also had been given by the 15th accused company. The 5th accused cannot be brought under conspiracy charge and he cannot be found fault for awarding the contract. It was submitted on behalf of the sixth accused that he being the General Manager, he was appointed only for salvage operation after the vessel had grounded. He was only on the technical side and he had nothing to do with the awarding short term contract to the company and he cannot be brought under the conspiracy charge.

10. On behalf of the 7th and 8th accused, it was submitted that they were only Manager (Materials) and Deputy Manager (Materials) respectively and they had no role to play with the award of the contract. They came into picture only long after the award of the contract. It was submitted on behalf of the 9th accused that he had nothing to do with the award of the short term contract and he came into picture only at the stage of salvage operation.

11. It was submitted on behalf of A.11 to A.14 Directors of the "Victory Marine Base Limited Company, that company had no role in the decision taken by ONGC for transporting the crude oil by sea route and the decision of the awarding short term contract was also the decision of the ONGC. It was only the committee which decided the short term contract. Only when the company was called through letter, the company accepted the contract. The contract is also given only with the consent of HPCL. The company did not have any special advantage and only

normal rate was fixed for transportation and it is not the case of the prosecution that any abnormal charge was fixed. Though the transportation loss was fixed as 0.3%, as against the permitted transportation loss of 0.68% allowed to transport contractors. VMBL company conveyed their acceptance to the assignment and requested to allow it at 0.68% to road transport contractors and only the committee of officers took into consideration various factors, the letters from VMBL and HPCL recommending the transportation loss to be limited to 0.68%. After the ship had grounded, only as interim measure the post dated cheque was given and subsequently bank guarantee had been furnished. The happenings following the incident of vessel grounding should not be taken into consideration to draw an inference for criminal intention. It is also submitted that A.13 and A.14 were female members and A.12 was not the Director during the relevant period. It is further submitted that the loss was covered by the Insurance Company and the payment also has been made to the ONGC.

12. The learned counsel for the petitioners relied on the decision reported in AIR 1996 SC 3390 = 1996 SCC (Cri.) 1025 (C.Chenga Reddy and others v. State of Andhra Pradesh) and 2002(1) SCC(Cri.) 310 (Dilawar Balu Kurane vs. State of Maharashtra).

13. In addition, it is brought to the notice of this court that originally the sanction authority refused to grant sanction to prosecute against the public servants and subsequently by persuading the authority sanction was obtained. According to the learned counsel for the petitioners, the sanctioning authority had declined to grant sanction by well considered reasons, but subsequently the authority was made to grant sanction even without any additional materials. The sanctioning authority on earlier occasion having rejected to accord sanction on applying his mind, had granted sanction on pressure without any application of mind and as such sanction order suffers from infirmity and it is invalid.

14. Per contra, the learned Special Public Prosecutor for CBI Cases, submitted that in order to show undue favour to ineligible A.15 company and to make experience in sea route transport of crude oil so as to make it eligible for long term contract under process for the transport of crude oil, the accused public servants

A.1 to A.4 and A.10 by violating the tender procedure awarded the short term contract to 15th accused while the long term contract were under process. There was no urgency for floating short term tender and A.15 company also did not commence the transportation process within 15 days and it was delayed for three months and the delay also was subsequently condoned. The permitted standard corporation loss in sea route transport for open tender was only 0.3%. But in the short term contract, 0.68% was allowed in order to show undue favour to A.15 company. The statement of LW-1, C.Pradeep Kumar shows the details of work order was substituted with one page letter of indent to show favour to A.1 to A.3. The ship being overloaded and as it was not following the safety norms ran aground with the danger of crude oil spilling over the river polluting the environment. Further the officials of ONGC helped A.15 company, arranged to pull the grounded barge at the expense of ONGC and engaged M/s. ESSAR ship company to pull out the grounded barge. Though 10 post dated cheques were taken from A.15 company, after the work was offered, A.15 company instructed not to honour the post dated cheques. Ultimately ONGC had to pay about Rs.2.39 Crores to Coast Guard and ESSAR shipping company, and thereby, loss was caused to ONGC. The learned Special Public Prosecutor further added that the settlement of insurance claim will not absolve A.15 company from the wrongful gain it made from the non-payment of its due to ONGC.

15. The learned Special Public Prosecutor further submitted that the combined reading of the statement of witnesses and the documents filed along with the final report make out a prima facie case against all the accused and the trial court also dismissed the petitions of the accused seeking discharge after elaborately considering all the materials and the order of the trial court is sustainable. Learned Special Public Prosecutor also relied on the decision of the Honourable Supreme Court in 1996 SCC (Cri.) 820 (State of Maharashtra and others vs. Som Nath Thapa and Others) and 2007(1) SCC -1 (Parkash Singh Badal and Another vs. State of Punjab and Others).

16. This Court considered the submissions and perused the records. From the statement of witnesses, in brief, it appears that a proposal was initiated for a long term contract for transporting crude oil from one port to another and task force was

constituted consisting some of the accused. The task force decided and recommended that the contractor should have three years experience and the collaborator should have two years experience in marine transportation of crude oil and petroleum products and should furnish documentary evidence and under evaporation, handling loss from 0.3% to 0.5% can be allowed and the contractor should have arranged comprehensive blanket cargo insurance on behalf of ONGC. Seven companies submitted their offers and the tender committee accepted. While the long term contract was in process M/s.Victory Marine Base Ltd., was offered for short term contract which in turn expressed willingness and approval was sought to carry out job by M/s.Victory Marine Base Limited at ONGC cost and ONGC to reimburse Rs.345/- per Metric Ton to HPCL for the quantity transported and to allow the ONGC to allow contractors. After the proposal was approved, a task force made representation that M/s.Victory Marine Base Limited., was having a valid contract with HPCL and they could be paid Rs.345/- per metric ton . Letter of indent was issued for the above process. VMBL was asked to mobilise the resources within 20 days, but there was a delay in arranging a barge and there was a request for condoning the delay and the delay was condoned. Subsequently, barge while transporting oil ran aground on 12.05.1994. Immediate steps were taken for transferring the oil cargo from the grounded barge and the coast guard organised the transport and ONGC rendered all the assistance. On the request of ONGC salvage operation was carried out by M/s.Essar Shipping. The work order was placed on M/s.Essar Shipping for the salvation operation. Salvation operation was also carried out by M/s.Essar. VMBL undertook to pay the expenses of M/s.Essar for salvaging the vessel and issued cheque for Rs.12 lakhs for the salvage operation, but the cheque was not honoured by the bank.

17. Based on the admitted facts and materials, both the prosecution and the defence have advanced their arguments. The question that arises among both parties, "To Do" or "Not To Do". In support of "Not To Do", the points relied on by the prosecution are:

(i) While ONGC wanted to enter into a long term contract for the transportation of crude oil from one port to another short term contract was arranged.

- (ii) M/s.Victory Marine Base Limited was not a qualified transporter as they had entered into agreement with HPCL for road transport only.
- (iii) The rate quoted was high in order.
- (iv) The average loss of percentage of account of evaporation was originally fixed as 0.3% subsequently given as 0.68%.
- (v) The work order for short term and letter of indent were issued on one and the same day.
- (vi) The Ministry wanted the cargo to be transported but without Ministry's permission, ONGC asked M/s.Essar Shipping to take the salvage operation.
- (vii) M/s.VMBL unauthorisedly stopped payment.
- (viii) ONGC had incurred loss of Rs.3 crores by way of handling charges. In support of "To Do", the points raised by the defence are as follows:
  - (i) Necessity for transportation of crude oil through sea route:
    - (a) Production of crude started in the Krishna Godawari Basin from March, 3rd 1993. Initially production was only 300 metric tones only. Later it was likely to go up to 600 metric tones per day.
    - (b) HPCL complained that production was more than 400 tonnes and refused to receive and store more than 400 tones.
    - (c) Movement by road was threat to safety. The barge movement on turnkey was taken up for the first time. Representation was sent by HPCL by Ministry of Petroleum with the request for ONGC that set up Barge movement. Ministry of petroleum and natural gas gave direction to ONGC to develop the facility of barge movement.
  - (ii) Short term contract: Finalisation of the parties on the basis of tenders already invited would take time and meanwhile there were practical compulsion for movement of oil by resorting to short term measures.

(iii) Long term contract had separate terms and conditions and did not have any relevancy to the short term contract on turnkey basis and Insurance cover was taken.

(a) The awarding job work of VMBL was based on BSU guidelines. (b) VMBL was doing work for HPCL.

(iv) Recommendations were given by the committee consisting of General Manager (Finance), General Manager (Management) and General Manager (Operations).

(a) Transport loss was fixed as 0.3% for sea transport and 0.68% allowed for road transport. HPCL stated evaporation loss increased to 0.1% and another handling evaporation loss would be totally 0.7% for total evaporation loss.

(b) VMBL conveyed their assignment of transportation they requested to allow it at 0.68% to road transport contractors as against the 0.3% offered by ONGC. On taking into consideration the deliberations which the representatives of ONGC had with HPCL, the transportation loss limit was fixed to 0.68%.

(v) Why M/s.Essar Shipping was engaged for salvage operation of the grounded ship:

(a) The Ministry of defence conveyed necessity to take immediate steps to evacuate the crude oil from the grounded vessel to prevent pollution.

(b) While the transshipment was entrusted to Coast Guard, M/s.Essar Shipping was engaged to execute the job and VMBL gave an undertaking to guarantee payment.

(c) The work order was placed on M/s.Essar Shipping by ONGC that the understanding VMBL will reimburse expenses, but M/s.Essar Shipping could not succeed in its attempt. Subsequent to the filing of the case, the Insurance Company had reimbursed to ONGC.

18. The point for determination is only whether the accused have acted with any mala fide intention and whether there is any prima facie material to show that the

accused have acted only with mala fide intention. Obviously, this Court feels that there is no prima facie material to show either officers of ONGC responsible for awarding the short term contract to VMBL, or the officers who were responsible in salvage operation had mala fide intention. Had the vessels successfully moved the oil and reached the destination, everything would have been gone right and no question would have been asked. It is the misfortune that the vessel of VMBL was grounded. Of course, it cannot be said that it was only due to the 'Act of God', but was only due to the act of the company which had no experience and due to overloading. Still it is not possible to say that there was any bad intention on the part of the accused. The grounding of the vessel was not due to criminal act of the accused. Even if the loss was caused in this case to ONGC, it is not possible to say that the loss was due to the criminal act of the accused. The error of judgment in giving work to VMBL resulted in loss. At the time of awarding contract to VMBL, the officers would not have imagined that the barge would run aground. Even if the officers have not followed the rules and regulations and overacted, the facts available in this case do not justify charging with criminal conspiracy against the accused. Though it is contended by the defence that at present, there is no loss to the ONGC without considering the said fact, it is impossible to say that the loss had arisen in this case only due to the criminal act of the ONGC officers. The loss is not the criteria for deciding the culpable mental state of the accused.

19. It is not the case where direct malpractice being done and the public servants indulging in the corruption activities. Even on facts of the case, the ingredients of the offence under Section 420 IPC are not made out, since no one had made false representation to ONGC with the intention to cause loss to ONGC. The final report filed by the CBI also do not indicate anyone of the accused as particularly liable under Section 420 IPC. The final report shows only common charge against all the accused that they are liable under Section 120-B r/w 420 IPC.

20. It is surprising to this Court as to how some of the officers who were not party to the act of awarding short term contract to the 15th accused could be made as party to the conspiracy of cheating. There is no material to show that the officers of the ONGC abused their official position intentionally to cause pecuniary advantage to A.15 company or to cause pecuniary loss to ONGC.

21. The learned Special Public Prosecutor relied on the decision of the Honourable Supreme Court reported in 2007-1 SCC 1 (Parkash Singh Badal and another vs. State of Punjab and Others) wherein it has been held as follows: "44. Mere non-description of the offences in detail is really not material. At the stage of framing charge it can be urged that no offence is made out.

45. With reference to the absence of allegations under Sections 8 and 9 of the Act, it is submitted whether the charge-sheet has reference to any particular material referred to in it and the relevance of it is to be considered at the time when the charges is framed. It would not be desirable to analyse minutely the materials as at that stage the court is primarily concerned with the question as to whether charge is to be framed in respect of any offence and whether prima facie there appears existence of any material and not the sufficiency of the materials....."

The learned Special Public Prosecutor also relied on the decision of the Honourable Supreme Court reported in 1996 SCC (Cri.) 820 (State of Maharashtra vs. Som Nath Thapa and others) wherein it has been held as follows: "32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

22. Though it is contended by the learned Special Public Prosecutor placing reliance on the above decisions that at the time of framing charge, a court cannot weigh by conducting a roving enquiry, in this case, this Court is not making any roving enquiry, but only making an attempt to collect the materials which prima facie show that the accused have acted with the criminal intention, but unable to get any such material, except the irregularities being committed by the officers. Public servants must be curtailed from committing irregularities and action must be taken against them while such irregularities do result in loss, but at the same time, they cannot be fastened with any criminal liability in the absence of any such

material.

23. It is observed by the Honourable Supreme Court in the decision reported in 1996 SCC (Cri.) 1205 (C.Chenga Reddy and others v. State of Andhra Pradesh) as follows:

"That because of the actions of the appellants in breach of codal provisions, instructions and procedural safeguards, the State may have suffered financially, particularly by allotment of work on nomination basis without inviting tenders, but those acts of omission and commission by themselves do not establish the commission of criminal offences alleged against them."

24. In the decision of the Honourable Supreme Court reported in 2002(1) SCC (Cri.) 310 (Dilawar Balu Kurane vs. State of Maharashtra), it is held as follows:

"12.Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. (see 1979 SCC (Cri) 609 - Union of India vs. Prafulla Kumar Samal)" - (emphasis added)

25. In the decision reported in 1977 SCC (Cri.) 404 (State of Karnataka vs. L.Muniswamy and Others), it has been held as follows:

"10. On the other hand, the decisions cited by learned counsel for the respondents in *Vadilal Panchal v. D.D.Ghadigaoinkar* (AIR 1960 SC 1113) and *Century Spinning and Manufacturing Co. v. State of Maharashtra* (AIR 1972 SC 545) show that it is wrong to say that at the stage of framing charges the court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. As observed in the latter case, the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial. In *Vadi Panchal's* case, Section 203 of the old Code was under consideration, which provided that the Magistrate could dismiss a complaint if after considering certain matters mentioned in the section there was in his judgment no sufficient ground for proceeding with the case. To an extent Section 327 of the new Code contains an analogous power which is conferred on the Sessions Court. It was held by this Court, while considering the true scope of Section 203 of the old Code that the Magistrate was not bound to accept the result of an enquiry or investigation and that he must apply his judicial mind to the material on which he had to form his judgment. These decisions show that for the purpose of determining whether there is sufficient ground for proceeding against an accused the court possess a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible."

26. Though the prosecution has made an attempt to throw suspicion on the part of the accused resting upon the irregularities and defaults committed by accused, as the materials which relied on by the prosecution are inadequate to frame any charge against the accused, the proceedings against all the accused in C.C.No.8 of 1999, on the file of the Principal Special Judge for CBI Cases are quashed.

27. All the Criminal Revision Cases are allowed.

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