(2015) 07 KL CK 0026

In the High Court Of Kerala

Case No : Bail Appl. No. 3900 of 2015

L. Adolphus APPELLANT

Vs

SP, ACB, CBI RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Emigration Act, 1983 — Section 24, 25
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2015) 07 KL CK 0026

Hon'ble Judges : K. Abraham Mathew, J.

Bench : Single Bench

Advocate : B. Raman Pillai, Senior Advocate, R. Anil, Sujesh Menon V.B., T. Anil Kumar, Manu Tom, Thomas Abraham, M. Vivek and A. Rajesh, Advocates, for the Appellant; P. Chandrasekhara Pillai, S.C., for the Respondent

Final Decision : Dismissed

Judgement

K. Abraham Mathew, J.—Petitioner is the 1st accused in R.C. No. 5(A)/2015 registered by the CBI Cochin Unit for the offences under Sections 120B and 420 of IPC and Section 13(2) r/w Section 13(1)(d) P.C. Act and Sections 24 and 25 of the Emigration Act. He is a Central Government Officer. Since 2010 he has been working as Protector of Emigrants (PoE). The 2nd accused is a company which has been registered under the Act to recruit employees for overseas jobs. The 3rd accused is its managing director.

2. In December 2014 about 1200 nurses were selected by the accused company for appointment to Kuwait Government service. Rule 22 of Emigration Rules provides that the company is entitled to collect only Rs. 19,500/- as its service charges from each selected candidate. But it demanded about Rs. 20 lakhs from each of the candidates. Some of them paid the full amount. In its account books the company showed that the amount collected from them was only Rs. 19,500/-. No receipt was given for the payment. Those candidates were made to

sign an affidavit on a 10 rupee stamp paper stating that the amount paid was only Rs. 19,500/-. With regard to those who could not pay the entire amount of Rs. 20 lakhs, no entry was made in the company''s official registers for the part payment made by them. The amounts paid them were entered in some private electronic records which were not prescribed under the Act or Rules. From each of these candidates the company took a signed blank cheque, and an affidavit stating that they took the deficit amount as a loan from the company and they were liable to repay it. The amount illegally collected by the company was sent to foreign countries through ''hawala'' channel. The petitioner was fully aware of the illegalities and irregularities committed by the accused company and other companies. He did not take any action against any of them though he had received complaints from several persons. He even destroyed some complaints received by him. In some cases he forwarded the complaints to the accused company asking it to settle the matter. The illegalities and irregularities committed by the accused company were pursuant to the conspiracy entered into by it and the petitioner. There was quid pro quo. The petitioner abused the official position with intent to help the companies which committed the illegalities. These are the allegations against the petitioner.

3. The petitioner was arrested and produced before the court concerned on 16.6.2015 and since then he has been in custody.

4. The Protector of Emigrants has a statutory duty to protect and aid with his advice intending emigrants and emigrants and to ensure that the provisions of the statutes are complied with by the agents. The allegation against the petitioner is that he ignored the complaint against various companies especially the 2nd accused company that they committed illegalities and irregularities and exploited the candidates selected for overseas employment. He did not take any action though he knew about the illegal activities of the recruitment agencies. According to the prosecution there was a conspiracy between the petitioner and the other accused to collect huge amounts from the candidates. There was quid pro quo.

5. The petitioner received several complaints from different persons about the illegal collection of money and other demands by the accused company and other companies. He did not take any action against any of the errant agents. He used to send copies of the complaints to the accused company with a request to settle the matter amicably. He was fully aware that crores and crores of rupees was being collected by the accused company and it was unaccounted money in the hands of the company. Still he did not think it proper to inform the police or other authorities about the economic offences and cheating which affected even national interests. It appears that once in a while he sent reports to the Protector General of Emigrants that there were allegations of some agents demanding exorbitant amount from the selected candidates. It is an admitted fact that the petitioner received a complaint from one Reshmi alleging that the accused company demanded about Rs. 20 lakhs from her and withheld her passport and

certificates. The petitioner sent a copy of the compliant to the accused company. He sent a report to the Protector of Emigrants only after the registration of this case. Even in this report he conveniently ignored the grave allegations against the company and gave prominence to the subsidiary matters like failure to return the certificates of the complainant. A perusal of the case diary also indicates that even a complaint forwarded by the Collector of a District was ignored by him.

6. It is also seen that he did not like candidates making complaints about the accused company. When a candidate made an oral complaint to him one ''tout'' interfered and asked him to withdraw the complaint. There is much weight in the submission of the learned counsel for the CBI that the petitioner dissuaded the candidates from making complaints against the accused company. Instead of taking any action against the recruiting agent he asked it to settle the disputes amicably. Some agencies which did not have licence to recruit candidates for employment abroad were doing so after giving advertisements in leading dailies. Still there was no action on his part.

7. What was the reason for the inaction on the part of the petitioner though he received serious complaints against the accused company and though he knew about the black money in the hands of the company. The evidence collected by the investigating officer indicates that the 3rd accused managing director of the company was sending the unaccounted money to a foreign country through ''hawala'' channel.

8. After the registration of the case the petitioner allegedly made attempts to influence the witnesses. The prosecution has a case that he did not co-operate with the investigation, which is not without basis.

9. The 3rd accused managing director of the company is absconding. It is not in dispute that he is abroad. There he allegedly threatens the nurses who have already gone abroad to pay the balance amount they had undertaken to pay.

10. The facts and circumstances mentioned above indicate that the inaction on the part of the petitioner and his reluctance to exercise the powers conferred on him were intended to help the accused company to collect illegal money from the selected candidates. This suggests that the prosecution case that there was conspiracy between the petitioner and the 2nd accused company is probable. The investigating officer has also collected evidence to prove the quid pro quo alleged by the prosecution.

11. It is true that the petitioner has been in custody since 16.6.15. He is an influential person. The 3rd accused managing director of the company is absconding. If the petitioner is granted bail at this stage there is every likelihood of his intimidating or influencing the witnesses or even destroying the evidence. It is also necessary to probe into the international ramifications and the assets of the petitioner, which in the nature of the case will take considerable time. So I am not inclined to grant him bail.

In the result, this application is dismissed.