(2005) 02 MAD CK 0118

In the Madras High Court

Case No : Criminal Original Petition No. 35023 of 2004

Mrs. S. Pareemalam APPELLANT

Vs

The Central Bureau of Investigation RESPONDENT

Date of Decision : 15-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2006) 130 CompCas 282

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : C.N. Niranjan, for the Appellant; N. Chandrasekaran, Special Public Prosecutor for C.B.I., for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The petitioner has filed the petition to direct the respondent to register a case on the basis of the complaint dated

21.06.2004 and to investigate and file a final report.

2. The case of the petitioner is that the petitioner is engaged in the business of export and import and is carrying on the business in the name and

style of Verismo Impex; that the petitioner is the Proprietrix of Verismo Impex; that the Letter of Credit is a document of the issuing bank and the

same is issued for effecting guaranteed payments to the exporter (Supplier) on behalf of the importer (purchaser); that therefore when Letter of

Credit is opened, it is presumed that the bank has done with due diligence as to the applicant of the Letter of Credit and also as to the genuineness

and the veracity of the receiver of the goods; that in the present case, the Supreme Impex is the applicant of the Letter of Credit and they had

requested Indian Overseas Bank, Singapore to open a Letter of Credit and that the goods are to be sent to M/s Upkar Corporation at Malaysia;

that accordingly, Indian Overseas Bank, Singapore had issued a letter of Credit and under the said Letter of Credit, M/s. Aishwarya & Company

as a beneficiary were to send goods to M/s. Upkar Corporation at Malaysia; that the petitioner submits that she had got the Letter of Credit

transferred in her name from M/s. Aishwarya & Company only for the reason that the said Letter of Credit was issued by Indian Overseas Bank,

Singapore and further believed that Indian Overseas Bank, Singapore would have done the same with due diligence as to the existence of M/s.

Upkar Corporation in Malaysia in the address mentioned in the Letter of Credit; that the petitioner submits that believing M/s. Upkar Corporation

existed in Malaysia at the address mentioned in the Letter of Credit, the petitioner had sent the shipment to Malaysia under the Letter of Credit but

to the petitioner''s shock she had found that M/s. Upkar Corporation never existed in the said address; that the petitioner submits that only after

filing the case in the subordinate court in Singapore, it has come to her knowledge that even before opening the Letter of Credit Supreme Impex

and Aishwarya & company had entered into an agreement as not to negotiate the said Letter of Credit and the same could be negotiated unless the

full fund are first remitted by way of telegraphic transfer to Supreme Impex account; that Indian Overseas Bank, Singapore as part of conspiracy

had aided and abetted the crime by opening a Letter of Credit knowing very well that M/s. Upkar Corporation never existed in Malaysia on the

date of opening the Letter of Credit and this had been done deliberately to aid Supreme Impex in opening a Letter of Credit which never intended

to do business.

3. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor for CBI as well.

4. During arguments, learned counsel for the petitioner would submit that on 10.11.2001 one Mrs. Minu Mathew, Proprietrix of M/s. Aishwarya

& Company along with her husband represented to the petitioner that they had received a Letter of Credit from Supreme Impex, Singapore and

that the said Letter of Credit was valid and genuine and offered to transfer the same to the petitioner; that believing the words of the said Minu

Mathew and her husband, the petitioner on 12.11.2001 had entered into MOU with them to transfer the said Letter of Credit in the name of the

petitioner''s firm; that under the said MOU, the petitioner was to pay 7% of the value of Letter of Credit to Aishwarya and Company for the said

transfer and accordingly, the petitioner had paid Rs.4,00,000/- to Mr. Alex Mathew of M/s. Aishwarya & Company; that after making the

payments to M/s. Aishwarya & Company, the Letter of Credit was transferred to the name of the petitioner''s firm; that subsequent to the transfer

of Letter of Credit, the petitioner had approached the Indian Overseas Bank, Thiruvanmiyur for packing credit to the tune of Rs.50,00,000; that

one Mrs. Shantha Ramakrishnan stood as guarantor and she has also given her property as collateral security; that the property was valued at that

point of time by Indian Overseas Bank at Rs.1,25,00,000/-.

5. The learned counsel for the petitioner would further submit that on 18.1.2001 the inspection team of the purchaser came to Chennai and after

inspecting the goods they were satisfied about the same and confirmed that they would give the inspection certificate directly to the purchaser''s

bank at Singapore and that upon their confirmation and as per the Letter of Credit, the petitioner had made the shipment as detailed and sought for

in the Letter of Credit.; that when the shipment reached Malaysia to her shock and surprise, she found that M/s Upkar Corporation did not clear

the goods and that upon the petitioner''s enquiry at Malaysia it was found that M/s Upkar Corporation was closed on 23.11.1998 and there was

another company by name Asona Enterprises functioning from 10.12.1980; that since the shipment was not cleared at Malaysia and since the

Letter of Credit was not honoured, the petitioner went to Singapore and filed a case against M/s Supreme Impex; that after filing the case, the

petitioner came to know about the larger conspiracy involved between Supreme Impex, Aishwarya & Company and Indian Overseas Bank,

Singapore; that since the Letter of Credit was not honoured by Indian Overseas Bank, Singapore, the petitioner is liable to pay her banker viz.

Indian Overseas Bank, Thiruvanmiyur; that it has come to the knowledge of the petitioner that M/s Supreme Impex is in the business of opening

the Letter of Credit in collusion with Indian overseas Bank only for the purpose of receiving commission; that the respondent agency alone is

capable of investigating the present case since the conspiracy and the act of issuing Letter of Credit was at Singapore and further Supreme Impex

agency is based at Singapore; that on 21.6.2004 she had preferred a complaint before the respondent for which the acknowledgment was given

on 7.10.2004 and that as of today even the FIR is not filed. On such arguments, the learned counsel would seek to the relief extracted supra.

6. On the contrary, on the part of the learned Special Public Prosecutor, CBI would submit that the complaint dated 21.6.2004 from the petitioner

was received at CBI, ACB on 7.10.2004 and ordered for verification. It is revealed from the enquiries that the subject Letter of Credit was

opened at IOB, Singapore on 8.11.2001 for the applicant M/s Supreme Impex, Singapore favouring M/s Aishwarya and company, Chennai; that

thereafter the L/c was transferred by M/s Aishwarya and Company ,Chennai to M/s Verismo Impex, Chennai on 20.11.2001; that the fact of this

transfer was not communicated to IOB, Singapore by the complainant; that thereafter the goods were exported by M/s Verismo Impex, Chennai

on M/s. Upkar Corporation, Malaysia, but after the documents reaching IOB, Singapore the same was not honoured, since the L/C conditions

were not complied with; that the same was rejected and intimated to IOB, Thiruvanmiyur; that the complainant wanted the IOB, Thiruvanmiyur to

transfer all the documents from IOB, Singapore to MAYBANK, MALAYSIA and favouring MIDSYNC INDUSTRIES, MALAYSIA; that the

request of the complainant was accepted by IOB, Thiruvanmiyur, who informed the IOB, Singapore accordingly; that thereafter all the documents

pertaining to the subject L/C was sent to MAYBANK, Malaysia as desired by the complainant; that the complainant also filed a Civil case at

Subordinate Court, Singapore and she lost the battle; that the genuineness of the receiver of goods is also verified is erroneous; that the opening of

an L/c at the bank is purely at the instance of the account holder, the sender of the goods, who has to fulfil the norms and submit all documents

required by the Bank for opening the L/c; that the Bank does not verify the status of the receiver of the goods.

7. It is further contended by the Special Public Prosecutor, CBI that no claim was made by the IOB, Thiruvanmiyur for the subject L/c, as no

packing credit was given to the petitioner. However, one L/c of the Supreme Impex, opened at United Commercial Bank, Singapore for export of confectionary items was financed a packing credit of Rs.25 lakhs by IOB, Thiruvanmiyur. The goods were detained by the Directorate of

Enforcement, Chennai on 9.7.2002 and have not yet been released to the petitioner, as the enquiry u/s 37(3) of Foreign Exchange management

Act, 1999 read with Section 133 of the Income Tax Act, 1961 has been instituted against the petitioner. The claim of Rs.53,98,704/- made by the

IOB, Thiruvanmiyur Branch, Chennai against the petitioner for non-payment of the dues was also favourably ordered for recovery by the Debts

Recovery Tribunal, Chennai on 31.5.2004 and hence the complaint is preferred only to subvert the due process of law.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and

the learned Special Public Prosecutor for C.B.I., what this Court is able to assess, in the given facts and circumstances of the case, is that the

petitioner, having exhausted some of her avenues, would ultimately arrive at the conclusion to file the criminal complaint before the respondent as

per her complaint dated 21.6.2004 which had also been acknowledged by the respondent after an inordinate delay on 7.10.2004 which is not the

expected manner in which the prestigious and the prime investigative agency of the country to exhibit.

9. Secondly, on receipt of the complaint of such nature, without registering a case, the respondent is alleged to have conducted some enquiry.

Since this Court is able to find on the face of the complaint that a prima facie case is made out, and therefore, the respondent should have rightly

registered the case and taken up the same for investigation without either making any preliminary enquiry as it comes to be seen to have been made

as revealed in the arguments of the learned Special Public Prosecutor which is absolutely bereft of any authority or sanction of law since the basic

law being that whether it is the CBI or any other investigative agency for the matter, would gain the power of investigation and it could in fact

investigate into, only in a registered case and without registering the case, on merely conducting an enquiry, no pre-drawn conclusions could be

arrived at as it seems to have been done in the case in hand as a result of which this Court is pained to register that all such exercises alleged to

have been undertaken by the respondent, besides being declared as without the authority of law and the legal force, the findings alleged to have been arrived at by the respondent also cannot be approved. Therefore, it is only desirable on the part of the respondent to register the case,

investigate into and give a disposal to the complaint of the petitioner given in writing on 21.6.2004 as it should be the hallmark in any case within

the permissible limits of the criminal jurisprudence and the Code in particular.

10. Thirdly, a criminal complaint cannot be decided on the basis of any yardstick applied by a civil forum or an Administrative Tribunal since the

standard of proof differs from Forum to Forum and therefore the respondent is not supposed to be carried away or cite any of the decisions

arrived at by any other Forum in the case in hand whether initiated by the petitioner or the other party much less abroad and therefore based on

such decisions, even if they are taken to be true, no pre-drawn conclusions could be arrived at by the respondent.

11. An investigation in a criminal case is entirely on different basis and parameters and therefore without wasting so much time, the respondent

should have registered the case and investigated into in order to arrive at the truth and to punish those who have committed crimes in the name of

promoting or doing business which are widely prevalent in the present time. The respondent cannot, at this stage, without even registering a case,

arrive at any conclusion that the petitioner has neither been cheated nor put at loss to the extent brought forth in her complaint and therefore it is the

bounden duty of the respondent to register the case on the complaint of the petitioner dated 21.6.2004 and to investigate into and find out as to

who are all behind the conspiracy and acted with criminal intention to commit such crimes and in fact acted so, thus committing such white collar

crimes as it has been brought forth in the complaint by the petitioner and hence even at this belated stage, this Court is of the view that the

respondent is left with no choice but to register the case, investigate into and give a disposal to the complaint of the petitioner and hence the

following order:

In result,

(i) the above Criminal Original Petition stands allowed.

(ii) The respondent is directed to register the case based on the complaint of the petitioner dated 21.6.2004, investigate into and give a disposal to

the same in the manner known to law at the earliest.