



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2023
Delivered on : 19.01.2024

CORAM:

THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN

CrI.R.C.(MD)No.95 of 2023
and
CrI.O.P(MD).No.5760 of 2023
and
CrI.M.P(MD).Nos.1300, 5023 and 5024 of 2023

In CrI.R.C(MD).No.95 of 2023

G.Kamaraj

... Petitioner

Vs.

State Rep. by,
Inspector of Police,
Vigilance and Anti-Corruption Wing,
Thanjavur.

... Respondent

In CrI.O.P(MD).No.5760 of 2023

G.Karunakaran

... Petitioner

Vs.

1.State of Tamil Nadu,
Inspector of Police,



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Vigilance and Anti-Corruption,
Thanjavur.

2. Venkatesan,
The Inspector of Police,
Vigilance and Anti-Corruption,
Thanjavur.

... Respondents

Prayer in CrI.R.C(MD).No.95 of 2023 : This Criminal Revision has been filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records in Spl.S.C.No.17 of 2019 on the file of the learned Chief Judicial Magistrate Cum Special Judge, Thanjavur @ Kumbakonam and set aside the order passed in CrI.M.P.No.135 of 2021 dated 15.10.2022.

PRAYER in CrI.O.P(MD).No.5760 of 2023 : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records in Special Case No.18 of 2019 on the file of learned Chief Judicial Magistrate, Thanjavur at Kumbakonam and quash the charge sheet and consequential all further proceedings as against the petitioner.

In CrI.R.C(MD).No.95 of 2023:-

For Petitioner	: Mr.N.R.Elango Senior Counsel for Mr.A.S.Aswin Prasanna
For Respondent	: Mr.T.Senthil Kumar Additional Public Prosecutor



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In CrI.O.P(MD).No.5760 of 2023

For Petitioner : Mr.D.Shanmugaraja Sethupathi
For Respondents : Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON ORDER

CrI.O.P(MD).No.5760 of 2023 has been filed to quash the Special Case No.18 of 2019 on the file of the learned Chief Judicial Magistrate, Thanjavur at Kumbakonam.

2. CrI.R.C(MD).No.95 of 2023 has been filed to set aside the order passed in CrI.M.P.No.135 of 2021 dated 15.10.2022 passed by the learned Chief Judicial Magistrate Cum Special Judge, Thanjavur at Kumbakonam.

3. According to the prosecution Thanjavur Municipal water headworks is functioning at Kollidam River North Bank, Thirumanur in Ariyalur District for pumping and supplying drinking water to Thanjavur Municipal areas. In the said place there are 120 HP Motors erected for pumping water in the water headworks. One 400 KVA Kirloskar genset is provided there for operating the motors during



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the power interruption period. The maintenance of operating motors and Genset for pumping water was entrusted with the accused and all the accused conspired together and misappropriated the funds to the tune of Rs.76,476.90/- by preparing the forged vouchers, as if they purchased diesel and the same was utilized for running genset.

4. A3, who is the contractor along with A1 and A2, who are officials prepared the monthly abstracts in the diesel register, as if they purchased the diesel of 1680 litres and they submitted the bill and the bill was sanctioned, thereby they misappropriated a sum of Rs.80,670.45/-.

5. After registering the case, the respondent police conducted the investigation and filed the final report before the Sub-Court, namely, learned Chief Judicial Magistrate cum Special Judge, Thanjavur, Kumbakonam and the same was taken on file in Special Case No.17 of 2019. In the said case, the second accused, namely, Kamaraj, filed discharge petition in CrI.M.P.No.135 of 2021 and the same was dismissed by the trial Judge stating that the contention of the petitioner to appreciate the statement of witnesses is beyond the scope of the



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discharge petition and there is sufficient *prima facie* material against the accused/A2. Hence, dismissed the petition. Challenging the same, CrI.R.C(MD).No.95 of 2023 has been filed before this Court.

6. Mr.N.R.Elango, learned senior counsel appearing for the petitioner submitted that as per the statment of the witnesses and also the evidence, no offence is made out against the second accused and according to him, the petitioner was working only for 2 months and during that period A1 created the forged bills and A2 forwarded the said bill to the Chief Engineer. After approval from the Chief Engineer, the same was again forwarded to A2 and A2 has granted sanction to disburse the amount and on that basis, A3 obtained the amount by way of cheque.

7. In short, the prosecution case is that all the accused conspired together, and without running the genset (generator), they prepared the voucher as if they have purchased diesel and thereby, committed misappropriation of the said amount.



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8. The learned senior counsel further submitted that a list of witnesses have been examined and they have not disclosed any role played by the petitioner. He further submitted that no sufficient materials are available to frame the charges against the petitioner. He further submitted that after the bill was prepared, the same was forwarded and without verifying the vouchers, the amount was sanctioned and it is not the duty of the petitioner, whether the electricity supply got interrupted and the genset was operated. In the said circumstance, the learned Senior Counsel submitted that there was no *prima facie* case against this petitioner. Hence, he seeks to discharge the petitioner from the above said case.

9. The learned Additional Public Prosecutor appearing for the respondent police submitted that it is the duty of the petitioner to conduct the spot inspection and verify the bills. Without any verification of the bills, approval was granted to sanction the amount. After getting approval from the concerned Officer, A3 had obtained money by way of cheque. So the conspiracy between all the accused is clearly established from the above said circumstances and hence, there are enough materials available to support the involvement of the above said accused and therefore, the learned Judge dismissed the said petition. Hence, he



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prays for dismissal of the petition.

10. This Court has considered the rival submissions made by the both parties and also perused the documents filed along with the typed set of papers and also perused the entire documents filed on behalf of the prosecutor.

11. The specific case of the prosecution is that there is a manipulation of the bills, as if there was a power interruption and due to the power interruption, the generator was operated and the huge quantity of diesel was utilized for operating the generator.

12. The Investigating Officer collected number of materials to show that there was no power interruption on the alleged date of the forged bills. The Investigating Officer further collected the duty and responsibility of A2, to show that he is to make spot inspection and find out the usage of the diesel and then only, he must sanction the bill. Many number of witnesses have spoken about the failure on the part of the petitioner to make the spot visit, which resulted in misappropriation of the said amount. Therefore, this Court is not inclined to see



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the other bills, which was collected by the Investigating Officer. After considering the defense of the petitioners and as per the materials available on record, the learned trial Judge correctly dismissed the discharged petition.

13. After hearing both side counsels and also perused the materials available on record, this Court found that the learned trial Judge correctly dismissed the discharge petition and there is no merit in the contention of the learned Senior Counsel for the petitioner to allow these petitions.

14. The learned counsel for the petitioner in Crl.O.P(MD).No.5760 of 2023 submitted that according to the prosecution, four types of allegation have been levelled against this petitioner, first one is criminal conspiracy, second one is the act of forgery under Sections 468 and 471 of IPC, third one is entrusts of amount and finally the misappropriation of amount.

15. The entire materials filed along with the final report did not constitute any of the ingrediants of the above said offence. There is no evidence to prove the offence made against the petitioner and the remaining accused to cause loss to the



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Government.

16. The learned Senior Counsel appearing for the petitioner submitted that the petitioner signed the diesel register maintained in the pumbing station and other than that he has not played any role in the entire episode. He further submitted that the petitioner was deputed as incharge as Executive Engineer in the above said place for a period of two months only. He further submitted that the bill was prepared in the E-Section and the same was forwarded to the accused/Officer and he signed the bill and thereafter, the same was forwarded to the third accused. He further submitted that it is the duty of the higher officials to verify the working of generator and the quantity of the diesel and the petitioner has no responsibility as alleged by the prosecution. He further submitted that no documents are available to attract the offence made against the petitioner and he has also relied upon the following judgments:-

1. *Anilkumar bose vs. State of Bihar* reported in *1974 4 SCC 616*

2. *Akesh Kumar Mishra vs. State of Bihar and others* reported in *2006 (1) SCC 557*

3. *Mohammed Ibrahim & others vs. State of Bihar and another* reported



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17. The above said judgment is applicable only on the facts of the particular case. In this case, the allegation is not only mere dereliction of the duty and also the fabrication of false documents and misappropriation of the Government fund. Hence, the above said judgments are not applicable to the present case.

18. This Court has perused the materials produced by the Investigating Officer and also found that materials were available to frame the charges against the accused persons. Therefore, this Court is not inclined to accept the contention of the learned senior counsel appearing for the petitioner. Hence, these petitions are dismissed and the petitioners shall raise all the contentions before the trial Court at the time of trial and the learned trial judge to conduct the trial without considering the findings made in these petitions. Consequently, the connected Criminal Miscellaneous Petitions are closed.

19.01.2024

Index : Yes/No
Internet : Yes/No
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To:-

1. Inspector of Police,
Vigilance and Anti-Corruption,
Thanjavur.
2. Venkatesan,
The Inspector of Police,
Vigilance and Anti-Corruption,
Thanjavur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J

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ORDER MADE IN
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