

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Cr1.O.P.No.19091 of 2015 and M.P.No.1 of 2015

Raja

...Petitioner

Vs.

State Rep. By the Inspector of Police,
CBCID, Dharmapuri Unit now at Krishnagiri,
Krishnagiri District.
(Crime No.1/1997)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482
Cr.P.C. praying to call for the records in C.C.No.285 of 1998
pending on the file of the learned Judicial Magistrate,
Krishnagiri, and to quash the same.

For Petitioner : S.Suseeladevi
For Respondent : C.Iyyapparaj
Additional Public Prosecutor

ORDER

This petition is filed to call for the records in C.C.No.285
of 1998 pending on the file of the learned Judicial Magistrate,
Krishnagiri, and to quash the same.

2 The petitioner herein has been arrayed as 3rd accused in
CC.No.285 of 1998, on the file of the Judicial Magistrate,
Krishnagiri. In the same case the 2nd accused namely Nalliappan
is the partner/power of attorney of the firm M/s.Rajalakshmi
Enterprises, which is engaged in mining operation.

3 The case of the prosecution is that the said
Rajalakshmi Enterprises who are granted the mining lease had
trespassed in the Government Porambokku land, Hosur and
illegally mined granite thereby, causing monetary loss to the
Government. According to the prosecution, the Government records
have also been tampered for the purpose of illegally mining the
Government porambokku lands.

4 Today, when the matter was called, the learned counsel for the petitioner submitted that the petitioner/3rd accused was employed as the Manager at Rajalakshmi Enterprises to which the 2nd accused was the managing partner. Incidentally, the 2nd accused namely, Nalliappan had earlier filed a petition in CrI.O.P. No.29448 of 2010 and by an order dated 28.03.2012, this Court had quashed the proceedings in C.C.No.285 of 1998, pending against the 2nd accused. The relevant portion of the said order is extracted hereunder:

"23.The case of the prosecution is that the Government records have been tampered with to include an extent which was not leased out to the applicant and thereby the applicant has benefited.

24.The applicant is admittedly one Rajalakshmi Enterprises. The petitioner is the holder of power of attorney for the firm and had signed the lease agreement with the Collector only in that capacity and not in the capacity of the partner of the firm. Moreover, the application for lease too does not show the Firm as a partnership Firm or the petitioner as a partner. Even according to the prosecution, the applicant is a proprietary firm and one Subramanian is the proprietor and it is not the case of the prosecution that the petitioner is the partner of the firm and he is only the power of attorney holder. The solvency certificate was also given only by the Subramanian and not by the petitioner.

25.The lease agreement would also show Rajalakshmi Enterprises as the lease. Neither in the agreement nor in the G.O. the name of the proprietor nor the name of the partners are shown. The G.O. also reads as Tvl.Rajalakshmi Enterprises, Madras had applied for a lease and the same was granted. The G.O. is also bereft of the description whether the said Enterprises is a proprietary firm or partnership firm.

26.When the prosecution has treated the petitioner only as a power of attorney to sign the lease agreement, he cannot be treated as a partner and a beneficiary of tampering of records and the alleged trespass.

27. When there is no legal evidence against the petitioner, the court can very well interfere in quashing the proceedings as the contrary would amount to abuse of process of law.

28. It is also pertinent to note that the case is pending from 1998 without any progress. As stated in 2006 10 SCC 560 (Moti Lal Sarat vs State of J&K and another) cited supra, speedy trial is the fundamental right of a citizen. For no reason attributable to the petitioner, the case has been pending for the last 13 years.

29. Therefore, the principle laid down by the Apex Court in the decisions cited supra, is also applicable to the case on hand. The petitioner is no way responsible for the delay in the trial and having waited for so many years, he has approached this Court on the above said grounds, which are acceptable. When the petitioner is neither the beneficiary nor involved in the alleged tampering of records and encroachment on the government lands, the pendency of the proceedings is nothing but abuse of process of law and therefore, liable to be quashed.

30. In the result, the criminal original petition is allowed and the proceedings in C.C.No.285/1998 on the file of the learned Judicial Magistrate, Krishnagiri is quashed as far as this petitioner is concerned"

5 Since the petitioner/3rd accused was only employed as a Manager of the 2nd accused, he cannot be personally made liable for commission of any crime and the charge sheet also does not reveal that the petitioner/3rd accused personally involved himself in the crime. If at all any overtact can be attributed for illegal mining operation, it can only be on the 2nd accused and not on his employees.

6 It is also seen that the issue is pending from the year 1998 onwards without any progress. It is well settled law that the right to the speedy trial is guaranteed under Section 21 of the Constitution of India. When this Court had called for a report from the trial court as to the reasons for pendency, it was mentioned that most of the documents in the present case have been lost and the trial court has expressed its inability

to trace them.

7 In view of the long delay in concluding the proceedings thereby affecting the fundamental right to the speedy trial and also taking into the fact that most of the documents have been lost without which it will not be possible to come to a logical conclusion, I am of the view that the petitioner is entitled to succeed on this ground also.

8 In the result the criminal original petition stands allowed and the proceedings in C.C.No.285 of 1998 on the file of the Judicial Magistrate, Krishnagiri is quashed. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate, Krishnagiri.
2. The Inspector of Police,
CBCID, Dharmapuri Unit now at Krishnagiri,
Krishnagiri District.
3. The Additional Public Prosecutor,
High Court, Madras.

+1 Cc to Ms.S. Suseeladevi, Advocate sr 77831.

Cr1.O.P.No.19091 of 2015

SK(CO)
SP(22/11/2017)

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