

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.08.2017

PRONOUNCED ON : 22 .09.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.OP No.6809 of 2013
and
M.P.Nos.1 and 2 of 2013

1.P.Chandrasekaran
2.K.Manogaran

.. Petitioners

Vs

STATE BY:
The Inspector of Police,
C.C.I.W.
Chennai.

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records connected with the case in C.C.No.1142 of 2011 on the file of the Court of the learned Judicial Magistrate, Tambaram and quash the same.

For Petitioners :M/s.S.Sathia Chandran

For Respondent :Mr.B.Ramesh Babu,
Govt.Advocate(Crl.side)

ORDER

This Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the entire records connected with the case in C.C.No.1142 of 2011 on the file of the Court of the learned Judicial Magistrate, Tambaram and quash the same.

2. The case of the prosecution is that the petitioners are working in an employees of the Tiruvallikani Urban Co-operative Society (for short "TUCS"). On 18.03.2009, the Co-operative Sub Registrar under the control of Deputy Registrar (Non-Credit) conducted an enquiry under section 81 of the Tamil Nadu Co-operative Societies Act, 1983 into the affairs of the Tambaram TUCS Gas Godown. Only during the enquiry the petitioners and other staff of the Tambaram branch learnt that the Indian Oil Corporation (for short "IOC") while conducting a routine and random enquiry to verify the genuineness of the customers sent communication to the available address by registered post and while a few of such communication were returned for various reasons, presumed and concluded that

i) the LPG cylinders claimed to have been supplied to those customers for domestic purpose were actually not supplied and the cylinder were diverted for commercial purpose in open market and with regard to the same, IOC concluded that as many as and

ii) 3449 domestic cylinders were diverted by booking them in the name of 403 Non existing customers by the Tambaram TUCS branch during the period from April 2007 to June 2008 and accordingly, the IOC by its letter dated 19.12.2008 directed

iii) the Special Officer of TUCS Tambarram branch to pay a differential cost of Rs.29,33,887.65/- including penalty cost towards the diverted LPG cylinders.

3. During the enquiry conducted under Section 81 of Tamil Nadu Co-operative Societies Act, the enquiry officer arrived at the conclusion that all the staff of the Tambaram branch were indeed liable on the sole basis of a circular of the TUCS in RC.5377/961G dated 21.12.98 which states that for the deficiencies occurring in the branch, the staff are collectively liable. On the same, he recommended for surcharge proceeding against all the 19 staffs of the branch, by its report dated 25.09.2009. In the above said report of the enquiry officer, the first petitioner was fasten with liability for surcharge proceeding for Rs.1,34,790.15/- and the 2nd petitioner for Rs.53,222.10/-

4. Thereafter, on a complaint preferred by the Deputy Registrar (Non-Credit), Chennai an F.I.R in Crime No.1 of 2010 dated 13.08.2010 was registered by the respondent against all the staff of the Tambaram branch except one Lakshmanan, (who died in the meantime), under Sections 407,408 r/w 120(B) I.P.C on the same set of facts.

5. By the proceedings in RC.4081/91/SF-1 dated 12.01.2011, the Deputy Registrar (Non-Credit) passed a detailed and reasoned order dropping the surcharge proceedings under Section 87(1) of the Tamil Nadu Co-operative Societies act, 1983. Inspite of the above fact that the enquiry report under Section 81 was found completely baseless by the Deputy Registrar (Non-credit) in the surcharge proceedings.

6. The respondent after investigation have filed charge sheet dated 25.04.2011, as against the petitioner, the 2nd petitioner and one Damodharan (since deceased on 21.10.2012) under Sections 408,477(A) r/w.34 I.P.C the same was taken on file by the learned Judicial Magistrate Tambaram as C.C.No.1142 of 2011. Similarly, the remaining 15 staffs were also charge sheeted by the respondent-police and the same has been taken on file as C.C.No.1138 of 2011.

7. Based upon the above averments, the learned counsel for the petitioner has submitted that there is no iota of legally acceptable evidence against the petitioner herein and charges are vague and in respect of the enquiry report under Section 81 of the Tamil Nadu Registration of Co-operative Societies Act the surcharge proceedings have subsequently closed. The respondent-police proceeded to file a charge sheet for alleged offence under Sections 408 and 478 read with 120(B) of I.P.C cannot stand the legal scrutiny and they are liable for quashment for the proceedings against A1 and A2.

8. The learned Public Prosecutor relied upon the status report filed by the Inspector of Police, Chennai have submitted that based upon the enquiry report conducted under Section 81 of the Co-operative Societies Act

for the year 14,2007 to June 2008 in Triplicane Urban Co-operative Society (TUCS). It is found that there is a misappropriation done by the TUCS Society officials A1 to A18 and as per the report, these accused have supplied 3345 Nos of Gas cylinders to 382 customers on various accounts illegally and these totally 28,46,023.25/- including sum of Rs.2,000/- was lost the society and the tabular column showing alleged modus apprehended quantity and quality in terms of money are as under:-

S. N o.	Nature	No.of customers	No.of Delivered Cylinders	Amount (in Rs)
1.	Shifted the address and Transferred the Gas connection	5	21	17,741.85
2.	Not available customers at the given address	291	2543	21,48,435.55
3.	Customers who vacated from one area to other	60	567	4,79,029.95
4.	Customers without obtain connection and deceased	26	241	1,80,797.90
5.	FINE			20,000.00
	TOTAL	382	3345	28,46,023.25

9. After the investigation, the section was altered into 402 and 477(A) read with 34 I.P.C and the sum and substance charge sheet is as follows:-

S. No.	C.C.Nos	Name of the Accused	Misappropriated Amount (Rs.)
1.	1138/2011	1.Chandrasekaram 2.Elumalai 3.Mariappan 4.Sivasankaran	1,13,250.00

10. As against the first petitioner Chandrasekaran two cases namely C.C.No.1138 and C.C.No.1142 of 2011 is pending and as against the second petition C.C.No.1142 of 2011 is pending. After perusing the statement of various witnesses recorded by the Investigation Officer and documents collected by him and also the enquiry conducted by the Co-operative Department, this Court finds that there is a specific overt act contributed against these petitioners. As the petitioners are working as a Sales Assistant in TUCS and in such capacity, he had appears to have colluded with the other two accused and committed the alleged offence.

11. As against the second petitioner in C.C.No.114 of 2011 in conveyance with the gas delivery boys the second petitioner while going for supply of gas cylinders if the gas cylinders were not supplied to the customers as per stated address, they ought to have returned to it to the office. However, they have diverted the undelivered gas cylinders for subsidised price and made a personal income by diverting and sold in the commercial place, illegally and jointly cheated and committed the alleged offence. It appears from the Final Report filed by the respondent police that there are totally 22

witnesses and 23 materials have been placed before the trial Court and learned Public Prosecutor has submitted that the P.W.1 is already examined-in-chief and for further examination and marking of the documents, the case stands adjourned to next hearing and at this juncture, this Criminal Original Petition has been filed.

12. After going through the statement of witnesses and the materials evidence that has been placed before the Magistrate Court, I am of the considered view that prima facie there is sufficient materials are available to proceed against these accused and also the other accused has shown in the F.I.R in both the cases in C.C.No.1138 and C.C.No.1142 of 2011 and the modus operandi and the loss caused to the TUCS is also clearly mentioned in the Final Report as extracted above and I did not any abuse of process of criminal proceedings nor lacks materials evidence. Hence, I have no doubt in my mind, this is not a fit case for quashment of the criminal proceedings and it is only a delaying tactics to drag on the proceedings and I find no infirmity either in the investigation or in taking cognizance by the learned Judicial Magistrate, Tambaram, this Criminal Original Petition is devoid of merits and accordingly, this Criminal Original Petition is dismissed.

13. Considering the fact that the alleged occurrence is taken place in the year 2007 and matter is pending for more than 6 years before the trial Court and there shall be a direction to the Judicial Magistrate, Tambaram to

complete the enquiry within a period of three months from the date of receipt of a copy of this order and the Magistrate shall endeavour to possess the case on a day-to-day basis and complete the trial as stipulated as mentioned above.

14. With these observations, this Criminal Original Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

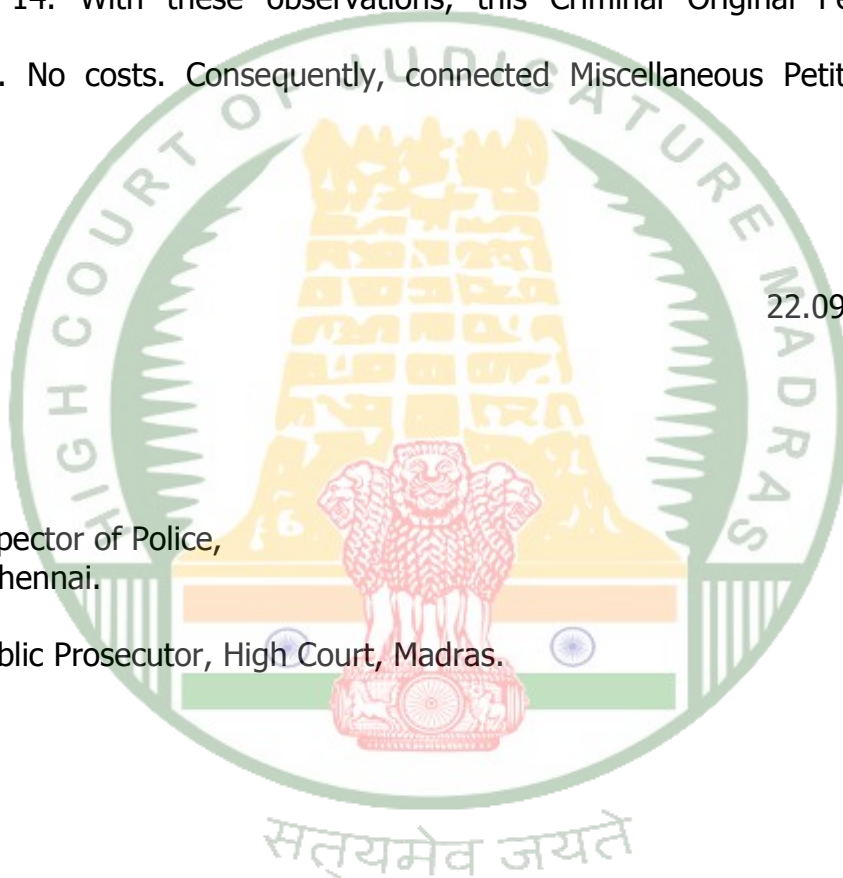
22.09.2017

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To

1.The Inspector of Police,
C.C.I.W.Chennai.

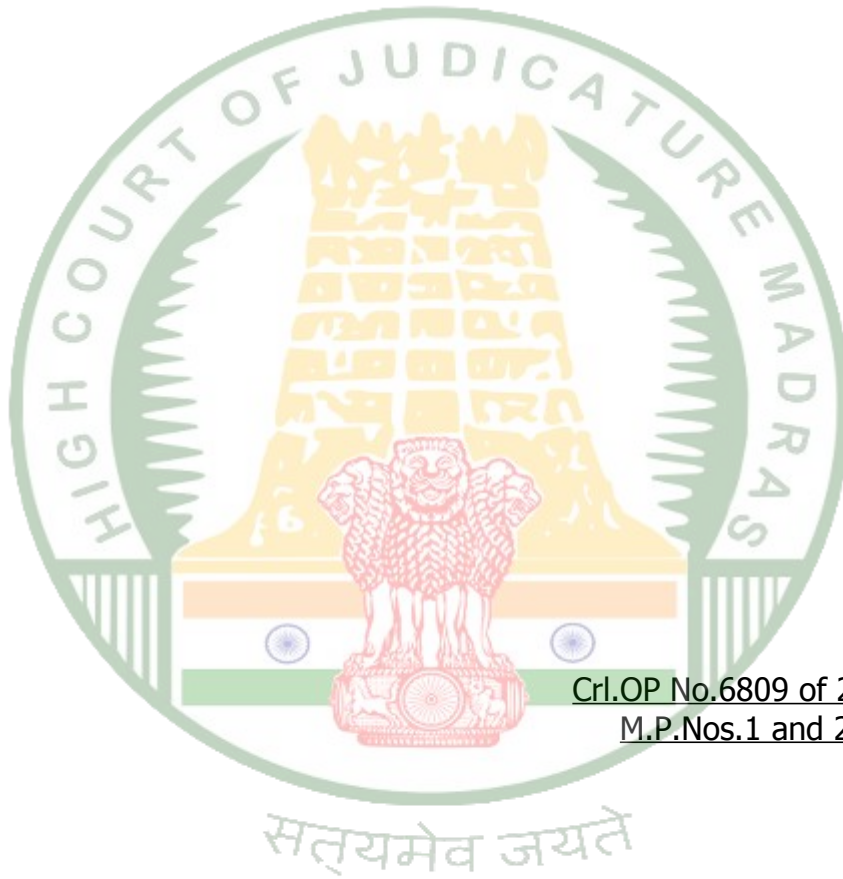
2. The Public Prosecutor, High Court, Madras.



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RMT.TEEKAA RAMAN,J.,

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