



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2017

CORAM:

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THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. (MD) Nos.2756 to 2758 of 2017
and
Crl.M.P. (MD) Nos.2098 to 2103 of 2017

M. Balasubramanian

Petitioner in all the Crl.O.Ps.

vs.

1 State represented by
the Inspector of Police
Civil Supply Crime Investigation
Department (Food Cell) Virudhunagar District
(Cr. No.04 of 2008)

2 Muniyasamy
Tahsildar
O/o the Tahsildar
Sattur Virudhunagar District

3 The Inspector of Police
Erukkankudi Police Station
Virudhunagar District
(Cr. No.04 of 2008)

Respondents in
Crl.O.P. (MD) No.2756/2017

1 State represented by
the Inspector of Police
Sattur Taluk Police Station
Virudhunagar District
(Cr. No.08 of 2008)

2 Madurai Veeran
Special Tahsildar
(Flying Squad)
District Collectorate
Virudhunagar District

Respondents in
Crl.O.P. (MD) No.2757/2017

1 State represented by
the Inspector of Police
Sattur Taluk Police Station
Virudhunagar District
(Cr. No.09 of 2008)



2 A.C. Shanmugam
Taluk Supply Officer
Sattur
Virudhunagar District

Respondents in
Crl.O.P. (MD) No.2758/2017

Criminal Original Petitions filed under Section 482, Cr.P.C. seeking to call for the records in C.C. No.129 of 2015, 164 of 2010 and 165 of 2010 respectively on the file of the Judicial Magistrate Court No.I, Virudhunagar and quash the charge sheets and the further consequential proceedings as against the petitioner.

For petitioner in Mr.T. Lenin Kumar
all the Crl.O.Ps.

For respondents Mr. K. Anbarasan
in all the Crl.O.Ps. Government Advocate (Crl.Side)

COMMON ORDER

Since the foundational facts for the commission of three distinct transactions enumerated in the three impugned charge sheets are the same, these three Criminal Original Petitions are clubbed together and decided by this common order.

2.1 The District Collector, Virudhunagar, received secret information that essential commodities that are intended for distribution through fair price shops are being lifted from the Tamil Nadu Civil Supplies Corporation (for brevity "TNCSC") godown, but, they are not reaching the intended fair price shops for distribution to public.

2.2 On the direction of the District Collector, Virudhunagar, a team of officials, led by the District Revenue Officer, conducted a surprise check in the TNCSC godown on 09.01.2008 and from the records available in the godown, took inventories of the various essential commodities that were shown on record to have been lifted from the TNCSC godown in lorry bearing Registration No.TN 47 B 5225 for effecting delivery to three fair price shops.

2.3 Armed with the records, the officers went to the fair price shops and found that the essential commodities that were lifted from the TNCSC godown had not reached their actual unloading point. Therefore, the allegation is that the accused had lifted stocks from the TNCSC godown, but, had not delivered the same to the respective fair price shops.

2.4 On the individual complaints given by the officers, three FIRs came to be registered, viz., Cr. No.4 of 2008, 8 of 2008 and



9 of 2008 and after completing the investigation, the police filed three final reports which are under challenge in these three quash applications by Balasubramanian (A6).

2.5 The details of the prosecutions and the relevant Criminal Original Petitions filed seeking quashment of the said prosecutions are tabulated hereunder:

S.No.	Cr. No.	C.C. No.before the Judicial Magistrate No.I, Virudhunagar	Crl.O.P. No.
1	4 of 2008	129 of 2015	2756 of 2017
2	8 of 2008	164 of 2010	2757 of 2017
3	9 of 2008	165 of 2010	2758 of 2017

2.6 In all the three charge sheets, the common accused are Veluchamy (A1), Kennedy (A2), Pulichamy (A4), Manimaran (A5) Balasubramanian (A6) and Siva (A7) and the third accused in these charge sheets are Nagarajan, Veeravel and Palaniselvam respectively.

3 It is the case of the prosecution that the accused 1 to 7 entered into a criminal conspiracy, pursuant to which, stocks of essential commodities were lifted from the TNCSC godown and were loaded in the lorry bearing Registration No.TN 47 B 5225 belonging to Balasubramanian (A6/petitioner herein) and the lorry was driven by Pulichamy (A4), but, the stocks did not reach the respective fair price shops.

4 The learned counsel for the petitioner submitted that even according to the prosecution, the Department had given the transport contract to Manimaran (A5) and that Manimaran had hired TN 47 B 5225 from Balasubramanian (A6) who is the owner of the lorry for his contract work; this Court has quashed the prosecution against Manimaran (A5) in all the three cases in Crl.O.P. Nos.8177 of 2015, 16927 of 2015 and 5912 of 2015; thus, when this Court has quashed the prosecution as against the contractor himself, there is no question of prosecuting the owner of the lorry, viz., the petitioner and his son Siva (A7).

5 The police have filed individual counter affidavit in all the three quash petitions strongly refuting the contentions raised by the petitioner and submitting that the prosecution as against the petitioner should not be quashed.



6 This Court gave its anxious consideration to the rival submissions.

7 On a thorough reading of the final reports and the Section 161(3), Cr.P.C. statement of the witnesses, it is limpid that there are enough materials to show that huge stocks of essential commodities like rice, sugar, etc. were lifted from the TNCSC godown and loaded in the lorry bearing Registration No.TN 47 B 5225 that was driven by Pulichamy (A4) and the same did not reach the three fair price shops which were manned by the third accused in each of the cases.

8 In these cases, the accused 1 to 3 are officials of the Department and conspiring with others, they have lifted the huge stocks of essential commodities from the TNCSC godown and disposed them in the open market. Offences like these are invariably done in secrecy and seldom will there be a direct witness, unless there is an approver to prove the offence. Therefore, the provisions of Section 10 of the Evidence Act can be invoked for fastening criminal liability on all the conspirators, if there are prima facie materials to show that the actors have acted in league.

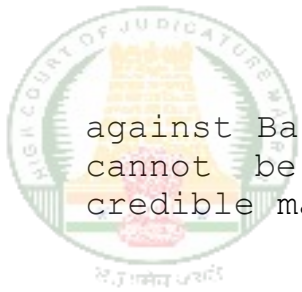
9 In the cases at hand, the prosecution has recorded the Section 161(3) Cr.P.C. statement of Ramar and Sundarrajan, loadmen, who had loaded the stocks in the lorry bearing Registration No.TN 47 B 5225 at the TNCSC godown and had accompanied the lorry to the destination. In their statement, they have stated that they went to Nathampatty ration shop, where, Nagarajan (A3 in C.C. No.129 of 2015), the person in-charge of the ration shop, told them that since he does not have the keys to open the fair price shop, the stock may be unloaded near the ration shop and therefore, they unloaded the stock and placed it near the shop and thereafter, left that place. There is no shred of evidence to show that the lorry bearing Registration No.TN 47 B 5225 belonging to Balasubramanian (A6) was used for transporting the essential commodities from the fair price shops to any other private godown. None of the witness has stated that he had seen Balasubramanian (A6)/lorry owner anywhere around the place at that time. Of course, mere absence of a person from the place of crime will not automatically mean that he is not part of the conspiracy because conspiracies, today, can be hatched even without the confluence of the conspirators at a particular spot. But, in the instant cases, the transport contractor is Manimaran (A5), who had requisitioned the lorry bearing Registration No.TN 47 B 5225 from Balasubramanian (A6/lorry owner). When the prosecution against Manimaran (A5) himself has been quashed, this Court is of the view that the prosecution of Balasubramanian (A6) and his son Siva (A7) would only be an abuse of process of law.



10 Though in their statement, the Revenue officers have recorded the name of Balasubramanian (A6) and Siva (A7), yet, none of them have stated as to how they were involved in the offence. They have merely inferred that this public loot could not have taken place without the connivance of the lorry driver, transport contractor and the lorry owner. Mere suspicion cannot be a good substitute for proof. In the counter affidavits filed by the police, they have placed reliance upon the confession statement of the petitioner himself, in which, it is stated that he was involved in the offence. This confession statement has been given to the police and is directly hit by Section 25 of the Evidence Act. Had there been any discovery of a new fact on the strength of the confession statement given by the petitioner/accused, this Court would be loathe to interfere under Section 482, Cr.P.C. It is true that without the connivance of the officials, transporter and private players, such loot could not have taken place. However strong one may feel morally that this offence could not have taken place without the active connivance of Balasubramanian(A6) and Siva (A7), s/o Balasubramanian(A6), yet, in the absence of prima facie materials coupled with the statement of the loadmen that they unloaded the essential commodities at the doorstep of the fair price shop at the instance of Nagarajan (A3 in C.C. No.129 of 2015), the Salesman of the fair price shop, this Court is not in a position to agree with the contention of the prosecution. Had the loadmen stated that they had acted under the instructions of Balasubramanian (A6) and unloaded the stocks elsewhere, Balasubramanian (A6) may not have a case.

11 Further, the charge sheet in two of these cases were filed in the year 2010 and now, we are in 2017. This Court is not unaware of the technique adopted by the accused to file quash applications one after the other and stall the proceedings before the Trial Court indefinitely and this menace has to be put an end to. In the present cases, Siva (A7) is said to be the son of the Balasubramanian (A6). If this Court quashes the prosecution launched against Balasubramanian (A6) alone now, Siva (A7) would file a quash application and stay the trial for the next ten years. This Court, while dealing with these quash applications, has thoroughly analysed the final reports, statements and the accompanying documents filed by the prosecution and found that the case of Siva (A7) is also on the same footing as that of Balasubramanian (A6), his father.

12 Hence, the prosecution in all the three cases viz., C.C. Nos.129 of 2015, 164 of 2010 and 165 of 2010 against both Balasubramanian (A6) and Siva (A7) are quashed and the Trial Court is directed to proceed with the trial expeditiously in respect of the other accused. It is made clear that quashing of the prosecution in C.C. Nos.129 of 2015, 164 of 2010 and 165 of 2010



against Balasubramanian (A6) and Siva (A7) will not mean that they cannot be arrayed as accused under Section 319, Cr.P.C. if credible materials surface against them during trial.

In the result, the Criminal Original Petitions stand allowed with the above observations. Connected CrI.M.Ps. are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

- 1 The Inspector of Police
Civil Supply Crime Investigation
Department (Food Cell) Virudhunagar District
- 2 The Inspector of Police
Erukkankudi Police Station Virudhunagar District
- 3 The Inspector of Police
Sattur Taluk Police Station
Virudhunagar District (Cr. No.08 of 2008)
- 4 The Additional Public Prosecutor
Madurai Bench of Madras High Court Madurai

+3 cc to Mr.T.Lenin Kumar, Advocate, SR.Nos.52961,52962 & 52963

Common order in

CrI.O.P. (MD) Nos.2756 to 2758 of 2017

20.04.2017

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