IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.07.2018
Pronounced on : 24.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.796 of 2011
and
M.P.Nos.1 & 2 of 2011

Shri.Chellapalam Manivannan,
S/o.Shri.P.Chellapalam. ... Petitioner/Accused

Vs.

The Assistant Commissioner of Customs,
Prosecution Unit (Air),
Custom House,
Chennai-600 001. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the said complaint bearing C.C.No.1021 of 2007 in R.R.No.32 of 2006 in O.S.No.42/2006 - INT and quash the complaint filed against the petitioner herein pending on the file Judicial Magistrate Court, Alandur, pending disposal of the Crl.O.P.

For Petitioner : Mr.S.Sudhakaran

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor for Customs

* * * * *

O R D E R

The petitioner has filed the above Quash petition to quash C.C.No.1021 of 2007 pending on the file of the Judicial Magistrate Court, Alandur, for the offences under Sections 132 & 135(1)(b) of the Customs Act, 1962 which is filed and prosecuted by the respondent.

2.The contention of the learned counsel for the petitioner is that the petitioner was detained under the "COFEPOSA Act" in GO.No.SRI/1061-3/2006, dated 20.12.2006, against which he had filed a Habeas Corpus Petition in H.C.P.No.141 of 2007 and the Division Bench of this Court by order dated 17.08.2007 was pleased to quash the detention order, due to non-furnishing of

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materials in support of the detenu's grounds of detention more specifically when the specific representation had been made in this regard and on the ground of Non-application of mind by the detening authority.

3.The specific ground raised by the learned counsel for the petitioner is that there are certain observations in the Habeas Corpus Petition order, which would not make the petitioner liable for the offence as alleged in the complaint. Further, the complaint filed is vexatious and not maintainable.

4.On the contrary, the learned Special Public Prosecutor for the Customs Department submitted that, the marshalling of materials in case of "COFEPOSA Act", which is a preventive detention and in the Criminal case filed before the Competent Court, which is pending trial is on a different perception and decree. In Habeas Corpus Petition, it is only the subjective satisfaction and in a trial Court marshalling of evidence is done, whether the accused has committed the offence are not, which has to be decided only on letting in of the evidence both oral and documentary. Thereafter, on assessment of the evidence, the trial Court has to give a finding, thus, equating the finding in a Habeas Corpus Petition as to that of a pending case in a trial Court is not proper and cannot be done and citing the finding of the Habeas Corpus Petition and seeking to quash the petition is improper and prayed for dismissal of quash petition.

5.This Court on consideration of the submissions of either parties, and on perusal of the materials, it finds that the contention of the petitioner is not sustainable. The only recourse available to the petitioner is to face the trail. Further, on going through the complaint, it is seen that there are enough and sufficient averments and materials for the trail to be proceeded with.

6.In view of the above the quash petition is dismissed. Since the case is pending from the year 2007 without any progress and the number of witnesses cited are only four. The trail Court is directed to complete the trial within a period of three months from the date of the receipt of the copy of this order and report compliance.

7.Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petition are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Alandur.

2.The Assistant Commissioner of Customs,
Prosecution Unit (Air),
Custom House,
Chennai-600 001.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.J.Sudhakaran, Advocate, S.R.No.65695

Crl.O.P.No.796 of 2011

MP(CO)

rrs 24/10/2018

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