

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Revision Case Nos.1354, 1368 and 1372 of 2017
and
Crl.M.P.Nos.13357 and 13339 of 2017

Vaidhiyanathan
S/o.Natarajan ... Petitioner/4th Accused
in Crl.R.C.No.1354/17

Revathy
W/o.Vaithyanathan ... Petitioner/2nd Accused
in Crl.R.C.No.1368/17

Abdul Rahim
S/o.Abdul Rehman ... Petitioner /23rd Accused
in Crl.R.C.No.1372/17

Vs.

The State represented by
The Additional Superintendent of Police,
Crime Branch C.I.D.,
Villupuram Range,
Villupuram. ... Respondent/Complainant
in all revisions

Criminal Revision Cases filed under Section 397 r/w 401 of
the Code of Criminal Procedure against the orders of learned
Chief Judicial Magistrate, Villupuram, passed in Crl.M.P.Nos.655
of 2017, 1157 and 799 of 2016 in C.C.No.1 of 2016 on 12.07.2017.

For Petitioners: Mr.V.Raghavachari
for Mr.Tranquebardoraivasu

For Respondent : Mr.V.Arul
Additional Public Prosecutor

C O M M O N O R D E R

These revisions arise against orders of learned Chief Judicial Magistrate, Villupuram, passed in CrI.M.P.Nos.655 of 2017, 1157 and 799 of 2016 in C.C.No.1 of 2016 on 12.07.2017.

2. Petitioners/A2, A4 and A23 and others face prosecution in C.C.No.1 of 2016 on the file of learned Chief Judicial Magistrate, Villupuram. Prosecution case is that on 19.08.2014 at about 23.00 hours, police had conducted vehicle check near Jain Plot, Govindapuram Village. Accused 5 and 6 were intercepted and on enquiry, they informed the previous offences committed by them at various places. When accused 5 and 6 were enquired in the presence of Village Administrative Officer and Village Assistant, they had confessed to criminal conspiracy hatched with milk tanker lorry drivers, owners and private dairy owners for committing theft by stealing milk being transported to main Aavin dairies and to supply the milk to the private milk food makers and others. A case was registered in Crime No.122 of 2014 on the file of respondent for offences u/s.120-B, 379, 407 and 272 IPC. Upon orders of Director General of Police, Tamil Nadu, Deputy Superintendent of Police, CBCID, Kancheepuram, has been nominated to conduct investigation in the case and the case was re-registered as Crime No.5 of 2014 on the file of respondent. Upon completion of investigation, a charge sheet was filed against 28 persons. Petitioners/A2, A4 and A23 moved CrI.M.P.Nos.655 of 2017, 1157 and 799 of 2016 in C.C.No.1 of 2016 seeking discharge. Court below, under orders dated 12.07.2017, dismissed such petitions. Hence, these revisions.

3. Heard learned counsel for petitioners and learned Additional Public Prosecutor.

4. Learned counsel for petitioners submits that petitioners herein are arrayed as accused 4, 2 and 23 in C.C.No.1 of 2016 on the file of learned Chief Judicial Magistrate, Villupuram. Learned counsel submits that the order of Court below reflects total non-application of mind and is also bereft of reasons. The only reason adduced by Court below is that the offences alleged against accused were technical in nature and there is a prima facie case and there were materials to frame charges against the accused. The genesis of prosecution case begins with the interception A5 and A6 and based on their confession, a case was registered, resulting in filing of final report. Accused 5 and 6 had been acquitted in cases tried in C.C.Nos.163 and 164 of 2014 and 27 of 2015 on the file of learned Judicial Magistrate I, Tindivanam, under judgment dated 21.12.2016. While so, the very genesis of the prosecution case becomes doubtful. The alleged confessions of accused 5 and 6 recorded by LW-13, Village Administrative Officer along with LW-14, Village Assistant in

the wee hours of 20.08.2014 was unbelievable. Further, State has not chosen to challenge the order of acquittal. Having alleged that the milk in the lorries belonging to A4 was adulterated and sold to private milk food manufacturers, prosecution has not chosen to produce any test report to establish such allegation. When adulteration is alleged, it is incumbent upon prosecution to act in keeping with Section 47 of the Food and Safety Standards Act, 2006, which prescribes the procedure of drawing a sample of the adulterated substance and forwarding the same for laboratory analysis. Even if charge alleged is taken to be true, it does not satisfy the ingredients of Section 272 IPC. Section 272 IPC requires that the effect of adulteration must be to render the food or drink noxious i.e., harmful or unfit for consumption. Learned counsel further submits that while the statements of LW-6, LW-7, LW-8 and LW-9, unanimously inform that they were introduced to accused 2 and 4 in June 2014 in the presence of A7, it was the confession of A7 that he joined the services of A4 only on 17.07.2014. The prosecution story that A4 had not paid his drivers well and hence, they were induced to commit theft of milk was unacceptable since the statements of LW-23 and LW-24 in this regard were only hearsay and hence, no credence could be attached to the same. Though the prosecution has sought to sustain the case of conspiracy on the basis of two phone calls alleged to have been made by A5 and A15 (employees of A4) to A4 on 07.08.2014 and 10.08.2014 respectively, no material has been produced to show that the phone calls had anything to do with the theft of milk. Learned counsel relied on several judgments in support of his case.

5. Learned Additional Public Prosecutor relied on the counter and submitted that a well-reasoned order has been passed by Court below in dismissing the petitions seeking discharge. Court below specifically has found that there were materials to frame charges against accused and the allegations levelled against the accused can be tested only at a full-fledged trial. Submitting so, learned Additional Public Prosecutor prays for dismissal of these revisions.

6. This Court has considered the rival submissions. Perused the materials on record.

7. The acquittal of accused 5 and 6 sounds the death knell of the prosecution case as it is their arrest and confession which forms the basis thereof. Confession of a co-accused would be a weak piece of evidence unless it finds corroboration in material particulars. As a result of the acquittal of accused 5 and 6, their confessions cannot be looked into. There is no material to prove that milk had been stolen or for that matter adulterated. In the absence thereof, it would be waste of judicial time to permit continuance of prosecution case.

These Criminal Revision Cases shall stand allowed. The orders of learned Chief Judicial Magistrate, Villupuram, passed in CrI.M.P.Nos.655 of 2017, 1157 and 799 of 2016 in C.C.No.1 of 2016 on 12.07.2017, shall stand set aside. Petitioners shall stand discharged of all charges. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Villupuram.

2.The Additional Superintendent of Police,
Crime Branch C.I.D.,
Villupuram Range,
Villupuram.

3.The Public Prosecutor,
High Court, Madras.

+3 ccs to M/s.K.S.Purushothaman Advocate sr 858
+3 ccs to M/s.Tranquobarduraivasu Advocate sr 856
+3 ccs to M/s.V.Raghavachari Advocate sr 857

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