

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2018

DELIVERED ON: 11.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.8840 of 2011
and
Crl.M.P.Nos.1 and 2 of 2011

1. M.Vaithiyanathan
2. V.Nandakumar

.... Petitioners/Accused

Vs.

State rep. by
The Deputy Superintendent of Police,
Civil Supplies Unit,
Chennai

.... Respondent/complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.346 of 2002 on the file of the Judicial magistrate No.1, Cuddalore and quash the same.

For Petitioners : Mr.R.C.Paul Kanagaraaj

For Respondent : Mr.T.Shunmugarajeswaran,
Government Advocate (Crl.Side)

ORDER

The petitioners are arrayed as A2 and A3 in C.C.No.346 of 2002 on the file of the Judicial Magistrate No.1, Cuddalore.

2. The Deputy Superintendent of Police, Civil Supplies Unit, Chennai filed a final report under Section 173(2)(1) of the Code of Criminal Procedure against the present petitioners as well as one Kasthuri for the alleged offences punishable under Sections 2(3)(i) VI and IX of Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 1998 read with Section 7(1)(a)(ii) of E.C.Act, 1955.

3. The petitioners (A2 and A3) in C.C.No.346 of 2002 on the file of the Judicial Magistrate No.1, Cuddalore are manager and clerk of the petrol bunk in the name and style of Kasthuri Agencies in Nellikuppam, an outlet of Indian Oil Corporation. On a routine retail outlet inspection, conducted on 7.2.1999 by the officials of Indian Oil Corporation Limited in their mobile lab, detected adulteration in the petrol being sold in the outlet. The inspection was conducted in the presence of the 2nd petitioner and the report was served on him

under his acknowledgment. The sales and supplies were ordered to be suspended immediately and directions were given to evacuate 4000 litres of petrol back to the Korukupet terminal of Indian Oil Corporation for further action. However, the first petitioner evacuated the stock of petrol only on 19.03.1999 in the presence of the Indian Oil Corporation officials and two consecutive days being government holidays, the testing of the samples at Korukupet terminal lab was possible only on 22.3.1999. It was found that the petrol samples tested over there did not meet the various specifications of petrol and also pertinently the report generated in Korukupet lab was different from the report of the mobile lab generated on 7.2.1999. Consequently, two separate complaints were preferred and the present Criminal case in C.C.No.346 of 2002 before the Judicial Magistrate No.1, Cuddalore was filed.

4. The petitioners have contended that investigation in terms of testing samples of product was not adhered to, as per the laid down procedure. It was also contended by the petitioners that the 2nd petitioner being the son of the first petitioner, was only a student and used to assist him in maintaining the accounts of the business in the bunk, and was in no way involved in managing affairs of the bunk.

5. Mr. R.C.Paul Kanagaraj, learned counsel appearing for the petitioners would contend that the sampling test were not carried out, as per the laid down procedure of the company i.e. Indian Oil Corporation. He also relied on the decision in Mahamaya Service Centre Vs. Indian Oil Corporation Limited and others in Writ Petition No.1668 of 2009 of High Court of Chatisgarh at Bilaspur and contended that whenever deficiencies in the testing procedure is found, the Honourable court has intervened and set aside such reports by quashing the same. The facts of the case referred to by the learned counsel appearing for the petitioners are very much different from the present case. The petitioners had stated that the sampling of the product was in accordance with Section 5 of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order 1998, which empowers to take 2 samples of one litre each of High Speed Diesel. According to him, this procedure was not followed in the instant case. It is pertinent to point out that the accused had never pointed out at any point of time about this alleged lapse and therefore, it appears only to be an after thought. It is not also mentioned in any part of the report that a lesser quantity was taken as sample for the sake of testing and there has been a time gap of more than a month, between the routine inspection and the date of transporting 4000 litres of adulterated petrol back to Korukupet terminal. Even assuming that there was a lapse on the part of the Indian Oil Corporation officials in doing the testing as per the laid down procedure, it could have been brought to their knowledge by way of a letter during this period. In the absence of any such correspondence, it can be concluded that the alleged lapse mentioned by the petitioners is only an after thought and cannot be accepted as a ground to

quash the criminal proceedings against them.

6. Since a Non Bailable Warrant is pending against the 2nd petitioner (3rd accused), the present petition was not pressed by the learned counsel for the petitioners. However, the allegations raised by the petitioners are disputed question of facts and therefore, I do not find any reason to quash the entire proceedings in C.C.No.346 of 2002 on the file of the Judicial Magistrate No.1, Cuddalore.

7. In the result, this Criminal Original Petition is dismissed. Since the case is pending from the year 2002, the learned Judicial Magistrate No.1, Cuddalore is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order, uninfluenced in any of the observations made by this court in the instant petition.

8. With the above observations, this Criminal Original Petition is dismissed. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Judicial Magistrate No.1
Cuddalore.

2. The Deputy Superintendent of Police,
Civil Supplies Unit,
Chennai.

3. The Public Prosecutor,
Madras High Court.

BR(CO)
sm:24.7.2018

Cr.O.P.No.8840 of 2011