

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2018

Pronounced on : 06.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.28147 of 2010

and

M.P.No.1 of 2010

D.Ramachandran,
S/o.Dharmalingam.

... Petitioner

Vs.

State rep. by
The Sub-Inspector of Police,
Vridhachalam Police Station,
[Crime No.498 of 2002]

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quashing charge sheet in C.C.No.278 of 2005 on the file of the Judicial Magistrate Court No.I, Virudhachalam.

For Petitioner : Mr.V.Gopalsamy for
Mr.G.Saravana Kumar

For Respondent : Ms.V.Saratha Devi,
Government Advocate [Crl.Side]

सत्यमेव जयते
O R D E R

The petitioner has filed the above said Criminal Original Petition to quash the proceedings in C.C.No.278 of 2005 pending trial on the file of the Judicial Magistrate Court No.I, Virudhachalam.

2.The respondent has registered a case in Crime No.337 of 2004 on 08.08.2004 for the offence under Section 135 of Indian Electricity Act, 2003.

3.The case of the prosecution is that on 07.08.2004, the Tamil Nadu Electricity Board Officials at about 06.30 P.M had

inspected the Electricity Board connection No.171 at the residence of the petitioner. During the inspection, it was found that the meter was of the make of Havels capacity 5.20 ohms in Serial No.164725 and reading as of that date was 03863.7, MRT side seals on the meter and in the terminal cover were intact. Further, on observation of the meter, it was found that there was a small hole on the top of the meter, hence, the meter reading was calculated as it amounted to Tampering of meter.

4.Taking into consideration the load factor, usage of working hours and period of usage and calculated the consumption of 173 units and the cost of the energy stolen was arrived at Rs.285/- (Rupees Two hundred and eighty five only) and a compounding charge of Rs.4,000/- (Rupees Four thousand only) was levied as per the working sheet submitted by the Electricity Board officials. Thereafter, a complaint was lodged with the respondent/police, who had visited the scene of occurrence and prepared Observation Mahazar, Rough Sketch and recorded the statement of witnesses namely Electricity Board Officials, seized the meter box and the meter board and produced the same before the Court.

5.Thereafter, on completion of investigation the respondent/police had filed the charge sheet against the petitioner, against which the petitioner had filed the quash petition. The petitioner, former Chairman of Panchayat Union, Kammapuram, an advocate with stature, social worker, who is around 90 years of age had some grudge over the Electricity Board Officials for making a demand to shift the meter at his residence from the present position to a safe and secured position.

6.Further, he had made a representation to the higher officials of Tamil Nadu Electricity Board and also filed a Civil Suit against the Electricity Board officials, who threatened to cancel the service connection of the petitioner.

7.Further the learned counsel for the petitioner contended that prior to the date of inspection, the petitioner had made complaints about the local Tamil Nadu Electricity Board Officials to their Higher Officials, the protest and the objections of the petitioner were not looked into by the respondent/police. During the inspection, the petitioner had recorded his objection in the Observation Report, which would go to show that there was every reason for the Electricity Board official to foist the case against the petitioner.

8.The learned counsel for the petitioner had further contented that the amount of Rs.285/- being the alleged amount

of misuse has been paid by the petitioner without any prejudice. Further, it had been contented by the learned counsel for the petitioner that there have been eight witnesses in the above case other than the Investigation Officer. Out of the eight witnesses except LW6-Photographer all the other witnesses are from the Electricity Board Department. The persons, who are said to have conducted inspection on the meter are the Assistant Executive Engineers, LW1 namely S.Chelladurai, LW2 N.V.Rajendran, LW3 S.Arumugham, LW4 P.Shanmugam, LW5 L.Baskar. All are officials of the Electricity Board in their statements they have stated about their inspection on 07.08.2004 at about 06.30 p.m. on the Electricity Board connection No.171 and on its meter at the residence of the petitioner. Further, the inspection team witnesses have admitted that the seal of the meter as well as seal in the terminal point are intact. The only observation they made is that there was a small hole on the top of the meter and hence, they have submitted a report that the petitioner had committed an offence under Section 135 (1) (b) and (1) (e) and (1) (d) and also under Section 138 (1) (d) of the Indian Electricity Act, 2003.

9.Further, it is submitted by the inspecting team officials that the petitioner had not given any representation or letter to the Electricity Board officials with regard to the change of meter or about the hole found on the meter. The petitioner further contented a hole on the top of the meter which is said to be found cannot by itself lead to interference that the meter had been tampered with. It is further stated that the Investigation Officer on 05.10.2004, had written a letter to the Electricity Board officials asking for whether through the hole in the meter the functioning of meter can be stopped and also the meter to be sent to the Forensic Department for Forensic Examination. Strangely the meter which was in custody of the Tamil Nadu Electricity Board Officials was not forwarded to the Forensic Laboratory, which is fatal to the prosecution case. Thereby grave prejudice going to the root of the case has been caused to the petitioner.

10.On perusal of the documents submitted, it is seen that the meter was not subjected to forensic examination and one witness of the Electricity Board Department namely N.Subbaiah of the Tamil Nadu Electricity Board, Cuddalore has been examined, who had received the meter on 20.12.2004 for examination, on the same day, he had given a certificate as follows:

“மீட்டரில் போடப்பட்டுள்ள சிறிய துளை மீட்டர் தயாரிப்பின்
போது போடப்பட்டது அல்ல என்றும் மேற்படி சிறிய துளை மின்சாரம்
திருடப்படுவதற்காக போடப்பட்டது”

In his statement, which was recorded on 21.12.2004 he states

about the issuance of the certificate to this effect other than the above observation there is nothing incriminatory against the petitioner. Further, the above said meter was not sent to the Forensic Department which is fatal to the case of the prosecution.

11. On perusal of the document, it could be seen that there is a note dated 24.01.2005 to justify all collected evidence, for delay in giving the complaint and with regard to some insertions made in the Seizure Mahazar and there is an instruction that the meter is to be submitted to Forensic Examination. These aspects cause serious doubt and aspersion in the manner the case has been projected by the respondent/police against the petitioner. Further, when the categorical finding of the Tamil Nadu Electricity Board officials and the respondent/police is that no seal has been tampered with and in the absence of seizure of any foreign materials and artificial means used by the consumer relating to the manner by which theft was committed. The continuation of prosecution is an exercise in futility.

12. It is for the prosecution to establish that in order to extract the energy/power theft by cogent and proper evidence. It is also not in the dispute that at any point of time the meter in question was running slow or the seals were tampered with. The petitioner submits that in the absence of any artificial means being found and none of the witnesses have spoken about the theft of energy by using artificial means and on the contrary witnesses have admitted that the meter was running at the time of inspection further nothing was found for abstraction, consumption or use of energy by the petitioner. In such circumstances, the prosecution failed to establish the existence of Foreign materials or artificial means in the meter to draw the presumption against the petitioner that he had committed the theft of electrical energy. Further, it is an admitted fact that the meter has not been subjected to forensic examination and it is also admitted that the cost of the energy of Rs.285/- has been paid and there have been no loss to the Electricity Department.

13. In the light of the above discussion, this Court finds that the continuation of proceedings in C.C.No.278 of 2005 pending on the file of the Judicial Magistrate Court No.I, Virudhachalam, even if allegations made against the petitioner in the charge sheet are accepted in their entirety then to no case is made out against the petitioner warranting continuation of the case. Already a lot of time has been wasted in unnecessary prosecution. Hence, the proceedings against the petitioner is to be quashed.

14. Accordingly, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ah/vv2

To

1. The Judicial Magistrate No. I,
Virudhachalam.

2. The Sub-Inspector of Police,
Virudhachalam Police Station,
[Crime No. 498 of 2002].

3. The Public Prosecutor,
High Court, Madras.

4. The Section Officer,
V.R. Section, High Court,
Madras. (2 copies)

+1cc to Mr. G. Saravana Kumar, Advocate, S.R.No. 61651

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GN(27/09/2018)

सत्यमेव जयते

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