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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.10.2018
CORAM:
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Cr1.OP[MD]No.24078 of 2015
and
M.P. (MD)Nos.1 and 2 of 2015

G.Laksmanaraj ... Petitioner
Vs.

1.The State represented by
Inspector of Police,
C.S.C.I.D.Police Station,
Trichy District.
In Crime No.625 of 2011.

2.Sirajudeen ... Respondents

PRAYER: Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the proceedings in C.C.No.31 of 2012 on the file of the learned Judicial Magistrate No.6, Trichy and quash the same.

For Petitioner : Mr.M.Sridharan
For R1 : Mrs.M.Anantha Devi,
Government Advocate (Cr1.Side)

ORDER

This petition is filed to quash the proceedings in C.C.No.31 of 2012 on the file of the Judicial Magistrate No.6, Trichy, having taken cognizance for the offence under Sections 7(1)(a)(ii) of E.C.Act, 1955 and 6(3) and 14(1)(a) of T.N.S.C. (RDCS) Order, 1982 against the petitioner and others.

2.The case of the prosecution is that on 02.08.2011 while conducting inspection with regard to kerosene stock from 01.01.2007 to 23.07.2011 at A.P.200, Ariyamangalam Primary Co-operative Society found malpractice while distributing kerosene to the public under the Public Distribution System. The petitioner and seven others created forged certificate and without entry, they sold kerosene and thereby, committed offence under the provisions of the Essential Commodities Act. They misappropriated the public funds to the tune of Rs.1,30,470.30/-. It is further alleged that the defacto complainant has showed the details, on which date and how much amount misappropriated by the accused. Hence, the charge sheet has been filed as against the petitioner.



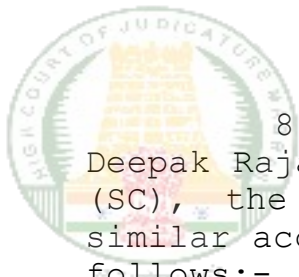
3. The learned counsel for the petitioner would submit that the petitioner had already undergone departmental punishment for lack of his duties by undergoing postponement of 5 cumulative effect as well as leave salary also to be postponed during his service period. Therefore, it cannot be once again prosecuted by the first respondent police. Further, he would contend that as per the charge, there is absolutely no incriminating material as against the petitioner. As far as the other accused A2 to A8 are concerned strictly responsible for the offence as alleged by the prosecution, since they were involved in day-to-day affairs and the petitioner herein is holding in-charge of the post during the relevant point of crime. He would further submit that the main allegation against the petitioner herein is that he failed to supervise the employees worked under him at the relevant point of time. He also failed to scrutiny the loan bill which was supplied by the Private Traders on 02.06.2011 by crediting 3000 liters kerosene to the petitioner's society. But it is admitted that due to suspicion, the petitioner has not disbursed amount as against the alleged bill and hence, the charge is liable to be quashed. Further, he contended that there are totally eight accused, in which, the petitioner is arrayed as first accused and the case has been split up and the trial commenced in C.C.No.58 of 2016 on the file of the learned Judicial Magistrate No.6, Trichy. Insofar A2 to A8 are concerned, the case was ended in acquittal by order dated 26.10.2016. When the other accused persons were acquitted by the trial Court, the same benefit shall also be extended to the petitioner. Hence, he prays for quashing the proceedings.

4. The learned Government Advocate (Crl.side) for the first respondent would submit that there are serious allegations and averments as against the petitioner. Though the other accused persons were got acquittal as against the petitioner, there is a specific allegation and clenching evidence to prove the charge against him. Further, he contended that he is the main person in this crime and as such, he prays for dismissal of the quash petition.

5. Heard both sides.

6. There are eight accused in which the petitioner arrayed as first accused. Admittedly, the case has been split up and separate trial has been conducted as against the accused 2 to 8 in C.C.No.58 of 2016 and it was ended in acquittal by order dated 26.10.2016.

7. It is seen from the order that the prosecution did not prove the case. Further, there was absolutely no documentary evidence to prove the charge as alleged by the prosecution. While that being so, he need not go for RDL trial. Admittedly, there is no evidence and materials to prove the charges against the accused persons.



8. In this regard, it is relevant to rely the judgment in Deepak Rajak Vs. State of West Bengal reported in 2008 (1) MLJ 1333 (SC), the extension of benefit of acquittal to the accused on similar accusation came up for consideration and it has been held as follows:-

"The position in law as to what happens in case of acquittal of similarly placed co-accused on the same set of facts and on similar accusations has been considered by this Court in several cases.

A departure may be made in cases where the accused had not surrendered after the conviction in addition to not filing an appeal against the conviction. But as in the present case, after surrender, the benefit of acquittal in the case of co-accused on similar accusations can be extended."

9. In view of the above settled principles of law, the co-accused were got acquitted, the same benefit shall also be extended to the other accused. The other accused persons 2 to 8 were acquitted by the Judicial Magistrate No.6, Trichirappalli in C.C.No.58 of 2016, by order dated 26.10.2016. Therefore, this Court is inclined to quash the proceedings as against the petitioner. Accordingly, this criminal original petition is allowed and C.C.No.31 of 2012 on the file of the Judicial Magistrate No.6, Trichy is hereby quashed. Consequently, M.P(MD)Nos.1 and 2 of 2015 are closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Inspector of Police,
C.S.C.I.D. Police Station,
Trichy District.

2. The Judicial Magistrate No.6, Trichy.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.M.Sridharan, Advocate, SR.No.93508

Cr1.OP[MD]No.24078 of 2015
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