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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
02.02.2018	12.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD) No.17388 of 2017
and
Crl.M.P. (MD) .Nos.11412 and 11413 of 2017

Xavier Hendry Siluvai

: Petitioner/Accused 1

Vs.

1. The State, rep by its
Additional Superintendent of Police,
Vigilance and Anti-Corruption,
Thoothukudi, Thoothukudi District. : 1st Respondent/Complainant
2. S.Shanmuganathan,
Inspector of Police,
Vigilance and Anti-Corruption,
Thoothukudi, Thoothukudi District.
Crime No.4 of 1999. : 2nd Respondent/Defacto
Complainant

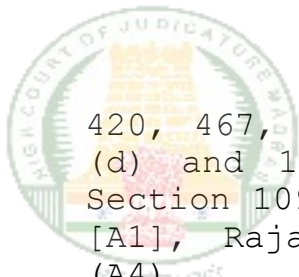
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for records relating to the impugned charge sheet laid in Special Case No.14 of 2012, on the file of the learned Chief Judicial Magistrate-cum-Special Judge, Thoothukudi and quash the same, insofar as the petitioner/Accused No.1 is concerned.

[prayer amended vide order dated 09.02.2018 in Crl.MP(MD).No.11662 of 2017]

For Petitioner : Mr.S.Veeranasamy
For Respondent No.1 : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

O R D E R

The Inspector of Police, Vigilance and Anti Corruption registered a *suo motu* First Information Report in Crime No.4 of 1999 against eight accused and after completing the investigation, filed a charge sheet in Special C.C.No.4 of 1999 before the learned Chief Judicial Magistrate cum Special Judge for Prevention of Corruption Act Cases, Tuticorin, for the offences under Sections 120-B, 409,



420, 467, 468, 471, 477-A IPC and Section 13(2) r/w Sections 13(1) (d) and 13(1)(c) of the Prevention of Corruption Act, 1988 and Section 109 IPC, against four accused, namely, Xavier Hendry Siluvai [A1], Raja Gopal (A2), Shree Krishnasamy (A3) and Lakshimipathy (A4).

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2. The learned Special Judge took cognizance of the offences and issued summons to all the four accused. Xavier Hendry Siluvai [A-1] did not appear, since his whereabouts were not known. Therefore, Non-Bailable Warrant was issued against him and the police were not able to execute the same for a long time. Hence, in the year 2012, the case against Xavier Hendry Siluvai [A-1] was split up as Spl.C.No.14 of 2012 and the trial in respect of A2, A3 and A4 began in Special C.C.No.4 of 2007, in which, three witnesses have been examined and 355 documents have been marked. The police executed the Non-Bailable Warrant and arrested Xavier Hendry Siluvai [A-1] on 02.03.2017. Now, Xavier Hendry Siluvai [A-1] is before this Court for quashing the prosecution.

3. Heard Mr.S.Veeranasamy, learned counsel appearing for Xavier Hendry Siluvai and Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor appearing for the first respondent.

4. The learned counsel for the petitioner/accused raised the following contentions that:-

- in the First Information Report, eight persons were named as accused, but, in the charge sheet, only four persons have been shown as accused;
- the petitioner was only an agent and that he had acted only in accordance with Clause 11 of his agency agreement;
- the entire process of selecting the beneficiaries was done by the officers of Agricultural Department and this petitioner had no role in selecting the farmers;
- for the incident that had taken place in the year 1992, the First Information Report itself was registered only in the year 1999 and the charge sheet has been filed in the year 2007 and therefore, the prosecution should be quashed.
- The Government had issued the procedure proposed for adoption in flood relief works according to which, it is only the officers of the department, who will be responsible for the distribution of fertilizers and not the petitioner.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent refuted the contentions.

6. To appreciate the contention of the petitioner, it may be necessary to extract verbatim the allegations made against the petitioner in the charge sheet.

"The Government of Tamil Nadu sanctioned vide G.O.Ms.No.723, dated 22.11.1992. R.s428.10 lakhs to provide fertilizer free of cost to the flood affected farmers of the Districts of Thoothukudi,



Tirunelveli and Kanyakumari through the Horticulture Department.

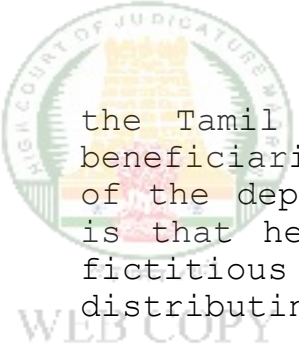
The accused A1 Tr.Xavier Henry Siluvai was appointed by the Tamil Nadu Agro Industries Corporation Ltd., vide appointment order 2204/Agent/FM/92 dated 23.12.1992 as the agent of the Tiruchendure centre.

The Agents of the Tamil Nadu Agro Industries Corporation Ltd., (TAI) were instructed, as per circular No.3364/Fert/Acct/Subsidy/92 dated 26.06.1992 of the Managing Director TAI to deliver fertilizer to the farmers only after verifying the genuineness of the permits produced at the center with the register maintained at the center. The TAI agents should obtain the signature of the farmers in the relevant cash bills and verify such signature with the signature found in the identity card.

In pursuance of the conspiracy and in the course of the same transaction, A1 who was having possession and control over the fertilizer to be allotted to the farmers created forged the signatures of Horticulture Officers with the same serial numbers as that of genuine permits issued by Horticulture Officers, used them as genuine and falsely prepared cash bills and Form V account statement and signed in the Form VI Statement as if he had supplied fertilizer to genuine and eligible farmers to the value of Rs.3,27,458.40, but without issuing the fertilizer to the genuine farmers based on the basis of genuine permits and cheated the Government and thereby A1 has committed the offences punishable u/s 467, 468, 471, 477(A) and 420 IPC.

In pursuance of the conspiracy and in the course of the same transaction, A1, who was entrusted with fertilizers by the TAI in order to distribute the same to genuine and eligible farmers with genuine permits misappropriated fertilizer worth Rs.3,27,458.40 by creating 174 forged permits bearing same serial number as that of genuine permits issued by Horticulture Officers and by falsely preparing cash bills as if fertilizer to the value of Rs.3,27,458.40 was issued to eligible farmers to whom permits were issued whereas in actuality no such permits were issued to the person whose name found a place in the forged permits and whereas fertilizers were not issued to eligible and genuine farmers and that thereby A1 is liable u/s 409 IPC".

7. It is true that the petitioner was appointed as an agent of



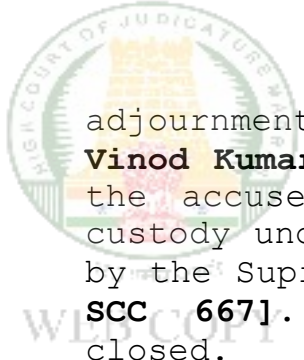
the Tamil Nadu Agri Industries Corporation Limited and that the beneficiaries under the scheme have to be selected by the officers of the department. However, the allegation against the petitioner is that he had conspired with the co-accused and had created 174 fictitious permits and had misused the fertilizers quota, without distributing the same to the beneficiaries.

8. For example, there is a permit bearing No.13612 dated 03.02.1993, in the name of one Nelson for whom, this petitioner and the accused have supplied fertilizers, but, whereas the permit No.13612 relates to one Thangadurai. Thus, there are two beneficiaries under one permit. Similarly, there are two beneficiaries in respect of permit No.27244, namely, Sankaravel Thevar and Maharrajan. The police have gathered materials to show that 174 permits have been fabricated and fertilizers have been distributed on such accounts. In the teeth of such over-whelming materials, this Court cannot go into the disputed question of fact raised by the learned counsel for the petitioner in a quash application under Section 482 Cr.P.C..

9. As regards the delay, the Hon'ble Supreme Court in **Ranjan Dwivedi Vs. CBI through the Director General, [AIR 2012 SC 3217]** has held that long delay in trial is no ground to quash the prosecution. Similarly, in **Niranjan Hemchandra Sashittal Vs. State of Maharashtra, [2013 (4) SCC 642]**, the Supreme Court has held that the long delay cannot be a reason to quash the prosecution under the Prevention of Corruption Act. In this case, though the offence had taken place in the year 1992 - 1993, the same came to light only when the discreet enquiry was undertaken by the department in the year 1999.

10. It is true that eight persons have been shown in the First Information Report, but, whereas, only four persons have been shown in the charge sheet. This does not mean that the prosecution against the petitioner should be quashed, because, the investigation conducted by the police has revealed the involvement of only four accused and therefore, the police deleted the name of four others, which cannot be said to be illegal.

11. In the result, this Criminal Original Petition is devoid of merits and the same is accordingly dismissed. However, this Court directs the trial Court to club C.C.No.4 of 2007 and Special C.C.No.14 of 2012 and conduct a joint trial. The petitioner will be entitled to recall the witnesses, who have already been examined, provided they are available and are in good health condition to give evidence and will be entitled to cross-examine them in the light of Section 299 Cr.P.C.. There need not be a *de novo* trial. In other words, it is not necessary for the prosecution to examine in chief the witnesses, who have already been examined, because, the petitioner cannot take advantage of his abscondance and seek *de novo* trial. The accused shall, hereafter, cross-examine the witnesses on the date of their examination in chief and there should not be any



adjournment as held by the Hon'ble Supreme Court in the case of **Vinod Kumar vs. State of Punjab** reported in **2015 (1) Scale 542**. If the accused adopts any dilatory tactics, he can be remanded to custody under Section 309 Cr.P.C. in the light of the law laid down by the Supreme Court in **State of U.P. v. Shambu Nath Singh [2001(4) SCC 667]**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate-cum-Special Judge,
Thoothukudi.
2. The Additional Superintendent of Police,
Vigilance and Anti-Corruption,
Thoothukudi, Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

NB

TE/CVC/SAR-4 : 09/03/2018 : 5P/4C

ORDER MADE IN
Cr1.O.P. (MD) No.17388 of 2017
Dated:-12.02.2018