



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

WEB COPY

Crl.R.C.(MD) No.812 of 2017andCrl.M.P.(MD) No.10050 of 2017

1.C.Dhandapani

2.K.Senthilarasan

... Petitioners / Petitioners / A1 & 2

vs.

State through

The Inspector of Police

Civil Supplies CID

Erode District

... Respondent / Respondent / Complainant

PRAYER: Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to set aside the order, dated 31.08.2017, made in Cr.M.P.No.3890 of 2017 in C.C.No.589 of 2010, on the file of the learned Judicial Magistrate No.I, Karur.

For Petitioner : Mr.G.S.Asok Adhithyan

For Respondent : Mr.C.Mayilvahana Rajendran

Additional Public Prosecutor

O R D E R

The petitioners are facing prosecution in C.C.No.589 of 2010, on the file of the learned Judicial Magistrate No.I, Karur, for the offences under Clauses 6(3) and 14(1)(a) of TNSC (RDCS) Order, 1982 r/w Section 7(1)a(ii) of E.C.Act 1955 and 120(b), 408, 468, 477(A) and 420 I.P.C.

2. The crux of the allegation made against the petitioners is that they were in-charge of Fair Price Shop Nos.4 and 5 in Aravakurichi Taluk and that in Fair Price Shop No.4, there were only 408 registered Family Card Holders, but whereas 578 bogus Family Card Holders were found functional. Similarly, in Fair Price Shop No.5, as against 297 registered Family Card Holders, 741 bogus Family Card Holders were found functional. Hence, F.I.R., was registered and prosecution has been launched. The prosecution have completed their evidence and the accused were questioned under Section 313 Cr.P.C. Thereafter, the accused filed C.M.P.No.3890 of 2017 in C.C.No.589 of 2010, under Section 243(2) Cr.P.C., seeking to call for the enumeration slips of all the registered Family Card Holders and also the audit reports of the Fair Price Shop Nos.4 and 5, which has been dismissed by the Trial Court by the impugned order, dated 31.08.2017. Challenging the same, the present revision has been filed.



3. Heard Mr.G.S.Asok Adhithyan, learned counsel appearing for the petitioners and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor for the respondent and perused the materials filed in the form of typed set of papers.

4. Mr.G.S.Asok Adhithyan, learned counsel for the petitioners submitted that the aforesaid documents are essential in order to establish that the accused had not committed the alleged offences. The learned counsel further submitted that the Taluk Office will have the application forms of all the Family Card Holders and if those application forms are called for, it will be established that there were no bogus Family Card Holders as alleged by the prosecution. Further, the learned counsel submitted that if the audit reports are called for, it will disprove the prosecution case.

5. Per contra, Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor submitted that these applications are being filed only to drag on the proceedings, inasmuch as the petitioners have not even laid the foundation about the very existence of the documents as required by law.

6. This Court gave its anxious consideration to the rival submissions.

7. It is a trite law that the burden of proving the offences against the accused is basically on the prosecution. As regards the request of the petitioners to produce the application forms of all the Family Card Holders is concerned, this Court is of the view that such a roving enquiry cannot be done, inasmuch as once a Family Card is issued, there will be an entry in the Register maintained by the concerned Taluk Office and it may not be necessary to retain the application forms indefinitely and such application forms can be destroyed after the period fixed for destruction by the Rules. This case relates to the year 2005 and now, we are in the year 2018. Hence, the petitioners cannot be permitted to conduct a fishing enquiry by calling upon the documents like application forms of the Family Card Holders and audit reports of 2005-2008, the very existence of which is unknown. However, on the orders of this Court, the Trial Court has sent Ex.P67 - Xerox copy of A-Register to this Court. It is seen that Ex.P67 has been marked subject to the objections raised by the accused.

8. The learned counsel for the petitioners submitted that the original of Ex.P67 is essential in order to disprove the case of the prosecution. A photocopy of Ex.P67 has been furnished to Mr.S.Saravana Kumar, S.I. of Police, C.S.C.I.D., Karur, who is present before this Court today (i.e.08.02.2017). He is directed to contact the concerned Taluk Supply Office and if the original of Ex.P67 is available, obtain the same and produce it before the learned Judicial Magistrate No.I, Karur, in C.C.No.589 of 2010, within a period of four weeks from the date of receipt of a copy of this Order. If the original of Ex.P67 has been destroyed or is not



available, a report to that effect shall be obtained from the concerned District Supply Officer and file the same before the Trial Court. The accused cannot take any advantage if the original is not available, because the charge sheet is of the year 2010 and the accused had not taken any steps to have the original brought to the Trial Court. Thereafter, the Trial Court shall proceed with the trial by appreciating Ex.P67 in accordance with law and pass orders.

9. The criminal revision stands dismissed with the above directions. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To:

1. The Judicial Magistrate No.I,
Karur.
2. The Inspector of Police,
Civil Supplies CID,
Erode District.
3. The District Supply Officer,
Office of the District Collector, Erode.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

(To return the Ex.P67 forthwith to the Judicial Magistrate No.I,
Karur, through Special Messenger)

+1cc to M/S.G.S.Asok Adhithyan, Advocate SR.No. 47643

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