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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P. No.6544 of 2013 and
CrI.M.P.No.1 of 2013

D.Somasundaram

.. Petitioner

Vs.

The State Rep. by,
The Deputy Superintendent of Police,
Organized Crime Unit II, CBCID,
Chennai-600 003.

.. Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in the Criminal complaint in C.C.No.10731 of 2010 filed by the respondent and pending on the file of XI Metropolitan Magistrate Court, Saidapet, Chennai - 600 015 and quash the same under Section 482 of Criminal Procedure Code as against the petitioner.

For Petitioner : M/s.S.Udayakumar

For Respondent : M/s.S.Thankira
Government Advocate [CrI. Side]

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.10731 of 2010, pending on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai.

2.The gist of the case is that there are totally 15 accused, in which the petitioner is arrayed as All. The defacto complainant, who is the Principal Secretary to Tamil Nadu Government lodged a complaint to the ADGP CBCID about the illegal export of misuse of Muriate of Potash, measuring about 3500 Metric Tons by one A.Natarajan Co. Pudukottai, Sri Kanth & Nagesh Firm, Sri Chemicals, Chennai and others. The said



Muriate of Potash is an agriculture fertilizer imported and subsidized by the Government of India only for the purpose of agricultural use of fertilizer.

3.The petitioner is the license holder to deal with fertilizer and entrusted with the Muriate of Potash imported from abroad and subsidized by the Government of India for the purpose of increasing the fertility of the soil and production and not for non-agricultural purpose.

4.The petitioner being a Proprietor of M/s.Chamundeeswari Agencies Fertilizer Dealer at Gopichettypalayam sold 100 Mtns of Muriate of Potash from Chennai to one A.Natarajan of Pudukottai by issuing Delivery bearing No.TN/07-08/465 dated 21.05.2008 in the name of Chamundeeswari Agencies obtained from Gujarat Narmadha Velly Fertilizer Corporation. The petitioner and other accused defeated the very purpose of the noble cause of the Government Policy and caused wrongful monetary loss to the Government of India and Tamil Nadu and deprived the farmers of their benefit granted by the Government of India.

5.The contention of the learned counsel for the petitioner is that the petitioner never purchased fertilizer from the agriculturists. He purchased the fertilizer only from the manufacturers under valid invoices and he is the authorized supplier and purchased the Muriate of Potash and sold the same to the normal course of business. Further, when the above case was pending, the license of the petitioner was renewed by the Assistant Director of Agriculture (Quality Control), Erode. The petitioner being a licensee, who is entitled to draw his required quantity and bound to supply the requirements as per the license given by the concerned authorities. Hence, the petitioner did not commit any offence of misappropriation or cheating.

6.He would further contented that the proceedings against the accused A1 to A3, who are the main accused in this case already approached this Court in CrI.O.P.Nos.27503 & 27504 of 2010, wherein this Court by order dated 05.09.2014 quashed the proceedings in C.C.No.10731 of 2010 in respect of them. He further submitted that the petitioners are also standing in the same footing and as such he prayed for allowing this quash petition.

7.The learned Government Advocate [CrI. Side] appearing on behalf of the respondent would submit there are specific allegations as against the petitioner to attract the offence under Sections 406, 420 of IPC and Section 7 r/w 3 of Essential Commodities Act, 1955 r/w Clause 3 of Fertilizer (Movement Control) Order 1973 and Clause 25 of Fertilizer Control Order,



1985. Therefore all the points raised by the petitioners have to consider only during the trial.

8.It is seen that the accused A1 to A3 in the very same case has already approached this Court to quash the proceedings in C.C.No.10731 of 2010, which was allowed in respect of them, as against which the respondent has filed special leave petition before the Hon'ble Supreme Court in SLP.Nos.10465 & 10466 of 2014, which were dismissed by order dated 07.07.2017 as such the petitioner who is also standing in the same footing shall be extended the same benefit.

9.In view of the above, this Court is inclined to quash the proceedings against the petitioner in C.C.No.10731 of 2010 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The XI Metropolitan Magistrate Court,
Saidapet.

2.The Deputy Superintendent of Police,
Organized Crime Unit II, CBCID,
Chennai-600 003.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Udayakumar, Advocate SR.No.64294

Crl.O.P.No.6544 of 2013

PM(CO)
GMY(12/09/2019)