

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.1811 of 2017
Crl.MP.Nos. 1299 & 1300 of 2017

1. A.V.Sivasankar
2. S.Manonmani

... Petitioners

Vs.

The State rep by
The Inspector of Police,
CBCID,
Perambalur District.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to C.C.No.3 of 2016 on the file of the CBCID, Ariyalur (C.C.No.1 of 2011 on the file of the learned Chief Judicial magistrate, Perambalur) and quash the same as against the petitioners.

For Petitioners : Mr.A.L.Ganthimathi

For Respondent : Mr.Mohammed Riyaz
Additional Public Prosecutor.

O R D E R

This Petition has been filed to quash the proceedings in C.C.No.3 of 2016 on the file of the learned Chief Judicial Magistrate, CBCID, Ariyalur (C.C.No.1 of 2011 on the file of the learned Chief Judicial magistrate, Perambalur).

2. The learned counsel appearing for the petitioners submitted that the petitioners are arraigned as A1 and A2. The trial Court have taken cognizance for the offences under Sections 420, 465, 468, 471, 472, 477(A) r/w 120(B) of IPC. The first petitioner is working as Assistant at Tamil Nadu Cement Corporation Limited (herein after called as TANCEM), Ariyalur and the second petitioner is the wife of the first petitioner, who is working as a school teacher. The first petitioner's

brother was running a cement Agencies in the name of M/s.Jayalakshmi Agencies, and he used to supply cement for Tamil Nadu Water and Drainage Board (herein after called as TWAD Board) for the purpose of government schemes. As such for the supply of cement to the TWAD Board, the dealer is entitled on a discounted rate and also entitled for the sales tax exemption.

2.1. He further submitted that the case has been registered as against the accused viz., the brother of the first petitioner alleging that he is the sole proprietor of M/s.Jayalakshmi Agencies, which is one of the sole selling Agencies of TANCEM for the supply of cement in Ariyalur and for the quantity of cement supplied for TWAD Board, he is entitled for the concession rate of 4% sales tax and a discount of Rs.5/- per bag on turn key basis. The said Agencies submitted papers containing 44 sets of Declaration Forms reportedly received from TWAD board contractors and various deviations for total requirement of 14,690 MTs cements and TANCEM in turn has to submit all these Declaration Forms to Sales Tax Authorities. On verification, it was found that the Declaration Form from TWAD board authorities, the certificates have been issued without filling the quantity, which were subsequently availed in by sole selling Agencies for 2000 MTs against the consumption of 20 MTs. Further the discount claimed by the selling Agencies works out to Rs.1,98,000/-. On verification of all the documents, it was found that discount to the tune of Rs.9 lakhs have been availed by M/s.Jayalakshmi Agencies for which, they submitted fraudulent documents and majority of the claims are fabricated documents, thereby causing loss of several lakhs of rupees by way of discount.

2.2. The learned counsel appearing for the petitioners further submitted that the first petitioner had worked as Assistant in TANCEM in the Purchase Department and the passing of the Declaration Form and the signing of the bills is only concerned with the marketing department, as such the first petitioner is no way connected with the alleged offences. Only because, the first petitioner happens to be the brother of the deceased accused viz., A.V.Senthil Kumar, the first petitioner and his wife have been arraigned as accused without any specific allegations or overtact. Further submitted that even the reading of statements under Section 161 of Cr.P.C., recorded from the witnesses shows that no one has spoken about them, and as such there is absolutely no basis for filing charges as against them as alleged by the prosecution. Further he submitted that the complaint is of the year 2004 and the charge has been framed only in the year 2011, as such there is inordinate delay of seven years in filing the charge sheet. Therefore, he sought for quashment of the entire proceedings.

3. Per contra, the learned Additional Public Prosecutor filed counter along with documents and submitted that the petitioners are arraigned as A1 and A2 in C.C.No.3 of 2016. Initially, the case was registered in Crime No. 1 of 2004 by the CBCID, Perambalur and thereafter transferred to the Chief Judicial Magistrate Court, Ariyalur in C.C.No.3 of 2016. He contended that TANCEM is the government of Tamil Nadu enterprises and it is engaged in the manufacturing and sale of cement, asbestos sheet, asbestos pipes and stoneware pipes and for the sale of cement they have network with the stockiest/sole selling agencies. M/s. Jayalakshmi Agencies is one of the sole Agencies of the TANCEM for the sale of cement. One A.V.Senthilkumar is the sole proprietor of M/s. Jayalakshmi Agencies and authorized dealer of Arasu cement. The quantity of cement supplied for the TWAD Board work is eligible for concession rate of 4% sale tax and discount of Rs.5/- per bag. The stockiest/sole selling Agencies should get the declaration forms from the TWAD Board authorities and submit the same to TANCEM to avail concession of 4% sale tax and discount of Rs.5/- per bag.

3.1. During the period from October 2002 and August 2003, M/s. Jayalakshmi Agencies had cheated the company and availed discount of Rs.9.07 lakhs and got several lakhs of sales tax exemption by producing 44 numbers of fabricated false declaration forms and fraudulent documents for the indent of 5803.75 MTs cement. The first petitioner is working as Assistant at TANCEM, Ariyalur and the second petitioner is none other than the wife of the first petitioner and she is working as school teacher. The brother of the first petitioner viz., A.V.Senthilkumar is the authorized sole selling agent of cement manufactured by the TANCEM, Ariyalur. When the first petitioner was working as clerk in the material section of TANCEM, the first and second accused were functioning as shadow proprietors and used to assist and manage the entire business transaction relating to M/s. Jayalakshmi Agencies, Ariyalur. In fact, other accused A3 and A5 are close friends of first accused, who are also working in marketing section of TANCEM, Ariyalur. Therefore he vehemently opposed to quash the criminal proceedings and prayed for dismissal of the quash petition.

4. Heard Mr.AL.Ganthimathi, learned counsel appearing for the petitioners and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondent.

5. On perusal of records it is seen that the respondent filed final report and the same has been taken cognizance in C.C.No.3 of 2016 on the file of the learned Chief Judicial Magistrate, Ariyalur for the offences under Sections 420, 465,

468, 471, 472, 477(A) r/w 120(B) of IPC. There are totally six accused in which, the petitioners are arraigned as A1 and A2. The first accused is the own brother of one A.V.Senthilkumar, who is the owner and sole proprietor of M/s. Jayalakshmi Agencies. M/s.Jayalakshmi Agencies cement works is one of the selling Agencies of TANCEM for the sale of cement. For supplying cements to TWAD Board, they are entitled for concession rate of 4% in the sales tax and also discount of Rs.5/- per bag. The allegations are that during the period from October 2002 to August 2003, M/s.Jayalakshmi Agencies had cheated the TANCEM and availed discount to the tune of Rs. 9.07 lakhs and also several lakhs of sales tax exemption by producing 44 numbers of fabricated false declaration forms and fraudulent documents for the indent of 5803.75 MTs cements.

6. The first petitioner (A1) was working as Assistant at TANCEM and the second petitioner is the wife of the first petitioner, who was working as school teacher. The brother of the first petitioner was running the cement Agencies in the name and style of M/s.Jayalakshmi Agencies and filed fraudulent declaration forms and on receipt of the same, the first petitioner and other accused persons knowingly sanctioned the delivery orders and dispatched the cements from the TANCEM factory and they helped the accused to cheat the company. It is also seen from the statements recorded under Section 161(3) of Cr.P.C., they are revealed the fact of the case and the forged declaration form submitted by the deceased accused persons.

7. It is also seen that the respondent seized documents like false declaration forms, ledgers, account books, bill books and forgery seals used for cheating have substantiated the allegations as against the petitioners. All the accused had conspired together prepared bogus seal and affixed the same in the declaration certificates signed as Engineers mentioned the false names of the contractors and forged the quantities of the cement requirement in the declaration certificate and thus utilized the false declaration certificate as a genuine and obtained more quantities of cement much against the legal requirements, thereby gained more than Rs. 9 lakhs.

8. As far as the second petitioner is concerned though she is the wife of the first accused, as against her there are specific allegations are there to attract the offences as alleged by the prosecution. There are statements under Section 161(3) of Cr.P.C., that she is being the wife of the first accused, she also conspired with the first accused to commit the offence. Therefore, the grounds raised by the petitioners cannot be considered to quash the proceedings and as such this Court is not inclined to quash the proceedings.

9. In view of the above discussions, this Criminal Original Petition stands dismissed. However, considering the case is of the year 2016, the trial Court viz., the learned Chief Judicial Magistrate, Ariyalur, is directed to complete the trial in C.C.No.3 of 2016, within the period of six months from the date of receipt of copy of this Order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

rts

To

1. The Chief Judicial Magistrate Court,
Ariyalur
2. The Inspector of Police,
CBCID,
Perambalur District
3. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.AL.Ganthimathi, Advocate SR.No.35587

CRL.O.P.No.1811 of 2017
Crl.MP.Nos.1299 & 1300 of 2017

SSI (CO)
GMY (22/05/2019)

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