



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2019

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P(MD).No.2974 of 2019

and

Crl.M.P(MD) Nos.1627 and 1628 of 2019

WEB COPY

Siva @ Sivakumar

... Petitioner

Vs.

1. The State Rep. by

The Inspector of Police

CSCID, Virudhunagar ... 1st Respondent/Investigating Officer

2. Eswaran

Sub Inspector of Police

CSCID, Virudhunagar ...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records pertaining to the charge sheet in C.C. No.7 of 2019 on the file of the Judicial Magistrate No.I, Virudhunagar and quash the same as illegal.

For Petitioner: Mr. T.Lenin Kumar

For Respondents : Mr.K.Suyambulinga Bharathi

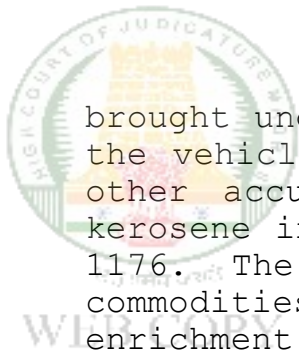
No.1 Government Advocate(Crl.Side)

O R D E R

This Criminal Original petition has been filed to quash the proceedings in C.C. No.7 of 2019 on the file of the Judicial Magistrate No.I, Virudhunagar

2. The learned counsel for the petitioner would submit that the entire proceedings are vitiated only on the ground that before taking cognizance to prosecute the petitioner for the offence under Section 17, 3(1) of Tamil Nadu Kerosene (Regulation of Trade) Order 1973 and 7(1)(a)(ii) of Essential Commodities Act, 1955, the defacto complainant ought to have obtained sanction as contemplated under Clause 25 of the Tamil Nadu Kerosene (Regulation of Trade), order 1973. When law mandates, the learned Magistrate ought not to have taken cognizance for those offences as against the accused persons. He also relied upon the judgment of this Court in **(2008) 3 MLJ (crl.) 767** in the case of **S.Mahendran -vs- State by Inspector of Police, CSCID, Chennai Division , Chennai- 600 101** and sought for quashing the entire proceedings.

3. Per contra, the learned Government Advocate(Crl.Side) would submit that the petitioner is arrayed as first accused(A1) and he is a habitual offender and committed so many offence similar in nature. He was charged for the allegations that the accused persons adulterated diesel with PDS Kerosene given to the general public



brought under the Public Distribution System and used it as fuel to the vehicle. During vehicle check up the first accused along with other accused persons found in filling up public distribution kerosene in the diesel tank for their lorry bearing Reg.No.TN 67 AC 1176. The petitioner was involved in peddling with essential commodities intended for card holding public for his personal enrichment and for that he was detained under Goondas Act as a black-marketer. So far several cases has been registered as against the petitioner for the similar offence. The details of crime are as follows:

" Crime No. 56 of 2001, 117 of 2002, 4 of 2008, 8 of 2008, 9 of 2008, 68 of 2016, 138 of 2018 in Virudhunagar District and of them 4 cases are pending trial and Crime No. 38 of 2013 in Tirunelveli District which is pending trial and Crime No. 128 of 2015 in Tuticorin District which is pending trial and for this case he was detained under Goondas Act in Central Prison, Madurai from 30.12.2015 to 25.02.2016"

Therefore he sought for dismissal of this quash petition.

4. Heard Mr.T.Lenin Kumar, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned counsel appearing for the first respondent.

5. There are totally three accused in this case and the petitioner herein is arrayed as A1. The crux of the complaint is that the petitioner along with other accused persons found filling up of kerosene brought under public distribution system in the diesel tank of the lorry bearing Reg.No.TN 67 AC 1176. He tendered confession on his own volition that he was involved in peddling with essential commodities which intended for card holding public for his personal enrichment. The petitioner is also involved in several cases and he was already detained under Goondas Act as black marketer. He is History Sheeter in H.S.No.21 of 2002 as Essential Commodities offender and he is a known black marketer indulged in peddling of essential commodities intended for card holding public through public distribution system.

6. In respect of the grounds raised by the petitioner that before taking cognizance the prosecution has to obtain sanction as contemplated under Clause 25 of the Tamil Nadu Kerosene (Regulation of Trade), order 1973. It is relevant to extract under Clause 25 of the Tamil Nadu Kerosene (Regulation of Trade), order 1973:

" No person shall be prosecuted for contravention, attempted to contravene or abate the contravention of any provision of this order or of the terms and conditions of the license, applicable to the authorization issued by the Government of the Licensing Authority or the Authorised Officer except with the previous sanction of



the Commissioner or Deputy Commissioner in city of the Collector concerned".

7. Admittedly the petitioner is not a license holder to deal with Essential Commodities Act. He is a habitual offender to sell essential commodities issued under the public distribution scheme. In this regard the learned counsel for the petitioner relied upon the judgment of this Court in **(2008) 3 MLJ (crl.) 767** in the case of **S.Mahendran -vs- State by Inspector of Police, CSCID, Chennai Division , Chennai- 600 101**. The relevant portion is extracted herein under:

"12. Therefore, in view of the above well settled principle of law laid down by the Hon'ble Apex Court, the sanction was accorded by an incompetent authority in this case and thereby this fundamental error invalidates the cognizance of the case itself as without jurisdiction. Therefore, this Court is left with the inevitable conclusion to quash the proceedings and accordingly the proceedings pending in C.C.No.1945 of 2005 on the file of the District Munsif cum Judicial Magistrate, Ambattur is hereby quashed. It is open to the respondent to obtain sanction in accordance with law if the respondent desires so and proceed with the matter.

This petition is ordered accordingly.
Consequently connected M.P is closed"

8. This Court held the above case that though the prosecution obtained sanction the same was not obtained from competent authorities. As per Clause 25 of the Tamil Nadu Kerosene (Regulation of Trade), order 1973 only Commissioner or Collector concerned or such officer authorised by them has to accord sanction for prosecution. In the case on hand the petitioner is not a license holder. That apart the prosecution already sought for sanction before District Collector (Virudhnagar) and it is pending.

9. Therefore on the grounds raised by the learned counsel for the petitioner, the entire proceedings cannot be quashed and the criminal petition stands dismissed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)



To;

1. The Judicial Magistrate No I,
Virudhunagar

2. The Inspector of Police
CSCID, Virudhunagar

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

CrI.O.P(MD).No.2974 of 2019 and
CrI.M.P(MD) Nos.1627 and 1628 of 2019
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