



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.11.2019
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C.(MD)No.826 of 2019
and
Crl.M.P.(MD)No.9556 of 2019

Ayyanar ... Petitioner/Accused No.6/LW-7
Vs.

The Inspector of Police,
C.S.C.I.D.,
Virudhunagar. ... Respondent/Complainant/Complainant
(Crime No.436 of 2010)

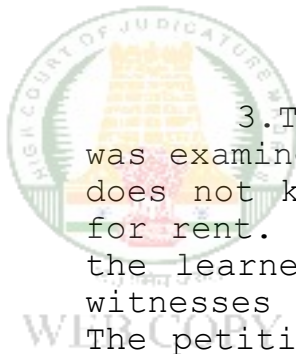
Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records pertaining to the order dated 08.08.2019, passed by the Judicial Magistrate No.I, Virudhunagar in C.C.No.141 of 2012 and set aside the same.

For Petitioner : Mr.T.Lenin Kumar
For Respondent : Mr.A.Robinson
Govt. Advocate (Crl. Side)

O R D E R

Heard the learned counsel on either side.

2.The prosecution registered Crime No.436 of 2010 for the offence under under Clause 6(4) of TNSC (RDSCS) Order, 1982 r/w. Section 7(1)(a)(ii) of Essential Commodities Act, against one Shanmugam and two others. The case pertains to illegal possession and transportation of PDS Rice contained in 130 packets. It is seen from materials on record that the petitioner herein namely., Ayyanar had addressed a complaint later dated 17.12.2010 to the Inspector of Police, C.S.C.I.D., Virudhunagar, alleging that he had rented out the godown in question to the main accused and the same was misused by him for storing the contraband/PDS Rice. Subsequently, statement under Section 161 of Cr.P.C., was also recorded from the petitioner herein on the same day. Investigation was completed and final report was filed before the learned Judicial Magistrate No.I, Virudhunagar. Cognizance of the offences under under Clause 6(4) of TNSC (RDSCS) Order, 1982 r/w. Section 7(1)(a)(ii) of Essential Commodities Act, was taken by the learned Jurisdictional Magistrate. The petitioner herein was shown as L.W.7.



3.Trial commenced in the case recently. When the petitioner was examined as P.W.7, he turned hostile. He took the stand that he does not know the second accused and he did not let out the godown for rent. In view of the about-turn made by the petitioner herein, the learned Trial Magistrate chose to delete him from the list of witnesses and proceeded against him under Section 319 of Cr.P.C. The petitioner who was formerly shown as L.W.7 now became A7. All these developments took place on a *suo motu* basis. The course of action adopted by the learned Trial Magistrate is put to challenge in this criminal revision case.

4.Merely because, a witness turned hostile, that by itself cannot furnish the basis for making him an accused in the very same criminal proceedings. Something more is required. Of course, the power under Section 319 of Cr.P.C., can also be invoked but then all the parameters set out therein must also be followed. Likewise, a witness who indulges in perjury can be dealt with under Section 340 of Cr.P.C. Again the procedure laid down in the statute will have to be followed. In this case, the Court below had straightaway arrayed the petitioner herein as accused. It is for this reason alone, I am constrained to intervene and not on any other ground. In this view of the matter, the impugned order dated 08.08.2019 made in C.C.No.141 of 2012, on the file of the learned Judicial Magistrate No.I, Virudhunagar *suo motu* making the petitioner as an accused is set aside. It is made clear that it is open to the Court below as well as the prosecution to take appropriate proceedings in accordance with law against the petitioner herein. With this liberty, the criminal revision case stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ias

To:

1. The Judicial Magistrate No.1,
Virudhunagar

2. The Inspector of Police,
C.S.C.I.D.,
Virudhunagar.

+1 CC to Mr.T.LENIN KUMAR, Advocate (SR-96632[F] dated 07/11/2019)

Cr1.R.C. (MD)No.826 of 2019

05.11.2019

MK (09.01.2020) 2P 4C

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