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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.13096 OF 2021

AND

CRL.M.P.NOS.7194 & 7195 OF 2021

K.Kalanidhi

... Petitioner

.Vs.

1. State Rep. by,
The Inspector of Police,
Central Crime Branch,
EDF-II, Team IV,
Vepery, Chennai - 600 007.
(Crime No.19/2020).

2. P.Nagaraj

... Respondents

PRAYER:-

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining the C.C.No.8596 of 2019 pending before the learned Metropolitan Magistrate Court for CCB & CBCID Cases, Egmore, Chennai and quash the same as against these petitioner in the interest of justice.

For Petitioner : Mr.R.Vijayakumar

For R1 : Mr.A.Damodaran,
Government Advocate [Crl. Side]

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.8596 of 2019 on the file of the Metropolitan Magistrate Court for CCB & CBCID Cases, Egmore, Chennai.



2. The petitioner/A3 is facing trial before the learned Metropolitan Magistrate Court for CCB & CBCID Cases, Egmore, Chennai in C.C.No.8596 of 2019, for offence under Sections 120 (b), 420, 436, 468 and 477A IPC.

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3. The gist of the case is that on 13.08.2009, at about 12.00 hours, there was fire accident in tasmac shop bearing No.4510, situated at No.2/159, East Coast Road, Enjambakkam, Chennai. One Thirumalaivasan/A1, Supervisor of the tasmac was on leave on the date of occurrence. On coming to know about the occurrence, the 2nd respondent, Assistant Manager, Tasmac Limited, Kancheepuram District visited the scene of occurrence and asked the Supervisor/A1 to lodge a complaint to the Inspector of Police, Neelankarai Police Station, Chennai and the same was registered in Crime No.587 of 2009. On the same day, the 2nd respondent lodged a complaint before the 1st respondent Police and the same was registered in Crime No.19 of 2010, for offence under Sections 420, 436 and 467 IPC against A1/Supervisor, A2/Salesman and the petitioner/A3/Salesman. During investigation, it was found that during the period between 01.04.2009 and 12.08.2009, there was shortage of stock in the tasmac to the tune of Rs.25,68,168/- as per the Annual Audit Report.

4. The learned counsel for the petitioner submitted that the fire accident in the tasmac shop bearing No.4510, situated at No.2/159, East Coast Road, Enjambakkam, Chennai had taken place early morning on 13.08.2009. He further submitted that the petitioner is only a Salesman in the tasmac shop. It is only A1/Supervisor who was responsible and entrusted with the stocks in tasmac, remittance of cash, placing orders and sending report to the superiors. On 13.08.2009, at the time of occurrence, the petitioner was on leave. On getting information, he had gone there and seen the entire shop burnt and stocks available completely charred and the properties like table, Almirah were also damaged due to fire. The petitioner is not aware of any enquiry conducted by the 2nd respondent/LW1 and how responsibilities have been fixed on the petitioner. The only allegation is that the Supervisor/A1 used to make false entry in the register maintained in the tasmac and he used to take away stocks, sell it outside and give portion of sale to the petitioner and the other salesman, which they refused to receive. This being so, the 2nd respondent cannot state that the petitioner acted in the conspiracy with other accused.

5. The learned counsel for the petitioner further submitted that since in this case there is no eye witness to the occurrence and the petitioner was not present at the time of occurrence, the petitioner cannot be charged and proceeded under Section 436 of IPC. The only witnesses which the prosecution



wants to rely upon are LW7 and LW8. LW7 and LW8 cannot be termed as eye witnesses, since their statements under Section 161 Cr.P.C., were recorded on 29.02.2010 i.e., after the arrest of A1 on 27.02.2009. Hence, these two witnesses were projected as though they are eye witnesses to the occurrence. In fact, from the memo of evidence, it is seen that LW7 is shown as witness to the Observation Mahazar. He further submitted that the overtact attributed against the petitioner is only on the confession of A1. The occurrence is said to have taken place early hours on 13.08.2009. After investigation, the charge sheet was made ready on 28.06.2017. Two years thereafter only, the charge sheet has been sent to the Court on 24.11.2019 and no reason has been given for such delay. The admitted case is that initially, the Supervisor/A1 was asked to lodge a complaint to the Inspector of Police, Neelankarai Police Station, Chennai. A1 had also given a complaint on 14.08.2009, which was registered in Crime No.578 of 2019 for fire accident. While being so, why the 2nd respondent/LW1 lodged a complaint on the same day to the 1st respondent Police is not known. On receipt of the complaint, the 1st respondent registered a case in Crime No.19 of 2010 against the petitioner and two others. Though LW1 to LW7 were listed as eye witnesses in the charge sheet, none of the witnesses have stated that the petitioner was present in the tasmac at the time of occurrence. From the charge sheet, no reason given by the 2nd respondent that the petitioner in conspiracy with other accused had cheated to the tune of Rs.25,68,168/-. Hence, he prayed for quashing of the proceedings against the petitioner.

6. The learned Government Advocate (Crl. Side) appearing on behalf of the 1st respondent Police submitted that in this case, the 2nd respondent is the Assistant Manager, Tasmac Limited, Kancheepuram. The 2nd respondent visited the scene of occurrence immediately on getting information about the fire accident. Thereafter, he called the Supervisor/A1 and the other employees/A2 and the petitioner/A3. During investigation, the entire shop was examined and found that the articles including stocks registers, table and entire things were burnt. Further, the official from United India Insurance Corporation Limited had also come there and conducted investigation. On verification of the Stock Inspection Report from the District Manager, Tasmac Limited, Kancheepuram; the Annual Audit Report; the stock position and other corresponding documents which were available in the District Office and remittance made in the bank, the 2nd respondent prepared a report. From the report, it is found that the petitioner along with other employees in the tasmac shop No.4510 joined together in a deceitful manner had taken away the stocks and sold it outside. In order to suppress the same, submitted false statement to the District Regional Office, Tasmac Limited, Kancheepuram.



7. The learned Government Advocate (Crl. Side) further submitted that the petitioner was present on the date of occurrence, which has been spoken by the witnesses LW7 and LW8. In this case, there are other witnesses who have spoken about the involvement of the petitioner. The points raised by the petitioner are disputed facts and there are materials against him to proceed with the trial. The trial Court on perusing the charge sheet and the materials produced had taken the case on file and issued summons to the accused. Hence, he prayed for dismissal of the quash petition.

8. This Court considered the rival submissions and perused the material available on record.

9. It is seen that the presence of the petitioner at the time of occurrence has been spoken by the witnesses LW7 and LW8. It is not in dispute that the tasmac shop bearing No.4510 was burnt during night hours on 13.08.2009, due to which the entire stock registers and other things were burnt. The 2nd respondent/Assistant Manager, Tasmac Limited, Kancheepuram conducted examination, verified records available in the District Regional Office, Tasmac Limited, Kancheepuram and bank statement of the accused and prepared a report. Thus, the points raised by the petitioner are to be put to the witnesses by way of cross examination during trial. In view of the same, this Court is not inclined to entertain this Criminal Original Petition and the same is liable to be dismissed.

10. At this juncture, the learned counsel for the petitioner submitted that due to the pendency of the above case for the past nine years, the petitioner is unable to seek any other employment. Hence, he seeks direction for completion of trial within a stipulated time.

11. The learned Government Advocate submitted that the trial would be completed within a period of six months.

12. The learned counsel for the petitioner prayed that the petitioner is the resident of Chengalpet, for the past nine years, he has been travelling from Chengalpet to Chennai to appear before the trial Court. Hence, he prayed for dispense with of his personal appearance.

13. On the plea of the learned counsel for the petitioner, it is made clear that the petitioner is to file a petition under Section 205 Cr.P.C., before the trial Court and also affidavit stating that he would not dispute his identity during the trial; cooperate with the trial; cross examine the witnesses then and there without seeking any unnecessary adjournments and he would not be cause for delay of the trial. The trial Court is to



consider the petition under Section 205 Cr.P.C. If the above undertaking is not followed by the petitioners, the trial Court is directed to secure the accused and conduct the trial.

14. In the result, this Criminal Original Petition stands dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed. The trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Metropolitan Magistrate Court
for CCB & CBCID Cases,
Egmore, Chennai.
2. The Inspector of Police,
Central Crime Branch,
EDF-II, Team IV,
Vepery,
Chennai - 600 007.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Vijayakumar, Advocate, S.R.No.37681

CRL.O.P.NO.13096 OF 2021

KSM(CO)
PBS/27/09/2021