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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl. O.P. No.6912 of 2017

and

Crl.M.P.Nos.5042 & 5043 of 2017

1. Mr.Sandeep Mageshwari
General Manager Retail, HPCL,
Thalamuthu Natarajan Building, Fourth Floor,
8-Gandhi Irwin Road, Egmore,
Chennai-600 006.
2. Mr.Benny C.Thomas
Chief Regional Manager, HPCL,
18/3, Periya Kadai Veedhi,
Coimbatore -641 001
3. Mr.John Abraham,
Senior Manager(Installation),
C/o. Indian Oil Corporation Limited,
Narayanappa Chavadi,
Sankari Durg, Salem-637 302.
4. Mr.Ch.Kishan Kumar,
Deputy Manager(Sales),
C/o. Puttiah Son, HPCL Dealer,
Ram Nagar, Hosur,
Krishnagiri-635 109.

..Petitioners/Accused

Vs.

State,
Rep. by Thiru A.Jeyakumar,
Deputy Inspector of Labour/
Assistant Controller of Legal Metrology,
Dharmapuri-636 701.

..Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.01 of 2017 on the file of Learned Judicial Magistrate-1, Krishnagiri and quash the same.



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For petitioners: Mr.Abdul Saleem
for M/s.AAV Partners.

For Respondent : Mr S.Vinoth Kumar
Government Advocate(Crl.side)

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.01 of 2017 on the file of Learned Judicial Magistrate-1, Krishnagiri and quash the same.

2. Heard learned counsel for the petitioners and learned counsel for the respondent.

3. It is the contention of the learned counsel for the petitioners that the accused 1 to 4 are the employees working in Hindustan Petroleum Corporation Ltd. (in short "HPCL"). A private complaint has been filed against them for violation of Section 26, 44(1)(iv), 25 and 30(a) of the Legal Metrology Act 2009.

4.The allegation made against the petitioners is that A5 is the owner of the lorry, who has entered into a contract with HPCL on 11.04.2014 for supply of petroleum products. On 06.05.2016, the lorry was sealed by the concerned Officer and petroleum products were loaded. On 25.06.2016, while unloading the petroleum products, there was a shortage of 250 litres of HSD had been noticed and a complaint has been lodged against HPCL. It was found that there was a baby tank fixed in the lorry inside the main tank. For committing such offence, show cause notice was issued in this regard. Thereafter, sanction was sought to prosecute the officers incharge of the HPCL. Besides owner, the driver has admitted the lapses on the part of the employees and submitted that he is not responsible. If such mistake is happened only at the instance of the owner, ultimately, the vehicle has to be black listed and the contract has to be terminated. After obtaining sanction, a private complaint was filed on 16.11.2016 against the accused vis-a-vis A1-General Manager, A2-Chief Regional Manager, A3-Senior Manager, A4-Deputy Manager, A5- Mr.Shahul Hameed (Dealer) and A6- Driver for violations of various provisions of law.

5. It is relevant to note that except contending that A1 to A4 were incharge of HCPL, there was no allegation whatsoever made in the entire complaint as to the nature of the responsibility and who was responsible at the relevant point of time. In the absence of evidence or averments, they cannot be prosecuted. Hence, it is the contention of the learned counsel for the petitioners that the complaint against the petitioners



has to be quashed.

6. The learned Government Advocate (Crl. Side) submitted that the company has not been made as a party or accused in this matter. However, it is submitted that A1 to A4 who were responsible Officers at the relevant point of time, they ought to have properly enquired before loading the petroleum products, which has not been done in this case. Therefore, it is a clear case of violation of law and the prosecution has been lodged against them. Therefore, the prosecution cannot be quashed.

7. As referred above, the violation has been found out during unloading of petroleum products on 25.06.2016. It is the case of the defacto complainant department that the baby tank was fixed with the connivance of the officers of the HPCL, whereas, the owner of the lorry himself had admitted the fact that several violation has been taken place and their employees are responsible for those violations.

8. It is to be noted that when a small baby tank was fixed inside the main tank, which was sealed in such a manner, the officers who are supplying the petroleum products cannot be blamed for that, unless the materials unearthed and collected by the department disclose the same. Except contending that four Officers who are responsible in HPCL was not there, no other allegation whatsoever made against these petitioners.

9. It is to be noted that the company is also not made an accused. Despite the sanction has been accorded to prosecute the company by sanctioning authorities vide order dated 17.10.2016, the company has not made an accused, only the petitioners were made as accused. Moreover, the petitioners were not even aware that how far they were responsible and what was their responsibility in the affairs of the company.

10. It is to be noted that once the sanction is accorded to the company and prosecution is launched, where no person were nominated as per the Section 49(ii) of the Legal Metrology Act, 2009, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company.

11. The Defacto complainant has not even verified whether any such authorisation has been made by HPCL. Without verifying such entries, the prosecution was made against all these Officers, which is not valid in the eye of law. The purpose of nominating the officer itself is to avoid unnecessary prosecution of other Officers, which has not been verified in this case.



12. This Court is of the view that mere allegation which is vague and no materials available on record to show the complicity of the accused with the crime and continuing the prosecution against A1 to A4, namely, the petitioners herein is nothing but abuse of process of law and the same is quashed. Accordingly, this Criminal Original petition is partly allowed. However, the prosecution against A5 and A6 shall continue and the trial Court shall proceed as per law and dispose of the main case as expeditiously as possible. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

msv/nr

To

1. The Judicial Magistrate No.1
Krishnagiri.
2. Do thro The Chief Judicial Magistrate,
Krishnagiri.
3. The Deputy Inspector of Labour / Assistant
Controller of Legal Metrology
Dharmapuri - 636 701.
4. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.AAV Partners, Advocate, S.R.No.60928

Cr1. O.P. No.6912 of 2017
and
Cr1.M.P.Nos.5042 & 5043 of 2017

GSM(CO)
RGA(14/12/2021)