



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 29.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No. 19044 of 2017

and

Crl.M.P.Nos. 11563 of 2017

1.K.Rajagopal

2.M.Mahalingam

3.P.Manickam

4.R.M.Pounraj

. . . Petitioners

Versus

State represented by

Deputy Superintendent of Police,

Civil Supplies C.I.D.,

Coimbatore.

. . . Respondent

(Crime No.98/2004 on the file of the Civil Supplies, CID Salem)

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.446 of 2009 on the file of the learned Judicial Magistrate No-II, Salem and quash the proceedings initiated in so far as the petitioners are concerned.

For Petitioners : Mr.K.V.Sridharan

For Respondent : Mr.S.Vinoth Kumar

Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed, to quash the final report , in C.C.No.446 of 2009, pending on the file of the learned Judicial Magistrate No.II, Salem.

2. The case of the prosecution is that the accused are responsible for the loss to the tune of Rs.3,58,750/-, in lifting of PDS rice from Tamil Nadu Civil Supplies Corporation Godown, at Omalur, there by, committed an offence punishable under Sections 408 r/w.109 of the Indian Penal Code and 6 (4) of



TNS (RDCS) Order 1982 r/w. 7 (1) (a) (ii) and Section 10 of the Essential Commodities Act, 1955.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The learned counsel appearing for the petitioners submitted that A10 is already dead and A7, A11, A12 are the officials of the Civil Supplies Department. The main contention of the learned counsel appearing for the petitioners is that when final report was filed, these accused have not been arrayed as an accused. After investigation, additional final report has been filed, wherein, these accused have been added as an accused. Moreover, the statements relied upon the prosecution as against these petitioners do not constitute an offence against them. Therefore the same has to be set aside.

5. It is to be noted that merely because the petitioners have not been arrayed as an accused, by the investigation officer, in the initial stage, but they were arrayed as additional accused, at a later stage, it cannot be said that prosecution is flawed. It is the prerogative right of the Investigation Officer to conduct further investigation. The statements recorded by the investigating officer show the complicity of the accused with the Crime. This Court is of the view that validity of the statement cannot be gone into at this stage. It is a matter of evidence before the trial Court.

6. In (2020) 3 Supreme Court Cases 317 (RAJEEV KOURAV Vs. BAISHAB AND OTHERS), the Hon'ble Supreme Court has held that

"The conclusion of the High Court to quash the criminal proceedings is on the basis of its assessment of the Statements recorded under Section 161 of the Code of Criminal Procedure. Statements of witnesses recorded under Section 161 Cr.P.C., being wholly inadmissible in evidence cannot be taken into consideration by the Court, while adjudicating a petition filed under Section 482 of the Code of Criminal Procedure.

7. In view of the above finding of the Hon'ble Supreme Court, this Court is of the view that contention of the learned



counsel appearing for the petitioners, cannot be countenanced. Accordingly, this Court do not find any merit in this Criminal Original Petition.

8. In the result, this Criminal Original Petition is dismissed. Since the matter has been prolonging for all these years successfully, the trial Court shall ensure that the case should be disposed of expeditiously. If any of the accused adopt the delay in tactics one by one or avoiding the process of the Court, trial Court is at liberty to cancel the bail of the accused by invoking power under Section 309 of the Code of Criminal Procedure and proceed with the case. Consequently, connected Criminal Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

psa/mvs
To

1. The Judicial Magistrate No-II,
Salem.

2. Deputy Superintendent of Police,
Civil Supplies C.I.D.,
Coimbatore.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.V.Sridharan, Advocate Sr.62124

CrI. O.P. No. 19044 of 2017

gsm[co]
srg 16/12/2021