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Crl.O.P.No.21677 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.21677 of 2022 and
Crl.M.P.No.14058 of 2022

Jeyagopu

... Petitioner

Vs.

The State represented by
The Inspector of Police,
CS-CID, Cuddalore Police Station,
Cuddalore District.
(Crime No.328 of 2012).

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C.,
to call for the entire records in S.C.No.214 of 2020 on the file of the
learned Principal Subordinate Judge, Villupuram and quash the same.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.C.No.214 of 2020 on the file of the learned Principal Subordinate Judge, Villupuram, thereby taken cognizance for the offences under Section 6(4) of the Tamil Nadu Scheduled Commodities (RDCS) Order 1982, (hereinafter called as “the TNSC(RDCS) Order”) r/w Section 7(1)(a)(ii) of Essential Commodities Act, 1955 (hereinafter called as “the EC Act”) and Sections 353, 307 of IPC.

2. The case of the prosecution is that on secrete information, the respondent police along with his police party went to Andiyur Ration shop and noticed two persons with two bags of rice. On seeing the police, the petitioner escaped and another Accused No.1 had taken 3 feet iron pipe and tried to assault them. Further on apprehending the Accused No.1, they found that he was employed in the ration shop and he revealed the details of other accused persons. On searching the Magalir building, where the ration shop is situated, they found 393 bags of rice. Since no records were available with Accused No.1, he was arrested and the case



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was registered for the above said offences. After completion of investigation, the respondent filed final report and the same has been taken cognizance in S.C.No.214 of 2020.

3. The learned counsel appearing for the petitioner would submit that totally there are four accused in which, the petitioner is arrayed as second accused. Even according to the case of the prosecution, when Accused No.1 was standing outside the ration shop, he was in possession of two bags of rice. When the respondent attempted to make search, Accused No.1 and others prevented the respondent police to do their official duty and also attempted to murder the defacto complainant. Therefore, Accused No.1 was standing outside the ration shop and except the two bags of rice, others were seized from the ration shop. There is absolutely no records produced by the respondent to prove the charge under Section 6(4) of Tamil Nadu Scheduled Commodities Order 1982 r/w. Section 7(1)(a)(ii) of the Essential Commodities Act, 1955.



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3.1. Further, the respondent failed to prove that Accused No.1 purchased the PDS rice, from the person who purchased under the family card. The premises from where in the alleged contraband of 393 bags of rice seized by the respondent, is not owned by the Accused No.1 and the Accused No.1 nowhere connected to the said shop.

3.2. He further submitted that the final report has been filed after the period of eight years from the date of the registration of the FIR. In fact, the officer, who in-charge of the respondent police station had not filed any final report. The FIR was registered on 02.12.2012 and after completion of investigation, the final report was made ready on 10.12.2012 itself. However, it was filed only on 15.09.2020, before the learned Judicial Magistrate No.I, Villupuram. The officer who was in-charge of the respondent police station was not filed the final report. The person who had registered the FIR and after completion of investigation made ready of the final report, has filed the final report. It is not permissible under law and it is a violation of provision 173(2) of the



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Cr.P.C., since the person who filed the final report was not in-charge on that day viz., 15.09.2020. Therefore, the entire proceedings are vitiated and liable to be quashed.

4. The learned Government Advocate (Crl. Side) appearing for the respondent police submitted that the petitioner along with other accused person were in possession of 359 bags of PDS rice and as such they have committed very serious offence. The witnesses categorically submitted that on verification, they found that it was ration rice. Therefore, Section 6(4) of the TNSC(RDCS) Order r/w. Section 7(1)(a)(ii) of the EC Act, 1955, is very much attracted and the grounds raised by the petitioner cannot be considered by this Court, since it is mixed question of fact and it can be adjudicated only before the trial Court.

4.1. He further submitted that the charge sheet was made ready on 10.12.2012 in Crime No.328 of 2012 and filed on the same day before the learned Judicial Magistrate, Cuddalore. However, it was returned for



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some corrections and thereafter it was represented before the learned Judicial Magistrate No.I, Villupuram, on 15.09.2020. Therefore, the officer who was in-charge of the respondent only filed final report and there is no violation under Section 173(2) of Cr.P.C.

4.2. That apart, the petitioner along with three others had prevented the defacto complainant from discharging his official duty. That apart, they were attempted to commit murder of the defacto complainant and as such, there are material on record to attract the offence under Sections 353, 307 of IPC.

5. Heard the learned counsel appearing on either side and perused the material placed before this Court.

6. There are totally four accused in which the petitioner is arrayed as second accused. On receipt of the secrete information, the defacto complainant along with police party went to Andiyur ration shop and had seen two persons with two rice bags standing outside the ration



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shop and talking to each other. On seeing the police party, petitioner ran away and Accused No.1 was found in possession of two bags of PDS rice. They also made search in the building, in which the ration shop situated and seized 359 rice bags on 02.12.2012 and the FIR has been registered for the offences under Section 6(4) of Tamil Nadu Scheduled Commodities Order 1982 r/w. 7(1)(a)(ii) of the Essential Commodities Act, 1955.

7. Though the respondent registered the FIR and completed investigation and made ready the final report, there is no proof to show that the final report was filed on 10.12.2012 before the learned Judicial Magistrate No.I, Cuddalore. The learned Government Advocate (Crl. Side) produced a certified copy of the final report in which, this Court finds no seal dated 10.12.2012 as if it was filed before the learned Judicial Magistrate No.I, Cuddalore. Whereas this Court finds, the seal dated 15.09.2020, which was filed before the learned Judicial Magistrate No.I, Villupuram.



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8. Apart from the delay of eight years in filing the final report, it was not filed by the officer in charge of the respondent police station on 15.09.2020. The Officer who completed the investigation and who made the final report ready, had filed the final report before the learned Judicial Magistrate No.I, Villupuram on 15.09.2020. Admittedly, on 15.09.2020, the officer, who completed and made the final report ready, was not the Officer in-charge of the respondent police station. It is relevant to extract the provision under Section 173(2) of Cr.P.C., as follows :-

“173. Report of police officer on completion of investigation -

.....

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

- (a) the names of the parties;*
- (b) the nature of the information;*
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;*
- (d) whether any offence appears to have been committed and, if so, by whom;*



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- (e) whether the accused has been arrested;*
(f) whether he has been released on his bond and, if so, whether with or without sureties;
(g) whether he has been forwarded in custody under section 170

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given

Thus, it is clear that the officer in-charge of the police station shall forward the report to the concerned jurisdictional Magistrate Court.

9. Further, the Officer who registered the FIR is one K.K.Senthil Kumar, CSCID, Cuddalore and he conducted investigation and made the final report ready, as early as on 10.12.2012 itself. However, it was not filed on that day before the Court. Subsequently, the Cuddalore District bifurcated as Villupuram and Cuddalore. After the period of eight years viz., only on 15.09.2020, the final report was filed before the learned Judicial Magistrate No.I, Villupuram. The investigating officer viz., K.K.Senthil Kumar was suspended from service by an order



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dated 14.11.2013 and his suspension order was released on 03.01.2014.

The said K.K.Senthil Kumar was not in-charge of the respondent police station on the date of filing of the final report viz., on 15.09.2020.

Though he completed the investigation and made the final report ready, the officer in-charge has to file the final report.

10. That apart, immediately after filing the final report, it has been entered in the general diary maintained by the Station House. The respondent also failed to produce the general dairy to substantiate that the said K.K.Senthil Kumar was in-charge of the respondent police Station on that date of filing the final report viz., on 15.09.2020. Therefore, the trial Court ought not to have taken cognizance on the final report filed by the Officer who was not in-charge of the respondent police Station.

11. Insofar as the offence under Section 6(4) of TNSC (RDCS) Order 1982 is concerned, admittedly Accused No.1 was found in possession of PDS rice in front of the ration shop along with petitioner.



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However, the respondent failed to prove that the rice which was in possession of Accused No.1 purchased from the ration card holder. In this regard, it is relevant to extract the provision under Section 6(4) of the TNSC (RDCS) Order as follows :-

“6. Supply of scheduled Commodities :-

.....

(4) No person shall purchase any scheduled commodity on a family card.”

12. As far as the present case is concerned, it is not the case of the prosecution that Accused No.1 had purchased or procured the rice bags on the basis of family cards. Therefore, there is absolutely no material of evidence available on record to attract the above said provision of law. When the offence under Section 6(4) of TNSC (RDCS) Order, is not attracted, Section 7 (1)(a)(ii) of the EC Act, is not at all attracted as against the petitioner. Insofar as the other offence under Sections 353, 307 of IPC are concerned, there is no specific averment in order to substantiate the offences as against the petitioner. The entire allegations are bald and vague and no witness had spoken about the specific overtact



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of the petitioner.

13. In view of the above discussions, the entire proceedings as against the petitioner is vitiated and it cannot be sustained. Accordingly, the proceedings in S.C.No.214 of 2020 on the file of the learned Principal Subordinate Judge, Villupuram, is hereby quashed as against the petitioner alone. The trial Court is directed to proceed with the trial as against other accused persons in accordance with law.

14. In the result, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Internet : Yes

Index : Yes/No

Speaking/Non speaking order

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To

1. The Principal Subordinate Judge,
Villupuram.
2. The Inspector of Police,
CSCID Cuddalore Police Station
Cuddalore District.
3. The Public Prosecutor,
High Court,
Madras.



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G.K.ILANTHIRAIYAN. J.

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and Crl.M.P.No.14058 of 2022

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