



Crl.O.P.No.3 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2023

CORAM

THE HON'BLE Mr.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.3 of 2023
and
Crl.M.P.Nos.1 & 2 of 2023

Kondapatti Anilkumar

... Petitioner

-Vs.-

1.State rep by its,
The Inspector of Police,
'O' Circle, Yanam,
Union Territory of Puducherry,
(Crime No.48 of 2012)

2.Md.Hyder Syed.

.. Respondents

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records relating to the impugned charge sheet in Special C.C.No.2 of 2015 on the file of Special Judge (Under Electricity Act, 2003)/Principal District Judge at Puducherry and quash the same as against the petitioner/A2.



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For Petitioner :Mr.K.Premkumar

For Respondents :Mr.V.Balamuruganee,
Public Prosecutor (Puducherry)

ORDER

This Criminal Original Petition has been filed to call for the records relating to the impugned charge sheet in Special C.C.No.2 of 2015 on the file of Special Judge (Under Electricity Act, 2003)/Principal District Judge at Puducherry and quash the same as against the petitioner/A2.

2. The learned counsel for the petitioner challenged the final report filed in Special C.C.No.2 of 2015 on the file of the Special Judge (Under Electricity Act, 2003)/Principal District Judge at Puducherry on two legal grounds:

(i) The final report reads that M/s.Kanaka Durga Casting Private Limited indulge in illegally consuming and causing the loss of Rs.28,54,63,320/- to the Electricity Department, Yanam. The accused A1 to A4 are holding various positions in M/s.Kanaka Durga Casting Private Limited. When a Company is involved in



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commission of offence under the Electricity Act, 2003, as per Section 149 of the Electricity Act, 2003, the Company should also be arrayed as an accused. However, in this case the Company was not arrayed as accused.

(ii) FIR registered in this case on 29.03.2012 but the final report was filed only on 03.08.2015, that is after expiry of three years. Thus, the final report was barred by limitation as well.

3. The learned counsel for the petitioner further submitted that the co-accused in this case namely Muppasani Krishna (A4) and M.Rangadhama Chowdary (A3) have filed Crl.O.P.Nos.9611 and 9785 of 2019 for quashing the final report in this case and this Court on 14.09.2022 accepted the aforesaid two grounds raised by the learned counsel appeared for the petitioners therein and quashed the proceedings against them. The petitioner herein is similarly placed and also seeking the similar relief like A3 and A4. Therefore, the petitioner must also extended for the same relief.

4. The learned Public Prosecutor (Puducherry) submitted that in



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Crl.O.P.Nos.9611 and 9785 of 2019, this Court quashed the criminal proceedings in Special C.C.No.2 of 2015 as against A3 and A4 on the aforesaid grounds.

5. Considered the rival submissions made by the learned counsel for the petitioner and the learned Public Prosecutor (Puducherry) and perused the materials available on records.

6. As stated by the learned counsel for the petitioner, the final report reads as follows:

“Prior to 28.03.2012, at the premises of M/s.Kanaka Durga Castings (Pvt.) Ltd., Industrial Road, Adavipolam, Dariyalathippa, Yanam, the accused persons (A1 to A4) – all representing M/s.Kanaka Durga Castings (Pvt.) Ltd., Yanam noted in the Column No.11 of this Charge Sheet had infurtherance of common intention, provided additional circuit in the secondary winding of current transformers in the metering CT-PT of HT service connection of M/s.Kanaka Durga Castings (Pvt.) Ltd., (M) 3500 K.V.A. Adavipolam, Dariyalathippa, Yanam and



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thereby the said usage of the additional circuit prevented the meter from proper registration of actual energy consumed and thereby dishonestly abstracted the energy by tampering the metering (CT-PT) to the total value of Rs.28,54,63,320/- (Rupees Twenty Eight Crores, Fifty Four Lakhs, Sixty Three Thousand and Three Hundred and Twenty Only) to the Electricity Department, Yanam.

Thus, the accused persons (A1 to A4) appears to have committed an offence punishable under Section 135(l)(b) and (d) of the Electricity Act, 2003.”

Thus it is clear that M/s.Kanaka Durga Casting Private Limited is not shown as accused in this case.

7. Section 149 of Electricity Act, 2003 deals with the offences by Companies and it reads as below:

“Section 149 (Offences by companies):

(1) Where an offence under this Act has been committed by a company, 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, as well as the company shall be deemed to be guilty of having committed the offence and



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shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section,-

(a) "Company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

8. The Constitution Bench of the Hon'ble Supreme Court in

Aneeta Hada vs Godfather Travels and Tours Private Limited reported



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in (2012) 5 SCC 661 has interpreted the expression “as well as the company” employed in Section 141 of the Negotiable Instruments Act. According to the Constitution Bench, the vicarious liability of the Directors/Manager will arise under the circumstances stated below:

“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the word “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.”

9. Section 149 of the Electricity Act, 2003 is in *pari materia* with Section 141 of the Negotiable Instruments Act.



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10. In the light of the interpretation given by the Constitution Bench of the Hon'ble Supreme Court in ***Aneeta Hada*** case, if the offence is committed by the Company, every person, who at the time the offence was committed, was in-charge of and was responsible to the Company for the conduct of business of the Company will be vicariously liable for the prosecution. The prosecution has to *prima facie* establish that the person against whom the prosecution alleged was in-charge of and was responsible to the Company for the conduct of the business of the said Company. The Company being a juristic person, the principal offender also have to be prosecuted.

11. As indicated above, the final report discloses that M/s.Kanaka Durga Casting Private Limited was not shown as accused in this case. There is also no material to show that the petitioners were in-charge of and was responsible to the Company for the conduct of the business of the Company and how and in what way, the accused person are vicariously liable is also not disclosed in the complaint or in the final



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report. That apart, as already stated, the final report was filed beyond three years.

12. In view of the aforesaid reasons and also in the light of the orders passed in Crl.O.P.Nos.9611 and 9785 of 2019, this Court allows this petition and quashes the final report in Special C.C.No.2 of 2015 against the petitioner herein.

13. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are also closed.

05.01.2023

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

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To



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- 2.The Public Prosecutor,
High Court, Madras.



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