



Cr1.RC(MD)No.837, 1110 & 1214 of 2022 and 323 of 2020



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20.02.2023

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.R.C(MD)Nos.837, 1110 & 1214 of 2022 and 323 of 2020
and

Cr1.MP(MD)No.10489, 14086, 14087, 15120 & 15121 of 2022

Cr1.R.C.(MD).No.837 of 2022

1.Boobalan

2.Bilavendran

: Petitioners/

Accused Nos.21 and 22

Vs.

State Rep. By,

The Inspector of Police,

CSCID Police Station,

Thoothukudi District.

(Crime No.176/2004)

: Respondent/Complainant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records from the lower Court in Cr1.M.P.No.6032 of 2018 in C.C.No.519 of 2017, dated 07.06.2022, on the file of the learned Judicial Magistrate No.II, Thoothukudi and duly set aside the same and consequently, discharge the accused.

For Petitioner : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.Veerakathiravan, AAG
for Mr.S.Ravi, APP

Cr1.R.C.(MD).No.1110 of 2022

Palaniselvam

: Petitioner/

Accused No.1

Vs.



Cr1.RC(MD)No.837, 1110 & 1214 of 2022 and 323 of 2020

State Rep. By,

The Inspector of Police,
CSCID Police Station,
Thoothukudi District.
(Crime No.176/2004)

: Respondent/Complainant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order dated 17.08.2022 made in Cr.M.P.No.2567 of 2020 in C.C.No.519 of 2017, on the file of the learned Judicial Magistrate No.II, Thoothukudi and set aside the same.

For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondent : Mr.Veerakathiravan, AAG
for Mr.S.Ravi, APP

Cr1.R.C.(MD).No.1214 of 2022

Pradeep Mittal

: Petitioner/
Accused No.3

Vs.

State Rep. By,

The Inspector of Police,
CSCID Police Station,
Thoothukudi District.
(Crime No.176/2004)

: Respondent/Complainant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order dated 17.08.2022 made in Cr.M.P.No.2565 of 2020 in C.C.No.519 of 2017, on the file of the learned Judicial Magistrate No.II, Thoothukudi and set aside the same.



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For Petitioner : Mr.G.Kalyan Jhabakh

For Respondent : Mr.Veerakathiravan, AAG
for Mr.S.Ravi, APP

Cr1.R.C.(MD).No.323 of 2020

State Rep. by
The District Collector and District Magistrate,
Thoothukudi,
(Crime No.176 of 2004 of Food Cell, Tirunelveli)

: Appellant/Complainant
Vs.

Ganeshrajan : Respondent/Accused

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the judgment passed by the learned Additional Sessions Judge, Fast Track Court No.II, Thoothukudi, in Criminal Appeal No.143/2006, dated 15.05.2008, convict the respondent/accused for the offences framed against him, pass sentence against him in accordance with law.

For Petitioner : Mr.Veerakathiravan, AAG
for Mr.S.Ravi, APP

For Respondent : Mr.C.Mayilvahana Rajendran
for Mr.P.Banu Prasath

COMMON ORDER

Revision petitions in Cr1.R.C.(MD).No.837, 1110 & 1214 of 2014 have been filed against the dismissal order that has been passed by the learned Judicial Magistrate No.II, Thoothukudi, dismissing the discharge petitions filed by the revision petitioners in respect of the crime No.176 of 2004.



2.The petitioners are facing charges under Section 6(4) of Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System order 1982 and 6(4) Public Distribution System (Control) P.D.S.Order 2001, r/w 7(i)a(ii) of E.C.Act and 467, 468 and 471 IPC r/w 120B IPC, before the trial Court.

3.The case of the prosecution in brief:

On 05.08.2004 at about 9.30 p.m. the department received a secret information that rice meant for PDS scheme is about to be illegally transported through wagons and stored in Railway Yard, Tuticorin. The above said rice about to be transported to Delhi. On the basis of the above said information received from the Authority, the respondent team with police inspected the godown and at that time, they found 2300 tons of rice packed in 50 kilograms each. Those rice were also found to be loaded in the wagons numbering about 40. On suspicion, they undertook the further process. On the basis of the above said, the case was registered in Crime No.176 of 2004. After getting proper permission from the higher authorities, the Civil Supplies Corporation officials along with Revenue Officials broke open the seal of the wagons on 17.08.2004. During enquiry process, it was found that it was about to be transported to Delhi as noted above. The yard and as well



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as the wagon were booked by one Bharath Trading Company. They also paid the rent for the wagon and the yard. The total rice seized is 2204.998.200 metric tons. It was recovered as per athatchi and handed over to the Regional Manager, Tamil Nadu Civil Supplies Corporation, Tuticorin. On further enquiry by the Inspector of Police, attached to the Civil Supplies Corporation, it was found that one Sri Vinayaka Exports and Imports Limited took on rent the yard for 30 days from 26.07.2004 to 26.08.2004. That was also inspected and it found having 50 kilograms, packed numbering about 3181 bags. It was also recovered through athatchi. The total weight is 150.587.260 metric tons. It was also handed over to the Regional Manager, Tamil Nadu Civil Supplies Corporation, Tuticorin.

4.In the course of investigation, on 19.08.2004 at about 10.30 p.m. on suspicion, a lorry bearing registration No.TN 04 B 1359 was found in possession of PDS rice. The drivers were apprehended and on enquiry it revealed that they are transporting the rice to the above said railway godown for the purpose of further transportation to Delhi. When search was made, it was found in possession of 11.187.715 metric tons. It also recovered through the athatchi on 20.08.2004. It was also handed over to the Regional Manager, Tamil Nadu Civil Supplies Corporation, Tuticorin. Samples were taken from all the three recovery



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as per the report of the Regional Manager, Tamil Nadu Civil Supplies Corporation, Tuticorin, dated 25.08.2004.

It was found that it is a rice intended for public distribution system.

5. In pursuance of the above said occurrence as mentioned above case was registered and during the course of investigation, involvement of all the accused persons came to light and it is also found that records have been fabricated, created, to show as if they were purchased in open market and intended to be transported to Delhi on contract basis. Now the charges are about to be framed and at that time these petitioners filed separate petitions seeking discharge from the criminal prosecution. All the petitions were heard separately by the trial Court and all those came to be dismissed. Against which, separate revision petitions have been preferred by the petitioners. Since common issue is involved, the matters are taken up for joint hearing and common order is passed.

6. So far as Cr1.R.C.(MD).No.1214 of 2022 is concerned third accused is the petitioner. In Cr1.R.C.(MD).No.837 of 2022 accused Nos.21 & 22 are the petitioners. In Cr1.R.C.(MD).No.1110 of 2022, the first accused is the petitioner.



7.Heard both sides.

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8.Before we go into the disputed facts, a number of events that took place subsequent to the above said registration of the FIR is relevant for reconsideration. After the above said seizure the proceedings were undertaken by the District Collector, Tuticorin, as per Section 6(E) of the Essential Commodities Act, on the basis of the recommendation made by the Investigating Officer. So during the pendency of the above said proceedings, the accused Ganesh Rajan, who is the second accused filed several writ petitions before the Court. W.P.No.29157 of 2004 was filed seeking release of the seized paddy. That petition was heard on 20.08.2004 and interim order was passed, by which, the above said Ganesh Rajan was directed to appear before the respondent and produce the documents to show that all the quantity seized belongs to him exclusively, since it was stated by him that it was purchased by him in the open market. In pursuance of the above said direction, enquiry was undertaken by District Superintendent of Police, Civil Supply Corporation and all the documents were verified and during the course of verification of the documents, it was found that the bills and as well as the lorry numbers were fake in nature and some of the vehicle numbers also found to be fake, which relates to either two wheelers, tractors, etc., Pending



investigation, further events also took place, which we are not concerned herein though it is relevant for consideration in the connected criminal revision preferred by the State Government against the order that was passed by the appellate authority.

9.But, the observation that was made by the District collector in the order may also be relevant for considering these petitions. The first accused also filed a writ petition in W.P.No.25333 of 2004 stating that the above said rice belongs to him. Ganesh Rajan namely the second accused claimed that he purchased the above said rice as stated above in the open market in Karnataka from three wholesale dealers. It was transported to Kovilpatti and since in Kovilpatti there was no sufficient godown facility, it was transported to Tutocorin Port, booked out the rent and about to be transported to Delhi to Bharath Trading Corporation. He also mentioned the three whole sale dealers. Since the above said particulars furnished by the second accused over the lorries and vehicles found to be fake, the contention that he purchased the rice from whole sale dealers were also rejected and confiscation proceedings has been ordered in respect of the remaining portion of the rice.



10. Against which the statutory appeal was preferred before the appellate authority and the appellate authority allowed the appeal and set aside the order of confiscation and directed the State Government to pay the cost of the rice with 9% interest. Over which, criminal appeal was preferred before this Court and later that was converted as criminal revision and also heard and reserved for orders and order is going to be passed in the above said connected matter today.

11. In the light of the above said development the preliminary argument that was advanced by the learned senior counsel Mr. Ajmal Khan for one of the revision petitioners would submit that in the factual circumstances of the case none of the violations that have been mentioned in the final report with regard to the violation of control orders are not attracted. According to him, when the preliminary violation itself is not maintainable, the secondary allegation with regard to the fabrication of records may not stand.

12. This preliminary point was raised by the learned senior counsel while responding two questions raised by me as to whether quashment is permissible when serious allegation of fabrication of records has been made. But, I am unable to agree with the line of argument that has been



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advanced in the form of reply. Perusal of entire records shows that by creating the false records only the above said attempt to transport the rice has been made. The seizure of the rice is not disputed by the accused. The simple defence as stated above is that there is no violation of the control orders and they purchased the same in the open market. But, during the confiscation proceedings and also the investigation, the above said contention was found to be false. So these are the primary offences that said to have been committed by the accused.

13. Even though lengthy argument has been advanced by the counsels with regard to the non attracting of ingredients of the control orders, I am not going into those aspects for the simple reason that it has to be decided on its own merits, at the time of framing of the charges. Which are the violations is now attracted may not be a matter for consideration by this Court at the revisional stage. It is a matter for consideration at the time of framing the charge as stated above, since *prima facie* it is seen that the control orders were in existence at the time of the above said seizure. Which control order has been violated as stated above is a matter for consideration by the trial Court. So I am not going into those aspects.



14.It is sufficient to say that the primary allegations only is going to be taken note by this Court.

In the light of the above said primary point now let us go to the arguments. The first accused would submit that no material has been collected during the course of investigation to implicate this petitioner into the offence and even there is no allegation to the effect that he purchased the rice from card holders. So now no offence is made out and for that purpose they would rely upon the judgment of this Court in the case of **Beer Mohammed and two others Vs. State rep. by the Inspector of Police, C.S.CID, Dindigul**, reported in **2017 (1) TLNJ 344 (Criminal)**. Similarly, he would further submit that Tamil Nadu Essential Trade Articles (Regulation of Trade) Order, 1984, Public Distribution System and Control order, 2001, and connected control orders, Tamil Nadu Paddy (Restriction and Movement) order, 1982, are not attracted; So *prima facie* the first accused cannot be proceeded, since he is not a licensee.

15.The arguments of third accused that absolutely he is a bonafide person and he placed the orders with Vinayaka Exports and Imports, Kovilpatti and also transferred the amount. So this according to him, this bonafide action is revealed through booking of wagons for



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transport. Had it been known to him that it is PDS rice, he would not have entered into the transaction. So according to him, all the control orders are not attracted. With regard to the fabrication of records also he is not concerned and no evidence has been produced to implicate him under Section 120B IPC.

16.The argument of the learned Senior Counsel appearing for the accused 21 and 22 is that the allegation is that the accused created records facilitating the smuggling, but these petitioners are working only as Office Assistants; No duty was assigned to them; no entrustment of property was also made; No statement was recorded and materials have been collected to implicate these petitioners under Section 120 B IPC. Even in the order that has been passed by the trial Court, there is no discussion with regard to the materials available against these petitioners. So according to him, in the absence of any specific allegation in the final report, they have to be discharged. It is further submitted by one of the accused that since distinct offences are being alleged, Section 218 Cr.P.C., must be complied. That is not done. So according to him, the prosecution itself is bad for violation of statutory provisions under Section 218 Cr.P.C.



17.Per contra, the learned Additional Advocate General would submit that enough materials have been collected during the course of investigation to implicate all these petitioners into the offences. Since the fabrication of false records have been found out it must be taken to its logical conclusion. According to him, the final report was filed and taken cognizance in 2005 itself. After lapse of 15 years, discharge petitions have been filed with a long delay and the first accused admitted the availability and seizure of rice from the godown; The third accused is the beneficiary and Accused 21 and 22, who were the watchmen, prepared bogus bills in favour of the second accused. So far as the first accused is concerned, statement of one Shanmugam, Village Administrative Officers, are available. So according to him, the argument that no materials have been collected is not correct.

18.Huge quantity of rice have been seized in the above said occurrence. Several proceedings have been initiated to get the rice released by the first accused. Some of them succeeded and some of them failed. As mentioned above, he tried to get the rice released by giving false information and producing fake documents. Those were found out to be fake during the course of investigation in this case also and also during the enquiry that was undertaken at the time of confiscation



proceedings. So on no ground the accused No.1 can say that no evidence and materials are available against him. The offence of such magnitude and severity must be taken to its logical conclusion. This is not the fittest case to discharge the first accused.

19. So far as the accused No.3 is concerned, as mentioned above, he would say that he is a bonafide intended purchaser. But 120 B IPC has also been included in the final report. Whether there was any conspiracy or not is a matter for consideration by the trial Court on evidence. In respect of Section 120 B IPC, no direct evidence can be expected to be produced. It can be inferred even from the circumstances. Whether enough circumstances are available in favour of the prosecution to accuse the accused No.3 is also matter for consideration by the trial Court. As contended by the learned Additional Advocate General, sufficient materials are available as on date to connect third accused also in this offence. So he can not also be discharged.

20. So far as the accused Nos.21 and 22 are concerned, no doubt they are only watchmen. When allegation is that they created bogus documents in favour of the third accused, this issue is also a matter for consideration by the trial Court. Section 120B IPC has also been included



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and it is for the trial Court to look into it. So considering the over all circumstances and the materials available on record accused Nos.21 and 22 cannot be discharged and they have to face the prosecution. On the above grounds, all the three revisions namely Cr1.R.C.(MD).Nos.837, 1110 & 1214 of 2022 are liable to be dismissed. Accordingly, **dismissed**. Consequently, connected miscellaneous petitions are closed.

21.Cr1.R.C.(MD).No.323 of 2020.

This revision was heard at length on more than one occasion. As mentioned in the above said revision cases, it has been contended that there is no violation of the control orders and without proper procedure the rice has been seized; samples were not properly taken as per procedure; even the seizure itself is illegal violating the procedure contemplated under Section 101 of Cr.P.C. and various control orders, Even though the samples were not drawn properly, all these above said contentions have been accepted by the appellate authority. The appellate authority as stated above set aside the confiscation order and ordered payment of cost of the rice with 9% interest to the respondent herein. Over the above said, appeal was preferred before this Court and later that appeal was converted into revision case. On going through the records,



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it was found that there is a statutory violation by the appellate authority in deciding the statutory appeal. The respondent has relied upon the judgment of this Court in Cr1.R.C.(MD).No.193 of 2007, wherein, a similar issue arose. The appellate authority as per section 6(c) of the Essential Commodities Act is the Principal District and Sessions Judge. But, the case was made over to Fast Track Court No.II, Tuticorin. So the jurisdiction of Fast Track Court No.II, Tuticorin, was challenged and by relying upon notification issued by Government of Tamil Nadu, it was held that only the Principal District Judge of the particular District is competent to entertain the appeal and not the Additional District Judges. The issue of Judicial authority came up for consideration in a number of judgments, which, we need not elaborate the same. It is suffice to say that the Principal District Judge is the competent jurisdictional authority. But without noting the same, it appears that the above said appeal was made over to Fast Track Court No.II, Tuticorin. It is also seen that it was not even brought to the notice of the appellate authority either at the time of hearing the appeal or at the time of filing the appeal before this Court by the State.

22.Now on going through the above said order, the learned Additional Advocate General would submit that the



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matter can be remanded back to the competent authority by setting aside the order, which, this Court is also agreeing. On the sole ground the revision namely Cr1.R.C. (MD).No.323 of 2020 is **allowed**. The order that has been passed by the appellate authority namely Additional Sessions Judge, Fast Track Court No.II, Thoothukudi, in Criminal Appeal No.143/2006, dated 15.05.2008, is set aside. The matter is remanded back to the learned Principal District Judge, Thoothukudi. The learned Principal District Judge, Tuticorin, shall restore the appeal on file and brought the same by issuing notice to the parties and decide the same within a period of **three** months from the date of appearance of the parties, since the matter started in the year 2004.

20.02.2023

Index:Yes/No
Internet:Yes/No
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To

- 1.The Principal District Judge, Kanniyakumari at Nagercoil.
- 2.Additional Sessions Judge, Fast Track Court No.II, Thoothukudi.
- 3.The Judicial Magistrate No.II, Thoothukudi.
- 4.The Inspector of Police,
CSCID Police Station,
Thoothukudi District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN, J

TM

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