IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.Nos. 7821 & 7690 of 2022
and
Crl.M.P.Nos.4509, 4511 & 4408 of 2022

1. P.Ganesh
2. N.Ranganathan
3. G.Sekar ... Petitioners in both Crl.O.P.s

Versus

1. State rep. by
   The Inspector of Police,
   Omalur Police Station,
   Salem Dt.
   (Crime Nos.358 & 359 of 2008)

2. The Executive Engineer,
   Operation and Maintenance (West Division),
   Tamil Nadu Generation and Distribution Corporation Ltd.,
   TANGEDCO, Salem-636 005. ... Respondents in both Crl.O.P.s

PRAYER in Crl.O.P.No. 7821 of 2022: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the charge sheet No.27 of 2011 in S.C.No.256 of 2013 on the file of Principal District and Sessions Judge, Salem and quash the same.

PRAYER in Crl.O.P.No. 7690 of 2022: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the charge sheet in S.C.No.220 of 2013 on the file of Principal District and Sessions Judge, Salem and quash the same.

For Petitioners in both Crl.O.P.s : Mrs.AL. Ganthimathi, Senior Advocate for Ms.S.Meenakshi

For Respondents in both Crl.O.P.s : Mr.S.Vinoth Kumar, Govt. Advocate (Crl. Side) for R1

R2- no appearance

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the charge sheets in S.C.Nos.256 and 220 of 2013 on the file of learned Principal District and Sessions Judge, Salem respectively.

2. Heard both sides.

3. The petitioners are ranked as A2 to A4 in the F.I.R. in Crime Nos.359 and 358 of 2008 registered for the offence under Sec.135(1)(b) of Electricity Act, 2003 amended by Electricity (Amendment) Act, 2007. Subsequently, the charge sheet has been filed and the same was taken on file in S.C.Nos.256 and 220 of 2013 on the file of Principal District and Sessions Judge, Salem and the same are pending. Now, the petitioners have filed these petitions praying to quash the said charge sheets.

4. The case of prosecution is that A1 company said to have involved in the alleged electricity theft and committed loss to the State to

the tune of Rs.1,42,72,328/-. The learned counsel for petitioners would submit that these petitioners are falsely implicated in this case and they are no way connected with the alleged offence said to be committed by A1. A2 is a Director incharge of the company and there is no specific allegation levelled against him about the alleged electricity theft said to be committed. He would also submit that the other petitioners 2 and 3, who are incharge of the company and they are only employees in A1 company and they were falsely implicated in this case. As there is no specific overtact attributed against them, the petitioners prayed to quash the proceedings initiated against them as it is vexatious one. According to them, now A1 company is under liquidation and now official liquidator has to pay the amount if any alleged due is pending from A1 company. Since A1 company is under liquidation, the employees/petitioners are no way connected with the alleged electricity theft and they are liable to be discharged from the proceedings. In support of her contentions, she relied the dictum laid down by the Apex Court reported in ***2015 (15) SCC 768*** in the case of ***Charanjit Pal Jindal vs. L.N.Metalics,*** wherein it has been held as follows :-

"*Debt, Financial and Monetary Laws – Negotiable Instruments Act, 1881 – Ss.141 and 138 – Cheque issued by appellant Director of Company on behalf of company – Dishonour of – Complaint made only against appellant Director without impleading company as accused – Maintainability of.*"

She had also relied the dictum laid down by the Apex Court reported in ***2012 (5) SCC 661*** in the case of ***Aneeta Hada vs. Godfather Travels and Tours Pvt. Ltd.,*** wherein it has been held as follows :-

"*Debt, Financial and Monetary Laws – Negotiable Instruments Act, 1881 – Ss.141, 138, 7, 139, 118 and 140 – Criminal liability for dishonour of cheque drawn by company – Officers of company when may be implicated – Extent of deeming fiction in S.141 – Mandatory requirement of impleading company as one of the accused – Director or authorised signatory of cheque – Prosecution against,* *without arraigning of company as accused, held no maintainable.”*

Based upon the above referred dictum laid down by the Apex Court, the learned counsel for petitioners argues that since because, the petitioners are employees of the A1 company, they are not liable to be prosecuted and they are liable to be discharged as A1 company is under liquidation. Accordingly, she prayed to quash the proceedings initiated against them.

5. By way of reply, the learned Government Advocate (Criminal side) appearing for 1st respondent would submit that it is a case of electricity theft, due to which, loss caused to the State is to the tune of total value of nearly about Rs.4 crores in both cases. Hence, he raised objections to discharge the petitioners from the proceedings initiated against them.

6. On seeing the facts, it reveals that the 2nd and 3rd petitioners are Electrical Engineer and Electrical Supervisor respectively in A1 company. At the time of inspection, all the officials were present and on verification,

they found that all the accused have stolen electricity by making loop connections, which interfered with accurate and proper registration and metering of electric current. So, by using loop wire, they have committed electricity theft as per the charges made by the prosecution. Therefore, the authorities relied on by the petitioners' counsel is not applicable to the facts of the present case, since because the facts are totally different and those proceedings initiated against the company was under the Negotiable Instruments Act. So, on seeing gravity of offence and also on seeing the facts and circumstances of the case, this Court is not inclined to quash the proceedings initiated in S.C.Nos. 256 and 220 of 2013 against the petitioners as it needs detailed investigation. If at all, the petitioners are innocent persons, they are at liberty to prove the same before the trial court as per manner known to law. Consequently, connected Criminal Miscellaneous Petitions are closed.

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Index: Yes/No
Internet: Yes/No
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To

1. The Inspector of Police,
   Omalur Police Station,
   Salem Dt.

2. The Executive Engineer,
   Operation and Maintenance (West Division),
   Tamil Nadu Generation and Distribution
   Corporation Ltd.,
   TANGEDCO, Salem-636 005.

3. The Public Prosecutor,
   High Court, Madras.

T.V.THAMILSELVI, J.

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