

Crl.OP(MD).No10209 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 05.06.2026

ORDER PRONOUNCED ON : 15.06.2026
CORAM

THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR

Crl.OP(MD).No. 10209 of 2026
and
Crl.MP(MD).Nos.10206 & 10207 of 2026

Francies

....Petitioner/Accused No.2

Vs

1.The State Represented by
The Inspector of Police
Marthandam Police Station
Kanyakumari District
Crime No.442 of 2019

...1st Respondent/Complainant

2.Kumar

....2nd Respondent/Defacto Complainant

Prayer:The Criminal Original Petition filed under Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to call for the records pertaining to the impugned charge sheet in C.C.No.113 of 2025 on the file of the Judicial Magistrate No.1, Kuzhithurai and quash the same insofar as the petitioner/Accused No.2 is concerned.



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For Petitioner

: Mr.H.Lakshmi Shankar

For Respondents

: Mr.P.Samuel Gunasingh
Counsel for State of Tamil Nadu for R1

ORDER

The second accused in C.C.No.113 of 2025 on the file of the Judicial Magistrate No.I, Kuzhithurai has filed the present petition seeking to quash the charge sheet wherein he is charged with the offence under Sections 4(a) and 5 of Explosive Substances Act, 1908.

2.A perusal of the charge sheet reveals that the petitioner herein who is an administrator of a School, had obtained permission for removal of rocks found in the school premises for the purpose of extending the play ground. He is alleged to have engaged a contractor (A3) who is said to have drilled 89 holes in the rocks and inserted electrical detonators for blasting of rocks.

3.As per allegation in the charge sheet, none of the accused persons have obtained any permission or license under the Explosive Substances Act 1908 and therefore, they are punishable A4 and A5 are the tractor owners and A6 was a labourer.

4.According to the learned counsel appearing for the petitioner, the school premises is located in a rocky terrain and in order to extend the play ground area, the rocks have to be removed. They approached the District



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Collector, Kanyakumari District seeking permission for removal of the said rocks and permission was granted on 25.10.2019. Thereafter, they have handed over the work to the private contractor (A3). Without knowledge of the school administration, the contractor has used the electrical detonators for blasting the rocks.

5.The learned counsel appearing for the petitioner had submitted that there was no unlawful object in using the electrical detonators and it was never meant to endanger life or property of any one. He further submitted that there was no malicious intention on the part of the School management. In such circumstances, according to him, Section 4(1) and 5 of Explosive Substances Act would not get attracted.

6.The learned counsel had further submitted that the petitioner has been implicated solely based upon the confession of A3(contractor). As per the said confession, 150 Gelatin Electric Detonators have been purchased and 89 of them have been used inside the holes. Rest of them are in possession of the School management. However, only 89 gelatin sticks from the drilled holes have been recovered and no recovery has been made from A1 or A2. When the confession of A3 has not lead to any recovery, the said confession cannot be relied upon by the prosecution and it will not lead to conviction of the accused person.



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7.The learned counsel for the petitioner had relied upon the decisions of the Hon'ble Supreme Court reported in **2024 SCC Online SC 3803 (Karan Talwar Vs. State of Tamil Nadu)** and **(1981) 2 SCC 443 (Mohammad Usman Mohammad Hussain Maniyar and others Vs. State of Maharashtra)** and decision of this Court in **Crl.R.C.No.398 of 2017 (M.Duraisamy Vs.State Rep.by the Inspector of Police, Mahudanchavadi Police Station)** dated 02.03.2023 in support of his contention.

8.Per contra, the learned counsel appearing for the respondent police submitted that the order of the District Collector specifically points out that the School management should not use any explosive. Therefore, accused Nos.1 and 2 were very well aware of the fact that they have been prohibited from using explosive substances for removing the rocks. In such circumstances, they should have obtained specific licence /permission from the concerned authority for using of explosive substances. He had further contended that when 150 gelatine electrical detonators have been purchased by the contractor, certainly the same would be within the knowledge of accused Nos.1 and 2. In fact, A1 and A2 alone have paid the money for purchase of these electrical detonators. Whether they had any prior knowledge (about the purchase of detonators or using of them in the drilled holes) or not could only be found out during trial.



9.The learned counsel for the respondent police had further contended that considering the fact that it is a school premises which is likely to cause endanger for the life of the general public and also the property, namely the School building in the said premises. He had further contended that using the explosive substances without obtaining any prior permission from the concerned authority could only be construed for an unlawful possession and it was done with malicious intention of overcoming the order of the District Collector which specifically prohibited the usage of the explosive substances. Hence, he prayed for dismissal of the petition.

10.Heard both sides and perused the material records.

11. A perusal of the charge sheet reveals that 89 electrical detonators have been seized from the drilled holes by the police authority. It is not in dispute that the second petitioner who is one of the trustee of the School, had obtained prior permission from the concerned District Collector for removal of rocks. However, the order of the District Collector dated 25.10.2019 clearly reveals that the rocks have to be removed without using explosive substances.

12.The petitioner had engaged a contractor (A3) to carry out the work of removal of rocks from the School premises. According to him, without knowledge or consent of the petitioner management, an independent contractor had purchased the electrical detonators and had inserted them into



the drilled holes so that the rocks could be removed in a speedy way and therefore, the management cannot be held responsible and no criminal offence could be attributable to A1 and A2 who are the administrators of the School.

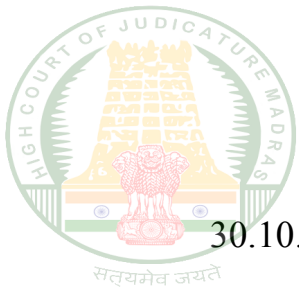
13.The petitioner has been charged with the offence under Section 4(a) and 5 of Explosives Substances Act, 1908 and they are extracted as followed:

“4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.- Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance, or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or....”

14.A perusal of Section 4 of the Act reveals that if any person who unlawfully and maliciously does any act with an intention to cause an explosion of nature likely to endanger life or to cause serious injury to property, he is liable to be punished.

15.In the present case, the petitioner has obtained prior permission from the District Collector for removal of rocks from the School premises, but without using explosive substances. The date on which the explosive substances were found in the School premises was between 7.30 p.m on

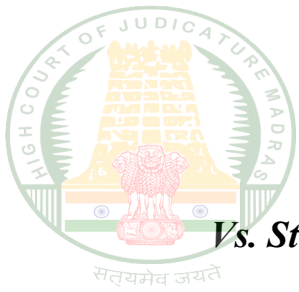


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30.10.2019 and 8.00 a.m on 31.10.2019. There is no allegation in the charge sheet that the petitioner had any intention to cause any explosion to endanger the life of any person or cause damage to the property. There is no whisper about the malicious intention on the part of the petitioner herein. The electrical detonators have been brought only with an intention to remove the rocks after obtaining permission from the District Collector and in such circumstances, this Court is of the considered opinion that the petitioner cannot be attributed with any unlawful or malicious intention to cause an explosion. Therefore, Section 4 of Explosives Substances Act, 1908 does not get attracted.

16.As far as Section 5 of the above said Act is concerned, the possession of explosive substance which give rise to a reasonable suspicion that a person is in possession of the same not for lawful object, then he is liable to be punished. In the present case, admittedly, the object of possession was to remove the rocks from the School premises. The prior permission has already been granted by the District Collector. However, no permission has been granted to use the explosive substances. Therefore, the object for which the possession of explosives was found, cannot be considered to be an unlawful object.

17.The Hon'ble Supreme Court in a judgment reported in **(1981) 2 SCC 443 (Mohammad Usman Mohammad Hussain Maniyar and others**



Vs. State of Maharashtra) paragraph Nos.13 & 14 are as follows:

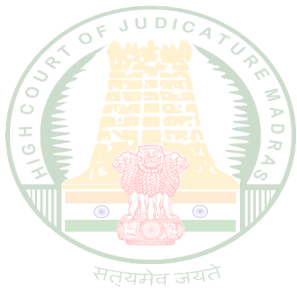
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“13.In order to bring home the offence under Section 5 of the Explosive Substances Act, the prosecution has to prove: (i) that the substance in question is explosive substance; (ii) that the accused makes or knowingly has in his possession or under his control any explosive substances; and (iii) that he does so under such circumstances as to give rise to a reasonable suspicion that he is not doing so for a lawful object.

14.The burden of proof of these ingredients is on the prosecution. The moment the prosecution has discharged that burden, it shifts to the accused to show that he was making or possessing the explosive substance for a lawful object, if he takes that plea.”

18.As per the above said judgment, all the three ingredients have to be satisfied for attracting Section 5 of the Act. Admittedly, the third ingredient, that the circumstances as to give rise reasonable suspicion that he will not do so for lawful object is not available. This judgment has been followed by our High Court in ***Crl.R.C.No.398 of 2017 (M.Duraisamy Vs. State Rep.by the Inspector of Police, Mahudanchavadi Police Station)*** dated 02.03.2023 wherein the accused was in possession of the explosive substance for the purpose of blasting the rock inside the Well. Paragraph Nos.12 & 13 of the said judgment are as follows:

“12.The burden of proof of the above three ingredients is



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*solely on the prosecution. The moment the prosecution has discharged that burden, it shifts to the accused person to show that he was making or possessing the explosive substance for a lawful object. Useful reference can be made to the judgment of the Apex Court in this regard in **Mohamad Usman Mohammad Hussain Maniyar and Ors .vs. The State of Maharashtra, reported in AIR (1981) SC 1062.***

13.In the instant case, the first two ingredients has been proved as already stated supra. The third ingredient has not been proved by the prosecution against the petitioner. The prosecution no where has proved that the petitioner, who was in possession of the explosive substance had created the reasonable suspicion that he is possessing the same for an unlawful object. Even as per the confession statement that was recorded from the petitioner, it is clear that the petitioner was having the explosive substance to blast the rock inside his well.

19.The petitioner has been implicated solely on the basis of the confession of co-accused namely the contractor/A3. In his confession statement, he had stated that 150 electrical detonators were purchased and 89 of them were used in the drilled holes and rest of them, namely 61 are in possession of the School Management. The Seizure Mahazer reflects the seizure of only 89 electric detonators and the rest, namely 61 electrical detonators have not been recovered from A1 or A2. In such circumstances, it



is clear that the confession of co-accused (A3) had not lead to any recovery from A1 or A2.

20.The Hon'ble Supreme Court in a judgment reported in **(2019) 16 SCC 547 (Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and another)** in Paragraph No.54 has held as follows:

“54.Proceeding on the basis that it is a confession by a co-accused and still proceeding further that there is a joint trial of the accused and that they are accused of the same offences (ignoring the fact that other accused are absconding and the appellant appears to be proceeded against on his own) and having found that there is no recovery from the residence of the appellant of the counterfeit notes and that there is no other material on the basis of which even a strong suspicion could be other material on the basis of which even a strong suspicion could be aroused, we would find that the mandate of the law requires us to free the appellant from being proceeded against. Accordingly, we allow the appeal and the petition filed under Section 482 Cr.P.C..... ”

21.In view of the above said decision and the deliberations of the facts, it is clear that the ingredients of Section 4(a) and 5 of Explosives Substances Act, 1908 have not been satisfied. The prosecution which is solely based



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upon the confession of the co-accused which has not lead to any recovery
would only be an abuse of process of law.

22.In view of the above said facts, the charge sheet in C.C.No.113 of 2025 on the file of the Judicial Magistrate No.I, Kuzhithurai stands quashed as against the petitioner alone. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

15-06-2026

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To

1.The Judicial Magistrate No.I,
Kuzhithurai

2.The Inspector of Police
Marthandam Police Station
Kanyakumari District
Crime No.442 of 2019

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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R.VIJAYAKUMAR, J.

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