

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

Crl.MC.No. 4373 of 2013 ()

**AGAINST THE ORDER IN CC 869/2013 of J.M.F.C.-I, CHERTHALA DATED
CRIME NO. 111/2010 OF CHERTHALA POLICE STATION , ALAPPUZHA**

PETITIONER(S)/ACCUSED:

**MR.PRASANNAN, AGED 58,
S/O.RAMAKRISHNAN, KALAVANPARAYIL HOUSE, WARD NO.XVI,
PALLIPURAM.**

**BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.M.A.ASIF**

RESPONDENT(S)/RESPONDENT/STATE:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM
(REPRESENTING THE SUB INSPECTOR OF POLICE,
CHERTHALA POLICE STATION).**

R BY PUBLIC PROSECUTOR SMT.LISHA M.G

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 16-07-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

AD

Crl.MC.No. 4373 of 2013 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE-A: TRUE COPY OF THE EXPLOSIVE LICENSE NO.476/APLY DATED
16.07.2007 AND RENEWED UPTO 31.03.2010.**

**ANNEXURE-B: TRUE COPY OF THE FIR IN CRIME NO.111/2010 OF CHERTHALA
POLICE STATION.**

ANNEXURE-C: TRUE COPY OF THE SEARCH LIST.

**ANNEXURE-D: TRUE COPY OF THE REPORT OF THE DY.CONTROLLER OF
EXPLOSIVES DATED 16.2.2010.**

**ANNEXURE-E: TRUE COPY OF THE ORDER DATED 30.03.2010 OF THE JUDICIAL
FIRST CLASS MAGISTRATE COURT-I, CHERTHALA ORDERING
RELEASE OF THE CHEMICALS SEIZED.**

**ANNEXURE-F: FINAL REPORT IN CRIME NO.111/2010 OF CHERTHALA POLICE
STATION NUMBERED AS C.C.NO.869 OF 2013 ON THE FILE OF THE
JUDICIAL FIRST CLASS MAGISTRATE COURT-I, CHERTHALA.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A TO JUDGE

AD

RAJA VIJAYARAGHAVAN.V, J.

Crl.M.C No.4373 of 2013

Dated this the 16th day of July, 2015

ORDER

1. This petition is filed under section 482 of the Code of Criminal Procedure seeking to quash Annexure-D final report in Crime No.111 of 2010 of Cherthala Police Station and all further proceedings in CC No.869/2013 pending on the files of the First Class Judicial Magistrate Court-I, Cherthala.

2. The case of the prosecution as is revealed from Annexure-F final report is as follows :

On receiving information that Chemicals, Sparklers, Amorges, Crackers and other fancy fireworks were stocked by the petitioner for sales in excess quantity, without proper licence, the Sub Inspector of Police, Cherthala Police Station along with his subordinate officers conducted inspection of the shop room of the petitioner bearing No's. CMC 230 and 231 on 23.1.2010. On inspection it was found that about 300 Kgms of explosive substances were stored in the said shop room. The said items

were seized as per Annexure-C search list dated 23.01.2010.

3. On the basis of the seizure effected, crime No.111 of 2010 was registered on 23.1.2010 alleging offence punishable under 9 (B)(1)(b) of the Explosives Act, 1884 and under Rule 119 and 126 of the Explosives Rules, 1983.

4. Pursuant to the registration of the crime, the Deputy Controller of Explosives was intimated by the Sub Inspector of police, and the said authority examined the seized exhibits in Crime No.111 of 2010 in the presence of the Sub Inspector of Police. After examination, Annexure-D report was submitted by the Deputy Controller of Explosives. Based on the said report, alleged violation of Rule. 119 and S.126 of the Explosives Rules, 1983, were deleted and Annexure F final report was laid before court under S.9(B)(1)(b) of the Explosives Act , 1884. The learned Judicial First Class Court-I Cherthala, took cognizance of the offence, numbered it as C.CNo.869/2013 on the files of the said Court.

5. I have heard the learned Counsel appearing for the

petitioner and the learned Public Prosecutor .

6. The learned Counsel for the petitioner would submit that in view of fact that the substantive offenses committed by the petitioner which are violation of Rule 119 and 126 of the Explosives Rules, 1983 stands deleted in the final report, there arose no question of the offence under S. 9(B)(1)(b) of the Act, being attracted against the petitioner. Pointing out that S. 9(B)(1)(b) is attracted only when a person possesses, uses, stores or transports any explosives in contravention of the Rules made under S.5 of the condition of licence granted under the said rules, it was argued that when the main offence alleged by the prosecution against the petitioner goes , there is no question of S. 9(B)(1)(b) of the Act being attracted.

7. On the other hand, the learned Public Prosecution has contended that a large quantity of explosives were seized from the shop of the petitioner as evidenced by Annexure-C and therefore, this was not a fit case necessitating invocation of powers under S.482 of the Code.

8. I have gone through the search list and the final report which is before Court and also Annexure-D report dated 16.02.2010 submitted by the Deputy Controller of Explosives.

9. It is borne out from from Annexure-D report submitted by the Deputy Controller of Explosives after conducting the examination of the seized explosives, that item No.1 as per the seizure list are chemicals used in the manufacture of fire works and are not explosives by themselves. It is also reported that no licence is required for the possession of such chemicals under Explosives Rules, 2008. It is further reported that item No.3 to 63 are authorised fire works coming under explosives of Class 7 Div. 2 Sub Div. 1 & 2 and for the possession and sale of which , a licence in Form No.24 of Explosives Rule 1983 or LE-5 of Explosives Rules are mandatory. Admittedly, the petitioner was holding a valid licence as evidenced by Annexure A ,during the relevant period , and the fire works were found in good condition by the Deputy Controller of explosives. The seized explosives were also released to the petitioner by the learned Magistrate as per order dated 30.3.2010 in CMP No 2509 of 2010 .

10. It is seen from the final report that the police , after investigation and on the strength of Annexure-D report submitted by the Deputy Controller of Explosives , have concluded that there is no violation of Rule 119 and 126 of the Explosives Rules, 1983. Rule 119 deals with maintenance of records by the licensee for possession sale or use of explosives and Rule 126 deals with storage of explosives in excess of the licensed quantity. In Annexure-F final report it has been reported by the investigating Officer that in view of the report given by the Deputy Controller of Explosives, offence u/r 119 or 126 of the Explosives Rules, 1983 is not made out against the petitioner. S.9(B) of the Explosives Act penalises a person who contravenes the rules made u/s 5 or the conditions of licence granted under the said Rules. If that be the case, when it is reported that there is no violation of any of the rules in view of Annexure D report , the whole edifice of the case disintegrates and there is absolutely no scope for contenting that the petitioner has violated S. 9(B)(1)(b) of the Act.

11. In the above facts and circumstances, there appears no reason to direct the petitioner to undergo the ordeal of a protracted trial when the investigating agency have themselves reported that

S.119 and 126 of Explosives Rules, 1983 are not attracted in the instance case. If that be the case subjecting the petitioner to a prosecution under S. 9(B)(1)(b) for something he has not done is nothing will be nothing but an abuse of process of Court.

12. I am of considered opinion that the facts and circumstances of the instance case does not necessitate that the prosecution of the petitioner in pursuance to Annexure-F final report should continue.

13 In the result, Crl.M.C stands allowed. Annexure-F final report and all further proceedings in C.C.No.869/2013 on the files of the First Class Magistrate Court-I Cherthala, are quashed.

Sd/-
RAJA VIJAYARAGHAVAN.V
Judge

AD