

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2016

CORAM

THE HONOURABLE Ms.JUSTICE R.MALA

CrI.O.P.No.20417 of 2014

Jayashankar

... Petitioner/Accused NO.2

Versus

1. The State,
represented by Inspector of Police,
D-5, Pallipet Police Station,
Tiruttani,
Tiruvallur District.
2. The Deputy Superintendent of Police,
Tiruttani Sub Division,
Tiruttani, Tiruvallur District ...Respondents
- 3.

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for records and quash the charge sheet pending for committal in P.R.C.No.21 of 2014 on the file of the Judicial Magistrate, Tiruttani.

For Petitioner : Mr. T. Saikrishnan for
M/s.Sai Bharath and Ilan

For Respondents: Mr.C.Emalias,
Addl. Public Prosecutor

O R D E R

This petition is filed praying to quash the charge sheet pending for committal in P.R.C.No.21 of 2014 on the file of the Judicial Magistrate, Tiruttani.

2.The petitioner/A2 has come forward with this petition to quash the charge sheet filed in P.R.C.No.21 of 2012 on the file of the Judicial Magistrate Court, Tiruttani, Tiruvallur District filed by the 2nd respondent herein for the alleged offences punishable under Sections 286, 304(ii) iPC (Thirty two counts), r/w.Section 9(b), (1) (b) of Explosives Act, r/w.Sections 149 and 338 of IPC.

3. The case of the prosecution is that the petitioner /A2 who is the owner of a premises situate at D.No.94, Pallipet to Sholinghur Main Road has let out his premises to one Vani for selling fire crackers without any valid licence and on 16.10.2009, on the eve of Deepavali Festival, suddenly fire was broken out at the entrance of the said shop which leads to continuous blasting for more than two hours and due to the said blast, 32 people were burnt alive and they died on the spot itself, thereby the accused A2/petitioner along with other accused has caused the death of 32 persons due to his unlawful activities. Since the petitioner has let out his premises for running fire crackers business without having any precautionary and other safety measures which leads to death of 32 persons, a charge sheet was filed against him for the offences punishable under Sections 286, 304(ii) IPC (Thirty two counts), r/w.Section 9(b), (1) (b) of Explosives Act, r/w.Sections 149 and 338 of IPC.

4. Learned counsel for the petitioner submitted that he entered into a lease agreement with one Vani, wife of Anandakumar-A1 for the purpose of conducting business of selling fire crackers both in wholesale and retail on 30.11.2008. In the said lease agreement, it was specifically mentioned that the lessee has to obtain necessary licence for conducting the said business from the concerned authorities. She also applied for licence for conducting crackers selling business. The Fire Service Department has given No Objection Certificate on 23.3.2009, Health Department also gave No Objection Certificate on 27.6.2009 and also the Tahsildar has also issued a recommendation letter to Revenue Divisional Officer on 12.9.2009 for issuance of licence for conducting business of selling fire crackers. But licence is yet to be issued. He would further submit that only the person who has conducted the business alone is liable as per Section 9(B)(b) of the provisions of the Explosives Act, 1884 and as per Rule 7 of the Explosives Rules, 2008, it is stated that no person shall manufacture, import, export, transport, possess for sale or use an explosive except as authorised or licensed under these rules. But this petitioner who is the owner of the premises is not possessing or selling the crackers. So he should not be prosecuted. Without considering the same, the Investigation Agency investigated the matter and filed a final report against this petitioner who entered lease agreement with one Vani and she was not arrayed as accused.

5. He would further contend that as per Rule 96 of Explosives Rules, 2008, a person in charge is held to be responsible for the occurrence. As per the above said Rule, the person incharge for the fire accident is licensee of the fire crackers, where his business is being carried on, but not the owner of the property. That factum was not properly considered

by the investigating agency. Hence, he prayed for quashing of criminal proceedings against him.

6. Resisting the same, the learned Additional Public Prosecutor would submit that the fire crackers selling business is carried on in an old flour mill building which is in a dilapidated condition. Further in the lease agreement, it was stated that Tahsildar and Fire Service Department has issued No Objection Certificate. In the No Objection Certificate issued by Fire Service Department, no objection was given to the lessee of the petitioner in respect of selling fire crackers in respect of only 20 Kilograms and to get ride of that only, the document dated 30.11.2008, which is a rental agreement entered into between the petitioner and Vani has been concocted stating that in the rental agreement that the premises was let out for carrying on selling fire crackers business both in retail and wholesale. The document filed by this petitioner dated 30.11.2008 is concocted at a later point of time. From the Case Diary he has produced another document viz., a rental agreement entered into between this petitioner and one Vani on 17.9.2008 and submitted that this is the actual document which has been obtained during the time of seizure under seizure mahazar. He would further submit that the recitals in that document are different from the document that was filed by this petitioner. So the document filed by the petitioner cannot be relied upon while deciding the matter in quash application filed under Section 482 of Cr.P.C.

7. He would further submit though the building is not fit for conducting fire crackers selling business, the same has been let out for conducting fire cracker selling business and further the petitioner has produced concocted document before the Court. Therefore, he is not entitled for quash the proceedings against him and prayed for dismissal of this petition.

8. Heard the learned counsel appearing for both sides and perused the materials available on record.

9. It is an admitted fact that the petitioner who was arrayed as A2 is the owner of the building. He leased out the building to one Vani and it is true that she is not at all arrayed as accused in this case. But she applied for licence. In that it was specifically mentioned by the Fire Service Department, no objection to selling fire crackers business up to 20 Kilograms, but that has been find place in this document seized and produced by the Investigation Agency. But in the document filed by the petitioner before this Court, the recitals were different. In that, it was specifically mentioned that for doing wholesale or retail business in selling fire cracker works and to get rid of that only, this document has been subsequently concocted is accepted by this court.

10. Furthermore, it is a well settled factum that the Apex Court at the time of dealing with application filed under Section 482 of Cr.P.C., only impeachable and sterilized documents alone has to be considered or communication by way of both parties would be considered, But here, the document produced along with this charge sheet and also document filed by the petitioner itself are entirely contra to each other. So this document filed by the petitioner shall not be looked into. Therefore, it is hereby discarded. Once the petitioner has come forward with this application for quash, he must come to Court with clean hands. But he has produced document No.I viz., lease agreement which is concocted for the purpose of the case. In such circumstances, without going into the merits of the case, this petition is dismissed. Consequently, connected M.P.No.1 of 2014 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate Tiruttani

2.-do-Thro The Chief Judicial Magistrate
Thiruvallur

3. The Inspector of Police,
D-5, Pallipet Police Station,
Tiruttani,
Tiruvallur District.

4. The Deputy Superintendent of Police,
Tiruttani Sub Division,
Tiruttani, Tiruvallur District.

5. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.20417 of 2014

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