

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.25510 of 2016

Crl.M.P.Nos.12393 and 12394 of 2016

Mohan .. Petitioner/Accused No.4
vs.

The State represented by
The Inspector of Police,
Keezhapuram Police Station,
Villupuram District. ... Respondent/Complainant

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to quash the order passed in Crl.M.P.No.2162 of 2015 dated 9th December 2015 in C.C.No.247 of 2014 on the file of the Judicial Magistrate, Kallakurichi for offences under Sections 279, 304(A) IPC r/w. 9B(1)(b) of Indian Explosives Act, 1884.

For Petitioner : Mr.A.Ramesh, Senior Counsel,
for M/s.Narmadha Sampath

For Respondent : Mr.C.Emalias
Additional Government Pleader

O R D E R

This Criminal Original Petition has been filed seeking to set aside the order passed in Crl.M.P.No.2162 of 2015 dated 09.12.2015 in C.C.No.247 of 2014 on the file of the Judicial Magistrate, Kallakurichi for the offences under Sections 279, 304(A) IPC r/w. 9B(1)(b) of Indian Explosives Act, 1884.

2. On the complaint lodged by Tmt.Kowsalya, Village Administrative Officer, the respondent police registered a case in Crime No.126 of 2013 on 23.06.2013 and on completion of investigation, filed a final report in C.C.No.247 of 2014 before the Judicial Magistrate, Kallakurichi for offences under Sections 286, 337, 338, 304(A) IPC and Section 9B(i)(b) of Indian Explosives Act, 1884 against one Mayilvaganan and Sarfuddin. It is the case of the prosecution that the accused were operating a licenced quarry, during which blast occurred,

resulting in death of two persons and injury to one. Hence, the F.I.R and the Final Report.

3. On 27.03.2015, trial commenced in C.C.No.247 of 2014 with the examination of Tmt.Kowsalya/VAO as PW1 in chief. PW1 was cross examined by the accused on the same day. On the same day, the learned Additional Public Prosecutor filed a petition in C.M.P.No.2162 of 2015 in C.C.No.247 of 2014 under Section 319 Cr.P.C. to include Mr.Ramasamy, owner of the quarry as additional accused in the case. The trial Court, vide order dated 09.12.2015, allowed the petition and implicated Mr.Ramasamy as well as one Mr.Mohan as accused in this case. Challenging the same, Mohan is before this Court.

4. Mr.A.Ramesh, learned Senior Counsel appearing for the petitioner submitted that there is no shred of evidence on record to implicate the petitioner for the aforesaid offences and that the petitioner was only a seller and he was in no way involved in the offence and the allegation against the petitioner is that he has sold the explosives that were used in the quarry.

5. There appears to be sufficient force in the submission made by Mr.A.Ramesh, learned Senior Counsel appearing for the petitioner. However, this Court finds that the trial Court had committed a grave error in not issuing notice to the proposed accused before passing orders on the petition under Section 319 Cr.P.C. implicating them in the prosecution.

6. In Jogendra Yadav v. State of Bihar [2015 (8) Scale 442], the Hon'ble Supreme Court has stated that the accused have to be heard before he is being implicated and once he is implicated, the accused does not have a second chance of filing discharge application under Section 239 or 227 Cr.P.C. In this case, admittedly, no notice was sent to the proposed accused. Had notice been sent to the proposed accused, he would have explained to the Court why he need not be prosecuted. This Court finds that there has been violation of fundamental principles of natural justice. Other grounds raised by Mr.A.Ramesh, learned Senior Counsel are left open for the trial Court to decide.

7. In the result, this Criminal Original Petition is allowed and the impugned order dated 09.12.2015 made in C.M.P.No.2162 of 2015 in C.C.No.247 of 2014 on the file of the learned Judicial Magistrate, Kallakurichi is hereby set aside. The petitioner is directed to surrender before the learned Judicial Magistrate, Kallakurichi within a period of two weeks from the date of receipt of a copy of this order and on such appearance, the

learned Magistrate is directed to furnish to the petitioner, copy of the final report, accompanying documents and give an opportunity to the petitioner to show cause as to why he should be implicated as accused. On the petitioner giving his explanation, the trial Court should bear in mind the laid down by the Hon'ble Supreme Court in Hardeep Singh v. State of Punjab [2014 (1) Scale 291] and only if the evidence on record is satisfactory, can the petitioner be arrayed as accused. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm
To

- 1.The Judicial Magistrate,
Kallakurichi
- 2.The Inspector of Police,
Keezhapuram Police Station,
Villupuram District.
- 3.The Public Prosecutor,
High Court, Madras

RJ(CO)
BB(29/12/2016)

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