



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2017

CORAM:

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

Crl.O.P.(MD) Nos.2863 of 2017, 5953/2016, 15601/2016 and
13508/2016

and

Crl.M.P. (MD) Nos.2189 & 2190/2017, 2934 and 2935/2016, 7416 and
7417/2016 and 6296/2016**Crl.O.P. (MD) No.2863/2017**1.Jayadhas
2.Suriyan
3.Jino
4.Raabinson

Petitioners/Accused 1 to 4

-vs-

The State rep. by
the Inspector of Police
Kulasekaram Police Station
Kanyakumari District
in Cr.No.297/2014

Respondent

Prayer: Criminal Original Petition filed under Section 482 of
Cr.P.C., praying to call for the records in respect of P.R.C.No.45
of 2016 pending on the file of the Judicial Magistrate Court,
Padmanabhapuram and quash the same.For petitioners
For respondentMs.J.Anandhavalli
Mr.K.Anbarasan
Government Advocate (Crl. Side)

Crl.O.P. (MD) No.5953/20161.Jayadhas
2.Jino
3.Raabinson

... Petitioners/Accused 1 to 3

-vs-

1.The State rep. by
the Inspector of Police
Kulasekaram Police Station
Kanyakumari District
(in Cr.No.248/2014)



2.S.Jinna Beer Mohammed
Sub Inspector of Police
Kulasekaram Police Station
Kanyakumari

... Respondents/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in respect of charge sheet in S.T.C.No.465 of 2015 pending on the file of the Judicial Magistrate Court, Padmanabhapuram, Kanyakumari and quash the same.

For petitioners
For R1

Ms.J.Anandhavalli
Mr.K.Anbarasan
Government Advocate (Crl. side)

Crl.O.P. (MD) No.15601/2016

1.Jayadhas
2.Jino
3.Raabinson

... Petitioners/Accused 1 to 3

-vs-

The State rep. by
the Inspector of Police
Kulasekaram Police Station
Kanyakumari District
(in Cr.No.219/2014)

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in respect of the proceedings in P.R.C.No.36 of 2016 on the file of the Judicial Magistrate Court, Padmanabhapuram and quash the same.

For petitioners
For respondent

Ms.J.Anandhavalli
Mr.K.Anbarasan
Government Advocate (Crl. Side)

Crl.O.P. (MD) No.13508/2016

Jayadhas

Petitioner/ Sole Accused

-vs-

State represented by
the Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District
in Cr.No.485/2015

Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in respect of Cr.No.485 of 2015 pending on the file of respondent and quash the same.



For Petitioner
For Respondent

Ms.J.Anandhavalli
Mr.K.Anbarasan
Government Advocate (Crl. Side)

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COMMON ORDER

If this Court were to deal with these quash applications individually on different dates, the result would have been dismissal of the quash applications on the ground that there are *prima facie* materials for the prosecution to proceed against the accused. However, if the facts as projected by the prosecution, in each of these cases, are narrated, the resultant conclusion would indubitably be in favour of the accused.

2. For the sake of convenience, the parties will be referred to by their name.

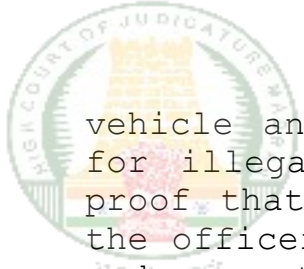
3. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl. Side) for the respondent/State.

4. In this common order, the cases are dealt with on the chronology of the FIRs registered in the four cases at hand.

5. It is unequivocally admitted by the prosecution that Jeyadhas @ Dhas is the holder of a valid lease issued by the Government of Tamil Nadu for quarrying rough stone/jelly, a minor mineral, in his own patta land in S.F.No.521/5A in Ponmanai Village to an extent of 1.78.2 hectares. It is also admitted by both sides that for the quarrying operations, explosives are required and that K.Arumugasamy, Proprietor of Sri Hari Narayana Explosives has the necessary licence under the Explosives Rules, 2008 to possess and trade in explosives.

Crl.O.P. (MD) No.15601/2016:

6. Based on the secret information received by the Superintendent of Police, Kanyakumari District and on his directions, a team of officers led by Mr.S.Jinna Peer Mohammed, Sub Inspector of Police, Kulasekaram Police Station, along with the Village Administrative Officer, went to the quarry of Jayadhas on 28.05.2014 around 9.30 a.m. and on seeing them, three persons tried to flee, out of whom, two were apprehended and when questioned, they revealed that they are Jino (A2) and Robinson (A3). On further inspection, the team found electric detonators 25(sun), celery 1860 and Ammonium Nitrate in two sacks weighing 40 kilos and 39 kilos respectively. On further enquiry, Jino (A2) and Robinson (A3) told the police team that the third person is the owner of the quarry, Dhas @ Jayadhas/A1, who has obtained the explosives from Arumugasamy (A4), who delivered it in his TATA Ace



vehicle and that Dhas @ Jeya Dhas (A1) would use the explosives for illegal purposes. Since the duo was not able to show any proof that the explosives mentioned above were legally obtained, the officers arrested them and seized the explosives under Form 95 and came to the police station and on the report of Mr.S.Jinna Peer Mohammed, Sub Inspector of Police, the Inspector of Police registered a case in Crime No.219/2014 on 28.05.2014 under Sections 9(B), 1(b) and 3, 5 of the Explosive Substances Act, 1908 (for brevity "the Act") against Dhas @ Jayadhas (A1), Jino (A2), Robinson (A3) and Arumugasamy (A4). On the same day, ie., on 28.05.2014, the Inspector of Police, Kulasekaram Police Station took up the investigation in Crime No.219/2014.

7. The Inspector of Police prepared an alteration report, stating that the discreet enquiry conducted by him showed that Arumugasamy (A4) was not involved in the offence and therefore, his name should be deleted from the FIR. In the meanwhile, the seized explosives were produced before the Judicial Magistrate, Padmanabhapuram, who gave interim custody of the explosives to Arumugasamy (A4) on the ground that he alone has the necessary licence to store explosives in that area and thereafter, on the orders of the Magistrate, the explosives were destroyed in the manner known to law. After completing the investigation, the Inspector of Police filed a charge sheet before the Judicial Magistrate, Padmanabhapuram, which was taken on file as P.R.C.No.36/2016 for offences under Sections 9B, 1(b), 3 and 5 of the Act against Jeyadhas (A1), Jino (A2) and Robinson (A3), challenging which, they are before this Court for quashing the prosecution.

Crl.O.P. (MD) No.5953/2016

8. On secret information received by the Superintendent of Police and on his directions, a team of officers led by Mr.S.Jinna Peer Mohammed, along with the Village Administrative Officer, inspected the quarry of Jayadhas (A1) on 16.06.2014 around 4.00 p.m. At that time, they saw four persons offloading a barrel from a TATA Ace vehicle and on seeing the police, they got into the vehicle and fled away. On enquiry Mr. Jinna Peer Mohammed learnt that the four persons were Jayadhas (A1), Jino (A2), Robinson (A3), Arumugasamy (A4). The barrels were inspected by the police team and they were found to contain 150 kilo litres of Ammonium Nitrate. The contraband was seized and was brought to the station and on the report of Mr.Jinna Peer Mohammed, Sub Inspector of Police, the Inspector of Police registered a case in Crime No.248/2014 for offences under Sections 9(B), 1(b) and Section 5 the Act against Jayadhas (A1), Jino (A2), Robinson (A3) and Arumugasamy (A4). The Inspector of Police took over the investigation in Crime No.248/2014 and on the next day, ie., on 17.06.2014, the Inspector of Police filed an alteration report stating that the discreet enquiry conducted by him revealed that Arumugasamy (A4)



is not involved in the case and therefore, his name should be deleted from the FIR. The contraband seized was produced before the Judicial Magistrate, Padmanabhapuram and on the orders of the Magistrate, it was given to Arumugasamy (A4) for safe custody and thereafter, it was destroyed. After completing the investigation, the Inspector of Police filed a charge sheet before the Judicial Magistrate, Padmanabhapuram in S.T.C. No.465/2015 for offences under Sections 9B and 1(b) of the Act against Dhas (A1), Jino (A2) and Robinson (A3), challenging which, they are before this Court with this petition.

Crl.O.P. (MD) No.2863/2017

9. Based on the secret information received by the Superintendent of Police, a team of officers headed by Mr. S.Jinna Peer Mohammed, Sub Inspector of Police, along with the Village Administrative Officer, went to the quarry of Jayadhas (A1) on 14.07.2014 around 8.00a.m. At that time, they saw three persons working in the quarry and one person was found in a car and on seeing the police, all the four persons ran away. On enquiry, the police party came to know that the three persons, working in the quarry who ran away were Suriyan (A2), Jino (A3) and Robinson (A4) and that the one who was inside the car was Jeyadhas (A1). On inspecting the quarry, the team found electric detonators (109 nos.), celery 95 written as Sun 90 (each contain 125 grams) and Ammonium Nitrate in two plastic sacks, one weighing 13 kgs. and another weighing 10 kgs. and a car bearing registration No.TN 75 M 8181. On further enquiry, Mr.Jinna Peer Mohammed came to understand that the seized explosives were supplied by Arumugasamy (A5) in his TATA Ace car. The police party seized the explosives and returned to the police station, where, on the special report given by Mr. Jinna Peer Mohammed, the Inspector of Police registered a case in Crime No.297/2014 on 14.07.2014 under Sections 4 and 5 of the Act against Jayadhas, (A1), Suriyan (A2), Jino (A3), Robinson (A4) and Arumugasamy (A5). On the very same day, i.e., on 14.07.2014, the Inspector of Police, filed an alteration report stating that from his discreet enquiry, he came to know that Arumugasamy (A5) was not involved in the offence and therefore, his name should be deleted in the charge sheet. In the meanwhile, the seized explosives were produced before the Judicial Magistrate, Padmanabhapuram, who ordered to give interim custody of the explosives to Arumugasamy (A5) on the ground that he alone has the necessary licence to store the explosives in that area and thereafter, on the orders of the Magistrate, the explosives were destroyed in the manner known to law. After completing the investigation, the Inspector of Police filed a charge sheet before the Judicial Magistrate, Padmanabhapuram in P.R.C.No.45/2016 for offences under Sections 4 and 5 of the Act against Jayadhas (A1), Suriyan (A2), Jino (A3) and Robinson (A4), challenging which, they are before this Court with this petition.

Crl.O.P.(MD) No.13508/2016

10. A team of officers led by Mr. Murugan, Sub Inspector of Police, Kulasekaram Police Station, went for inspection to the quarry of Jayadhas on 21.10.2015 around 6.30 a.m. and during inspection, they found near the quarry a plastic sack containing five electric detonators, 85 ordinary detonators and celery gel 52 and seized the same under Form 95 and brought the same to the police station. On the report given by Mr. Murugan, Sub Inspector of Police, the Inspector of Police, Kulasekaram Police Station, registered a case in Crime No.485/2015 on 21.10.2015 under Sections 9(B) and 1(b) of the Act against Jayadhas. On the same day, Jayadhas was arrested and was released on station bail. Thereafter, Jayadhas has filed the present quash application for quashing the FIR.

11. Ms.J.Anandhavalli, learned counsel for the petitioners, meticulously took this Court to all the charge sheets and FIRs and submitted that admittedly, Jayadhas (A1) has a valid licence given by the Government of Tamil Nadu to quarry small stones in his own patta land in S.No.521/5A in Ponmanai Village to an extent of 1.78.2 hectares. While so, the learned counsel for the petitioners submitted that every month, it has become a practice for the police to register a stereotyped FIR, as if, when they came to the quarry on secret information, they found some persons running away from the place and later, they knew about the identity of those persons, based on which, FIR is registered against Jayadhas and his workers and also against Arumugasamy and immediately thereafter, the name of Arumugasamy is deleted from the FIR on the ground that the discreet enquiry conducted by the police showed that he was not involved in the offence and the seized explosives, which were produced before the Court, were handed over to Arumugasamy for safe custody and thereafter, the same were also disposed of and subsequent thereto, the charge sheets have been filed, as stated above.

12. The learned counsel for the petitioners further submitted that as regards the FIR in Crime No.485/2015 which is sought to be quashed in Crl.O.P. No.13508 of 2016, the complaint given by Murugan itself shows that the explosives were recovered from a place near the quarry of Jayadhas (A1) and not from the quarry of Jayadhas and thus, the prosecution itself shows the *mala fide* nature of the prosecution.

13. Refuting the contentions put forth by the petitioners, the Inspector of Police has filed a counter affidavit reiterating the averments made in the FIR and charge sheet and justifying the action taken by the police.

<https://hcservices.ecourts.gov.in/hcservices/> Since this Court felt that there was force in the submission of the learned counsel for the petitioners/accused, this Court summoned the Superintendent of Police to be present



before this Court for the hearing.

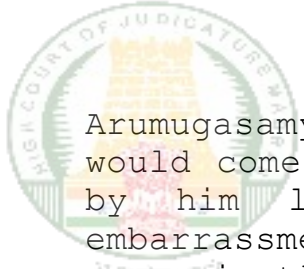
15. On the directions of this Court, Mr.M.Sree Abhinao, I.P.S. Assistant Superintendent of Police, Mr.D.Rajinikanth, Inspector of Police, and Mr.G.Muthaiyan, Special Sub Inspector of Police, Kulasekaram Police Station are present.

16. In the first three cases, the de-facto complainant is none other than Mr. S. Jinna Peer Mohammed, Sub Inspector of Police. In each of the cases, he goes with a team of officers to the quarry and on seeing him, three or four persons run away and after enquiry made by him, he learns that their names are Jeyadhas, Jino, Robinson and Suriyan. He seizes the explosives and returns to the station and gives a special report to the Inspector of Police. Based on the said special report, the Inspector of Police registers the FIR against the run-away accused and also against Arumugasamy who is said to have supplied the explosives illegally in a TATA Ace car. Either on the same day or on the next day, the Inspector of Police files the alteration report stating that, discreet enquiry conducted by him showed that Arumugasamy was not involved in the offence and therefore, his name should be deleted in the array of accused in the FIR.

17. Is Mr. Jinna Peer Mohammed, Sub Inspector of Police, Kulasekaram Police Station, such a dunce that each time, he has to be told about the name of the persons who ran away after seeing him? Why is it that the FIRs are initially registered against Arumugasamy also and why is it that immediately his name is deleted in the FIR by the Inspector of Police based on discreet enquiry?

18. It is admitted by the Superintendent of Police that Arumugasamy has the necessary licence to trade in explosives that were allegedly seized from the quarry of Jayadhas (A1). But, it is the case of the police in the charge sheet that Arumugasamy had not supplied the explosives. If it is so, should not the police have recorded at least the 161(3) Cr.P.C. statement of Arumugasamy to the effect that he identified the explosives that were recovered from the quarry of Jayadhas (A1) and that he had not supplied those items to Jayadhas (A1)? This is the minimum that the police should have done to sustain the prosecution against the accused. Neither the Superintendent of Police nor the Inspector of Police assisting him was able to give any satisfactory answer as to how and why the name of Arumugasamy got deleted each time from the FIR and why the investigating officer did not even record the 161(3) Cr.P.C. statement of Arumugasamy and show his name in the witnesses list.

<https://hcservices.ecourts.gov.in/hcservice/> The learned counsel for the petitioners contended that Jayadhas (A1) normally purchases explosives for his quarry operations from Arumugasamy, who is the licensed vendor and if



Arumugasamy is either made as an accused or shown as a witness, he would come to the Court and say that the explosives were supplied by him legally to Jayadhas (A1), which will be a great embarrassment for the police and therefore, the police conveniently deleted the name of Arumugasamy from the FIRs and also did not record any statement from him and enlist him as a prosecution witness. This argument of Ms.J.Anandhavalli, does, sound convincing.

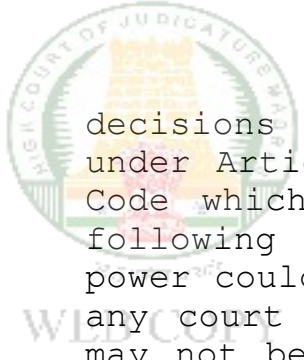
20. As regards the challenge to the FIR in Crime No.485/2015, the Superintendent of Police and the Inspector of Police assisting him fairly conceded that after registration of the FIR, Jayadhas (A1) was arrested by the police on the same day, ie., on 21.10.2015 and was released on station bail.

21. It may be necessary to recapitulate here that in Crime No.485/2015, the explosives were seized near the quarry of Jayadhas (A1) and not found in the quarry of Jayadhas (A1). But, it is the admitted case of the police that the explosives were found abandoned near the quarry of Jayadhas (A1). Therefore, this Court asked the Inspector of Police to furnish the statement that must have been recorded by the police from Jayadhas (A1) when they arrested him on 21.10.2015 and released him on station bail, for which, the Inspector of Police submitted that no statement whatsoever was recorded from Jayadhas (A1).

22. This Court is conscious of the legal position that a confession to police officer is inadmissible under Section 25 of the Evidence Act. But, this rule will apply only during trial and it would have no application during investigation. In other words, there is no bar for the police to record the statement of the accused under Section 161(3) Cr.P.C. inasmuch as such interrogation would lead to discovery of several facts hitherto unknown to the police, which will be relevant under Section 27 of the Evidence Act during trial. So, the minimum the police should have done is to have asked Jayadhas (A1) as to his connection with the explosives that were allegedly found near his quarry. Even without ascertaining the link, this Court is not able to fathom as to the grounds on which, Jayadhas (A1) was arrested on 21.10.2015 by the police.

23. In view of the above discussion, the prosecutions launched by the police against Jayadhas (A1) and his workmen are clearly an abuse of process of law and deserve to be quashed in the light of the law laid down by the Supreme Court in **State of Haryana and others v. Bhajan Lal and others [1992 Supp. (1) SCC 335]**, wherein, at paragraph no.102(5), it is held as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of



decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."

In the result, the entire prosecution against all the accused in P.R.C.No.36/2016, STC No.465/2015 and PRC No.45/2016, pending on the file of the Judicial Magistrate Court, Padmanabhapuram, are hereby quashed and the case in Crime No.485/2015 pending on the file of Kulasekaram Police Station is also quashed and all the Criminal Original Petitions are accordingly allowed. Consequently connected Miscellaneous Petitions are closed.

Sd/-

ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To:

- 1.The Judicial Magistrate, Padmanabhapuram.
- 2.The Chief Judicial Magistrate, Kanyakumari at Nagercoil.
- 3.The Inspector of Police
Kulasekaram Police Station ,Kanyakumari District.
- 4.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

+3 CC TO MR.K.SAMIDURAI , ADVOCATE,SR NOS.53334,53335&53336
+1 CC TO M/S.J.ANANDHAVALLI,ADVOCATE,SR NO.53333

Rr/cad

MAS/RSK/SAR4:09.05.2017:9P-9C

Common order in
Cr1.O.P. (MD) Nos.2863 of 2017, 5953/2016,
15601/2016 and 13508/2016
20.04.2017