



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.08.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C.(MD)No.494 of 2016
and
CrI.M.P(MD)No.5891 of 2016

K.Ramasubbu

... Petitioner/Sole accused

-Vs-

State rep. By
The Inspector of Police,
Vembakottai Police Station.

... Respondent/Complainant

Prayer : Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure, against the order of dismissal of the discharge petition, dated 23.06.2016 in Cr.M.P.No.453 of 2011 in S.C.No.160 of 2011 on the file of the learned Assistant Sessions Judge, Sivakasi in Virudhunagar District and allow this Criminal Revision by discharging the Petitioner from the offences punishable under section 5 of the Explosive Substances Act.

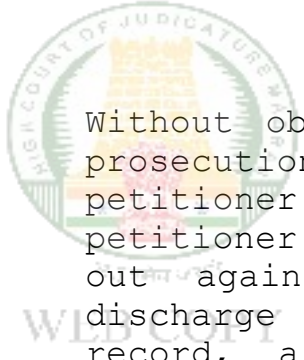
For Petitioner : Mr.V.Sasi Kumar

For Respondent : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

ORDER

The Criminal Revision has been filed against the order dismissing the discharge petition filed by the petitioner in Cr.M.P.No.453 of 2011 in S.C.No.160 of 2011 on the file of the learned Assistant Sessions Judge, Sivakasi in Virudhunagar District.

2.The petitioner stood charged for the offences under Section 286 I.P.C and under Section 9-B(1)(a) of the Indian Explosives Act and under Section 5 of the Explosive Substances Act. After filing the final report, the Court below has taken cognizance of the offences and thereafter, the petitioner has filed a discharge petition in Cr.M.P.No.453 of 2011 to discharge him from the above charges mainly on the ground that as per Section 7 of the Explosive Substances Act, trial should not be commenced till obtaining consent from the District Magistrate.



Without obtaining any consent from the District Magistrate, the prosecution cannot proceed with the trial and on that score, the petitioner is entitled for discharge. Apart from that, the petitioner also contended that there is no *prima facie* case made out against the petitioner. The Court below dismissed the discharge petition holding that from the materials available on record, a *prima facie* is made out against the petitioner. Challenging the same, the present revision is filed.

3.The learned counsel appearing for the petitioner would contend that under Section 7 of the Explosive Substances Act, the prosecution did not get consent from the District Magistrate and on that score, the petitioner can be discharged.

4.The learned Additional Public Prosecutor appearing for the respondent would submit that obtaining consent from the District Magistrate is only a condition for commencement of trial and the trial is yet to be commenced and now only charges were framed and before commencing trial, consent will be obtained from the District Magistrate, if so required.

5.Section 7 of the Explosive Substances Act reads as follows:-

"7.Restriction on trial of offences.- No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate."

6.Even as per Section 7 of the Explosive Substances Act, prosecution can get consent before commencement of the trial. Since, as admitted, the trial not yet commenced, at this stage there is no necessity for getting consent and on that score, the petitioner is not entitled to get discharged from the proceedings. Apart from that, the trial Court has also considered the entire materials and come to the conclusion that there is *prima facie* material available on record to proceed against the petitioner.

7.I have also carefully perused the materials available on record and I do not find any illegality or irregularity in the order passed by the trial Court. Accordingly, this Civil Revision Case fails and the same is dismissed.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar



To

1. The Assistant Sessions Judge,
Sivakasi, Virudhunagar District.
2. The Inspector of Police,
Vembakottai Police Station.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.V.Sasi Kumar, ADVOCATE IN SR No.75243
ps/ta
AE/SV MMS/SAR-1/3P/5C/15.09.2017

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