



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:29.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P. (MD)No.18042 of 2016
and Crl.M.P. (MD)Nos.8987 of 2016 and 7504 of 2017

Venugopal ... Petitioner/Sole Accused

-Vs-

1.State rep.by
The Inspector of Police (Circle),
Kovilpati West Police Station,
Tuticorin District.
(Crime No.31 of 2012) ... 1st Respondent / Complainant

2.Vadivel ... 2nd Respondent / De-facto
Complainant

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to call for the records in S.C.No.171 of 2016 on the file of II Additional Sessions Court, Tuticorin, and quash the same.

For Petitioner : Mr.M.Saravanan

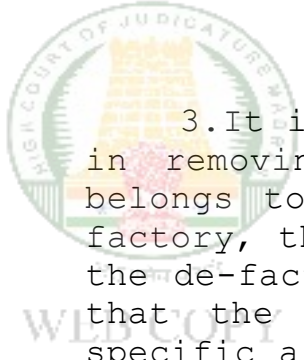
For R-1 : Mr.K.Anbarasan
Government Advocate(Crl.Side)

For R-2 : Mr.Rajendra Babu

O R D E R

This Criminal Original petition is filed to call for the records in S.C.No.171 of 2016 on the file of II Additional Sessions Court, Tuticorin, and quash the same.

2.Based on the complaint given by one Vadivel/the de-facto complainant, a case was registered as against the petitioner in Crime No.31 of 2012 for an offence under Section 304 of I.P.C. and Section 3 of Explosive Substance Act. The complaint of the de-facto complainant is about the incident namely an accident by which the de-facto complainant's son died. The de-facto complainant is a law of the de-facto complainant died.



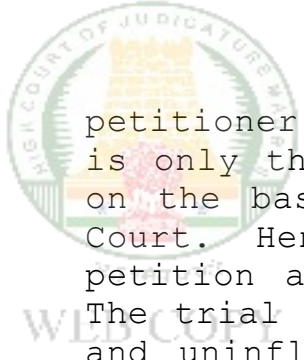
3. It is stated in the complaint that the deceased was engaged in removing the waste materials from the Match Factory which belongs to the petitioner. When it was dumped outside the match factory, there was an explosion and due to which the son in law of the de-facto complainant died on the spot and it is also reported that the whole body of the deceased was charred. There was specific allegations as against the petitioner for not maintaining the materials and it is only the negligence of the petitioner which caused the accident.

4. The case of the petitioner is that the petitioner was not running the match factory atleast five years before the incident occurred, i.e, 30.05.2012. Since the complaint itself does not disclose any overt act as against the petitioner, the learned counsel appearing for the petitioner submitted that the petitioner cannot be implicated for the offences punishable under Section 304 of I.P.C. He also referred to the provisions of Explosive Substance Act and submitted that there was no allegation as against the petitioner that there was some intension of act on his part. He stated that Section 3 of Explosive Substance Act is not attracted. He also relied upon a judgment of this Court, in the case of V.N.Subramaniam Vs. State represented by the Inspector of Police, T.I.W. Salem in Crl.R.C.No.598 of 2009, dated 02.09.2010.

5. In the said Judgement, this Court after taking into account that the fact that cognizance was taken after a period of three years has held that the final report which was filed after a period of two years is not sustainable. The facts of the present case, do not come within the factual matrix as extracted in the judgment relied upon by the learned counsel for the petitioner.

6. The petitioner does not dispute the accident that occurred as on the fateful day, just on the southern side of the petitioner's factory premises. It is alleged that waste materials were dumped at the place of occurrence, at the instance of the petitioner and the deceased also was engaged for the said purpose that is to clean the factory premises and to dump the waste materials removed from the factory premises just on the outside of the factory. Since it is alleged that the accident occurred due to the explosion of chemicals, the matter was investigated and a charge sheet was filed.

7. The materials collected by the Investigation Officer clearly disclose that the allegations found in the charges are prima facie made out. Though there are some discrepancies in the statements of some of the witnesses, and other factual aspects are pleaded by the petitioner, the issues on disputed facts cannot be decided at this stage. The question is whether the offences are made out from the charges framed as against the petitioner. The



petitioner's version on the facts is a matter for evidence and it is only the Court at the time of trial will decide on merits and on the basis of evidence and other materials availed before the Court. Hence, this Court is not inclined to entertain this petition and hence this Criminal Original Petition is dismissed. The trial Court is directed to consider the case wholly on merits and uninfluenced by any of the observations or findings of this Court. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar.

To

1. The IInd Additional Sessions Court,
Tuticorin.

2. The Inspector of Police (Circle),
Kovilpati West Police Station,
Tuticorin District.

+1CC to Mr.M.Saravanan, Advocate, SR.No.75436

+1CC to Mr.P.Rajendra Babu, Advocate, SR.No. 75279

CRL.O.P.(MD) No.18042 of 2016
29.08.2017

ls/cmr

AM/SKN RSK/SAR 2/18.09.2017/3P/5C