

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.8341 of 2017

and

Crl.M.P.Nos.5988 and 5989 of 2017

1.C.Arjunan

2.A.Venkatesh Babu

3.Babu

4.Suresh

4

... Petitioners/ Accused 1-

Vs.

State represented by

The Inspector of Police,

Karumalaikoodal Police Station,

Mettur,

Salem District.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records pertaining to S.C.No.150 of 2017 pending on the file of the Assistant Sessions Court, Mettur, Salem District and quash the same as illegal, incompetent and ultra vires.

For Petitioners : Mr.Ma.P.Thangavel

For Respondent : Mr.C.Raghavan

Government Advocate (Crl. Side)

O R D E R

This petition has been filed challenging the proceedings in S.C.No.150 of 2017, pending on the file of the Assistant Sessions Court, Mettur, Salem District.

2.Based on the complaint given against the petitioner, an FIR came to be registered against the petitioner for an offence under Section 4(b) of the Explosive substance Act, 1908. The case was investigated and a final report came to be filed by the respondent police for an offence under Sections 4(b), 5 and 6 of the Explosive Substance Act and Section 9 B of Explosive Act. The said final report was taken cognizance by the Judicial Magistrate No.2, Mettur and thereafter the case has been committed to the Assistant Sessions Court, Mettur.

3.The learned counsel for the petitioner submitted that admittedly in this case, the following substances were found in possession of the petitioner:

- 1)316 bags of Ammonium Nitrate each 50 Kgs,
 - 2)Unnamed explosive materials 10 bags each 50 kgs,
 - 3)Two bags of PVC rasin each 25 kgs,
 - 4)2 bags of Aluminium powder each 15 kgs
- totally 330 bags without valid licence from the competent authority.

4.The learned counsel by pointing out the above substance would submit that Ammonium Nitrate is not an Explosive substance. In order to substantiate the said submission, the learned counsel for the petitioner brought to the notice of this Court the proceedings of the Department of Explosive, wherein the said authority has categorically stated that Ammonium Nitrate and Potassium Nitrate individually are not explosives.

5.The learned counsel for the petitioner would further submit that there is no requirement to have licence in order to hold this substance. In order to substantiate this submission, the learned counsel for the petitioner brought to the notice of this Court, the communication from the Ministry of Commerce and Industry Petroleum and explosives Safety Organisation (PESO), made to the District Collector of Salem. In the said communication, an opinion has been given with regard to the four substances that were recovered from the petitioner and it has been categorically stated that Items No.2, 3 and 4 which have been mentioned herein above are not explosives and insofar as Ammonium Nitrate is concerned, no specific rules have been made. The learned counsel for the petitioner also brought to the notice of this Court the fact that no licence is required for the manufacture and storage of either Ammonium Nitrate or Potassium Nitrate.

6.The learned counsel also placed reliance on the judgment of this Court and also the judgment of the Andra Pradesh and Madhya Pradesh High Court, in order to substantiate his submissions.

7.This Court in M.Antony Gomes Vs. State reported in 2014 SCC Online Mad 8100, held as follows:

"2.The complaint proceeds as if at about 13.45 on 08.06.2012, on instructions from the Superintendent of Police, Kancheepuram, the Inspector of police, by name lakshmi Murgugan, special Sub Inspector of Police, and Suresh, Police Constable, had been to Sankarapuram stone quarrying

area, by way of surprise inspection. At that time, they found raw materials such as, open boosters, Ammonium rolls and Gelatin sticks stored in the shed adjacent to quarrying area and A1 Krishnan, A2 Jeeva @ Jeevanantham and A3 Saravanan were present inside the shed and when they were questioned, they informed that the explosive substances were kept in the shed at the instance of the owner Antony Gomez, Manager Kothandam and Supervisor Senthil and one Balu @ Balasundaram, and explosive substances were stored there without any licence. At the same time, the Police officials have also seen a Tata Tarras Lorry bearing Registration No.AP 16 TV 5445, which was parked near the shed. The Police officials arrested A1 to A3 and seized explosive substances vis, (i) Electric Detonator-358 nos. (ii) Cable Electric Detonator-429 nos. (iii) Gelatin Sticks-128 nos. (iv) Detonator cables-346 nos. (v) Ammonium Hydrate packed Roos-131 nos. (vi) Boosters-135 nos and (vii) Ammonium Nitrate Seven bags weighing 25 kg each under seizure mahazar and removed them safely and handed over the accused along with seized articles to the Inspector of Police, D2 Palur Police Station, Chengalpet taluk, along with the special report.

5. The petitioner has also sought to quash the FIR on other grounds that though the invoices and way bills are in the name of the company by name M/s. Parry Chemicals and company, which belongs to Dhanakotteeswaran, who purchases Ammonium nitrates and other chemicals for the purpose of selling it in retail, he is not implicated as accused and that, the only material available against the petitioner herein is the confession statement of A1 to the respondent police, which can be used only for the limited extent of section 27 of the Indian Evidence Act and except the same, no other legal evidence is available to implicate the petitioner in the case. It is his further case that even assuming it to be true that the explosive substances were found in the shed near the quarrying site, the licence holder of the Explosive Substance is responsible for the materials used for blasting work, as and when required for quarrying operation. As per the agreement entered into between the owner of the site and explosive licence holder by name Kaliammal, Proprietor of M/s. Lakshmi Explosives, the petitioner has

nothing to do with the explosive substance, if any, seized from the shed in question. It is also the case of the petitioner that as Ammonium nitrate is notified as explosive only on 21.12.2012, with effect from 21.7.2011, the same seized on 8.6.2012 cannot be treated as explosive for all practical purposes and no offence is attracted and no FIR registered for the same is maintainable.

14. Yet another ground raised on the side of the petitioner in support of the relief sought for herein is that the seizure of Ammonium nitrate from the shed in question on 8.6.2012 will not attract any offence for the simple reason that Ammonium nitrate was notified as explosive with effect from 21.7.2011, only through notification dated 21.12.2012 and as on the date of seizure of the explosives, the same is not explosive and the possession of the same will not amount to any offence. The learned senior counsel for the petitioner in support of such contention cited the judgment of this Court reported in 2013-2-LW (Cr1) 554 (V.Sekar v. the State rep. by Inspector of Police, Vellore North Police Station, Vellore). The case cited before this court, arises out of the order, refusing to return of 554 bags of Ammonium nitrate belonging to the petitioner therein. The learned brother judge in para 6 of the judgment referred to the decision of the Hon'ble Apex court reported in CDJ 2010 APHC 279 (O.Sudheer Reddy and another v. State by Sub Inspector of Police), wherein the Hon'ble Apex court quashed the FIR relating to possession of explosives, for the offence under Section 9B of the Explosives Act 1884 on the ground that the Ammonium nitrate is not an explosive and the Ammonium Nitrate is meant for the purpose of using the same in blasting boulders in stone crushers and end user of Ammonium Nitrate is not material and the possession of Ammonium Nitrate simplicitor without licence is not an offence. Following the same, the learned brother judge allowed the revision petition and ordered return of Ammonium Nitrate to the petitioner therein."

8. The next judgment of Andhra Pradesh High Court in O.Sudheer Reddy & Another Versus State, by Sub Inspector of Police, Talupula Police Station reported in CDJ 2010 APHC 279,

the relevant portions are as follows:

"The question is whether possession of Ammonium Nitrate without licence under the Explosives Act attracts liability under Section 9B of the said Act. According to the petitioner's counsel, Ammonium Nitrate though an essential item in the explosion process along with other chemicals, Ammonium Nitrate by itself is not an explosive material and that it is not a notified material under the Explosives Act requiring licence for possession thereof. The petitioners filed copy of letter addressed by the Deputy Chief Controller of Explosives, Hyderabad working in the department of Explosives, Government of India dated 12.06.2003. The said letter was addressed to one M.Jaya Ramulu of Ananthapur. In that letter, the Deputy Chief Controller of Explosives, Hyderabad informed the addressee that storage, sale and transportation etc., of Ammonium Nitrate do not attract provisions of the Explosives Act, 1884 and the rules framed there under and that hence, no licence is obligatory for the same under the said rules.

Further, this Court in order dated 07.07.2008 in Criminal Petition No.3565 of 2008 quashed FIR relating to offence punishable under Section 9B(1) (b) of the Explosives Act on the ground that the then Public Prosecutor after obtaining instructions reported before the Court that Ammonium Nitrate is not an explosive.

Now it is contended by the Additional Public Prosecutor that though Ammonium Nitrate is not an explosive, in this case, the said Ammonium Nitrate is meant for the purpose of using the same in blasting boulders in stone crushers. End user of Ammonium Nitrate is not material in this case. The only simple question here is whether possession of Ammonium Nitrate simplicitor without licence is an offence. Having regard to above discussion of the subject, inevitable answer for the said question is in the negative.

Hence, the petition is allowed quashing FIR in Crime No.17 of 2010 of Talupula Police Station, Anantapur District relating to offence under Section 9B of the Explosives Act, 1884."

9.The third judgment relied upon by the learned counsel for

the petitioner in Sharad Kumar Agrawal Versus State of M.P., reported in CDJ 2014 MPHC 508, the relevant portion is extracted hereunder:

"(4) It is submitted by Shri Chaturvedi, learned counsel appearing on behalf of the petitioner that the substance, namely, Ammonium Nitrate was not the explosive substance on 09.04.2009 as defined under the Explosive Substances Act. In the gazetted notification of Government of India dated 11.07.2012 Ammonium Nitrate Rules 2012 were published and enforced from the date of its publication. Therefore, charges under Section 4/5 of the Explosive Substances Act could not be framed against the petitioner on the ground that bags of Ammonium Nitrate were seized in the year 2009.

(8) As per the clarification issued by the Government of India on 18th March, 2009, Ammonium Nitrate per se is not an explosive and does not require any licence under either Explosives Act, 1884 or Explosive Substances Act, 1908.

(9) Since the Ammonium Nitrate Rules, 2012 came into force only on 11.07.2012, therefore, earlier to commencement of these rules i.e. on 09.04.2009 if Ammonium Nitrate was found in the possession of the petitioner, no licence thereof was required since it was clarified by the Government of India vide its clarification dated 18th March, 2009 wherein specifically it has been mentioned that Ammonium Nitrate per se is not an explosive and does not require any licence under either Explosives Act, 1884 or Explosive Substances Act, 1908 at present."

10. From the above judgments, it is clear that Ammonium Nitrate is not an explosive substance and it is not an offence to possess it, under Section 9 B of the Explosive Act. Admittedly, in this case except for the first substance, other substances have already been held to be not an explosive substance by the Ministry of Commerce and Industry Petroleum and explosives Safety Organisation (PESO) and which has been referred supra.

11. Apart from the clarification given by the concerned department, the above judgments also make it clear that Ammonium Nitrate is not an explosive and the possession of the same will not amount to an offence.

12.In view of the above, no useful purpose will be served by making the petitioner go through the ordeal of trial. This Court in exercise of its jurisdiction under Section 482 of Cr.P.C., will have to necessarily interfere with the pending proceedings.

13.In the result, the proceedings in S.C.No.150 of 2017, pending on the file of the Assistant Sessions Court, Mettur, Salem District is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected CrI.M.P.Nos.5988 and 5989 of 2017 are closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

vsg1/ia

To:

1. The Assistant Sessions Judge,
Mettur, Salem.
- 2.The Inspector of Police,
Karumalaikoodal Police Station,
Mettur, Salem District.
- 3.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No.85028

CrI.O.P.No.8341 of 2017
and
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CSL/28.12.2018

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