



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl. R.C.(MD)No.544 of 2016

and

Crl.M.P.(MD)Nos.6895 of 2016 and 1617 of 2017

A.Kandasamy ... Petitioner / Appellant / Accused No.1

-Vs.-

The State Represented by
The Inspector of Police,
Alwarkuruchi Police Station,
Tirunelveli District.
(Crime No.02 of 2010)

... Respondent / Respondent /
Complainant

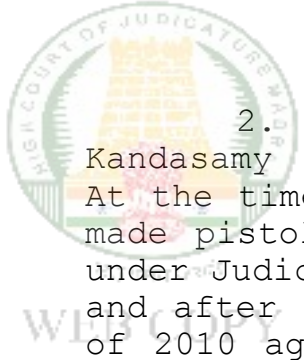
Prayer: Criminal Revision Case - filed under Section 397 r/w 401 Cr.P.C., to call for the entire records pertaining to the order passed by the learned IV Additional Sessions Judge, Tirunelveli in Cr.M.P.No.128 of 2016 in S.C.No.48 of 2011 vide his order dated 27.04.2016 and set aside the same and consequently discharge the accused from the charge in respect of the offence under Section 25 (1-B) (a) of the Indian Arms Act in the aforesaid case.

For Petitioner : Mr.R.Anand

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

O R D E R

On 07.01.2010, around 02.40 p.m., a gruesome and macbre incident took place in Ambai to Tenkasi High Road, in which, a Sub-Inspector of Police in uniform, by name, Vetrivel was brutally hacked with deadly weapons and country bombs were thrown at him, by six persons. This incident was witnessed by one Mani, Sub-Inspector of Police and on his complaint, the respondent police registered a case in Crime No.2 of 2010 for the offences under Sections 147, 148, 294(b), 307 IPC and Section 3 and 4 of the Indian Explosive Substances Act, 1908. After the death of Vetrivel, on the same day, Section 307 IPC was deleted and Section 302 IPC was included.



2. During the course of investigation, the police arrested Kandasamy (A1) on 09.01.2010, around 01.00 p.m., at Palayamkottai. At the time of his arrest, he was found in possession of a country made pistol. The Pistol was seized and Kandasamy (A1) was placed under Judicial custody. The police proceeded with the investigation and after completing the same, filed a final report in P.R.C.No.16 of 2010 against 18 accused, in which, Kandasamy was arrayed as A1 for the offences under Sections 120(B), 147, 148, 302, 114 IPC and Sections 3(a), 5(a) of the Indian Explosive Substances Act, 1908, and Section 25(1-B)(a) of the Indian Arms Act read with Sections 149 and 34 IPC before the learned Judicial Magistrate, Ambasamuthram.

3. The learned Judicial Magistrate, Ambasamuthram took cognizance of the above said offences and on appearance of the accused, the case was committed to the Court of Sessions in S.C.No.48 of 2011 and the same is pending on the file of the learned IV Additional District and Sessions Judge, Tirunelveli. While so, Kandasamy (A1) filed a discharge petition in Crl.M.P.No.128 of 2016 in Sessions Case No.48 of 2011 under Section 227 Cr.P.C.. The trial Court, by impugned order dated 27.04.2016, has dismissed the discharge application, aggrieved by which, the petitioner (A1) is before this Court.

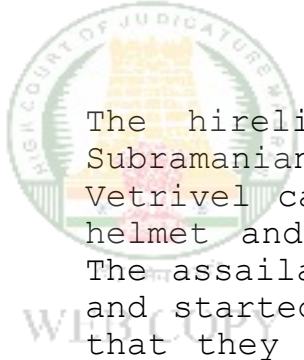
4. Heard Mr.R.Anand, learned counsel for the petitioner and Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor appearing for the state.

5. Mr.R.Anand, learned counsel for the petitioner submitted that a charge under Section 25(1-B)(a) of the Indian Arms Act cannot be framed against this petitioner in S.C.No.48 of 2011, because the possession of the country made pistol was not in the course of same transaction in which the murder had taken place. He read out to this Court the relevant paragraph from the charge sheet, wherein, it is clearly stated that, when Kandasamy (A1) was arrested by the police, he was in possession of a country made pistol obtained by him, after the incident, for his self protection. Therefore, Mr.Anand, learned counsel for the petitioner contended that the charge under Section 25(1-B)(a) of the Indian Arms Act is liable to be quashed as against the petitioner (A1).

6. The learned Additional Public Prosecutor fairly conceded the position and submitted the judgment of the Supreme Court in *Vijender vs. State of Delhi* (1997 (6) SCC 171) in support of the plea raised by Mr.Anand. This Court places on record its appreciation to Mr.C.Mayilvahana Rajendran for his fairness.

7. This court gave its anxious consideration to the rival submissions.

8. The allegation in the charge sheet is that all the accused including Kandasamy (A1) had conspired to eliminate one Siva Subramanian, Sub-Inspector of Police, the son-in-law of Kandasamy (A1). Kandasamy had set up hirelings to eliminate his son-in-law.



The hirelings were keeping track about the movements of Siva Subramanian on the date of incident. Unfortunately, the deceased Vetrivel came out of the police station by his two-wheeler wearing helmet and was proceeding in Ambasamuthram to Tenkasi High Road. The assailants intercepted him thinking that he was Sivasubramanian and started hacking him, his helmet fell down and the accused knew that they were attacking a wrong target. However, they decided to finish him off as he would identify them. Therefore, they cut him into pieces and fled away.

9. The investigation conducted by the police revealed that Kandasamy(A1) was not in the place of occurrence. Post-mortem report also does not show that the deceased Vetrivel suffered any bullet injury. All this clearly show that the pistol that was seized from Kandasamy (A1) was not used in the commission of the offence.

10. In fact, the investigation conducted by the police revealed that Kandasamy (A1) had acquired the pistol, subsequent to the incident for self protection. Under Section 218 Cr.P.C., there should be a separate charge for every distinct offence. Under Section 220 Cr.P.C., a person can be charged for more than one offence committed by him in the course of the same transaction.

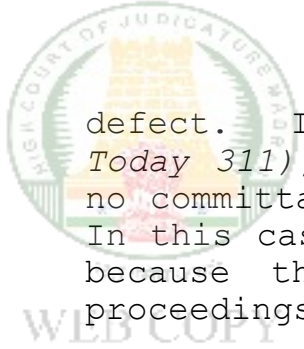
11. In this case, Kandasamy (A1) had not committed the offence of murder of Vetrivel with the pistol in question. He was keeping the pistol unauthorisedly for his self protection fearing that he may be attacked in retaliation. Therefore, the charge under Section 25(1-B)(a) of the Indian Arms Act cannot be framed as against Kandasamy (A1) in S.C.No.48 of 2011.

12. The learned counsel for the petitioner submitted that after the dismissal of the discharge application, the trial Court has framed charges against the accused including the charge under Section 25(1-B)(a) of the Indian Arms Act against Kandasamy (A1), since no stay was granted by this Court. If that is so, the charge under Section 25(1-B)(a) is liable to be quashed.

13. Mr.R.Anand, learned counsel for the petitioner submitted that on quashing of the charges, the matter must be once again sent to the committal Magistrate for fresh committal proceedings.

14. This argument cannot be countenanced, because parameters for taking cognizance of offence are different from the parameters for framing of charges. Just because a particular charge for which cognizance had also been taken, is not framed against the accused by the Sessions Court, it will amount to judicial absurdity to once again start the case from committal proceedings.

15. In fact, *Kamalanantha Vs. State of TamilNadu* (2005 AIRSCW 1850) the Supreme Court has clearly held that even if there is a mis-joinder of charges in contravention of Section 218 Cr.P.C., prosecution cannot be quashed, since it is merely a curable



defect. In *State of M.P. vs. Bhooraji & Ors.* (2001 (6) *Supreme Today* 311), the Supreme Court has held that even if there had been no committal proceedings in a case, the trial will not be vitiated. In this case, there has been a valid committal proceedings and just because this Court has quashed one charge, a fresh committal proceedings is not at all warranted.

16. Though the Court has quashed the charge under Section 25 (1-B)(a) of the Arms Act, it does not mean that the petitioner cannot be prosecuted for the possession of the pistol simpliciter under the Arms Act separately. It is open to the prosecution to take a call on this aspect separately.

17. In the result, this Criminal Revision Case is allowed to the effect that the charge framed against the petitioner under Section 25(1-B)(a) of the Indian Arms Act in S.C.No.48 of 2017 alone is quashed. The trial Court shall proceed with the trial expeditiously and complete the same, within a period of four months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed.

18. The accused shall co-operate with the trial Court by cross-examining the witnesses on the day when they are examined in chief, as directed by the Supreme Court in the case of Vinod Kumar vs. State of Punjab reported in 2015 (1) Scale 542. If the accused adopt any dilatory tactics, they can be remanded to custody under Section 309 Cr.P.C., in the light of the law laid down by the Supreme Court in *State of U.P. v. Shambu Nath Singh* [2001(4)SCC 667]. If any of the accused absconds, a fresh FIR can be registered under Section 229-A IPC and they can be remanded to custody.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1.The IV Additional Sessions Judge,
Tirunelveli.

2.The Inspector of Police,
Alwarkuruchi Police Station,
Tirunelveli District.

+1cc to Mr.R.ANAND,Advocate,SR.42078

CrI. R.C. (MD) No.544 of 2016
11.01.2018