



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2018

Delivered on : 05.03.2018

WEB COPY

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.1509 of 2013

and

M.P.(MD)Nos.1 and 2 of 2013

Duraipandi

... Petitioner

Vs.

The State Rep. by the
Inspector of Police,
Chekkanoorani Police Station,
Madurai District.
(Crime No.295 of 2009)

... Respondent

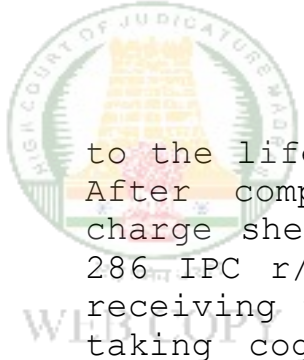
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 06.12.2012 made in P.R.C.No.60 of 2012 in Crime No.295 of 2009, on the file of the District Munsif-cum-Judicial Magistrate Court No.I, Usilampatti and set aside the same as illegal.

For Petitioner	: Mr.M.Ajmalkhan Senior Counsel for M/s.Ajmal Associates
For Respondent	: Mr.A.Robinson Government Advocate (Criminal side)

ORDER

The petitioner herein is the sole accused in P.R.C.No.60 of 2012 on the file of the District Munsif-cum-Judicial Magistrate Court No.I, Usilampatti. The said case was taken on file based on the final report filed in Crime No.295 of 2009 on the file of the respondent police.

2.Initially, on 07.07.2009, after receiving the complaint from one Nagendran, the respondent police registered a case for the offences punishable under Sections 304(ii), 286, 337 and 338 IPC r/w. Section 5 of the Explosives Act. In the abovesaid case, it is alleged that due to the mishandling of the fireworks by unknown workers, the exploded fire spilt over the factory and caused loss



to the life of many people, in which, 14 persons died on the spot. After completing investigation, the respondent police laid a charge sheet for the offences under Sections 304-A, 338, 337 and 286 IPC r/w. 9(B)(1)(2)(3) of the Explosives Act, 1884. After receiving the final report, the learned Magistrate at the time of taking cognizance, he took the case on file for the offences punishable under Sections 304(ii), 286, 337 and 338 IPC r/w. 5 of the Explosives Substances Act. Now, challenging the said order, the petitioner herein has filed this Criminal Original Petition.

3.The learned Senior Counsel appearing for the petitioner submitted that the learned Magistrate at the time of taking cognizance exceeded his power and altered the Section of law. Further, he added that for the offence under Section 5 of the Explosives Substances Act, sanction of the Government is necessary, but in this case, no such order was obtained and enclosed by the investigating agency and therefore, he prayed to set aside the order, dated 06.12.2012, passed by the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti.

4.On the other hand, the learned Government Advocate (Criminal side) made a submission as by virtue of power under Section 190 of the Code of Criminal Procedure, 1973, the learned Magistrate is having the power for taking cognizance after verifying the records related to the final report.

5.Now, considering the submission made on either side, it has to be decided whether the learned District Munsif-cum-Judicial Magistrate is having the power to alter the Section of law at the time of taking cognizance, for which, the answer is available in **State of Gujarat Vs. Girish Radhakrishnan Varde** reported in **AIR 2014 SCC 620**, wherein at Paragraph No.14, the Hon'ble Supreme Court has held as follows:

'14.The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offence into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by



the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 of the Cr.P.C., as the case may be,''

6. So, the verdict of our Hon'ble Apex Court is squarely applicable to the case in our hand, through which, this Court comes to the conclusion that the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti, is having the power to alter the Section of law only at the time of framing the charges and not at the time of taking cognizance. However, in this case, the petitioner sought the relief to set aside the order passed by the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti, in which, the case has been taken on file for the offences under Sections 304(ii), 286, 337 and 338 IPC r/w. 5 of the Explosives Substances Act.

7. As per the discussion supra, the said order is liable to be set aside. However, considering the facts and other circumstances of the case, it is necessary to give some appropriate direction to the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti. Accordingly, the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti, is directed to take the case on file for the offences stated in the final report and if he feels that it is necessary to alter the Section of law, that process should be adopted during the time of framing charge as held by our Hon'ble Supreme Court.

8. In view of the above, this Criminal Original Petition is partly allowed and the order passed by the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti, dated 06.12.2012, is set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar



To

1. The District Munsif-cum-Judicial Magistrate No.I,
Usilampatti.

2. the Principal District Judge, Madurai.

3. The Inspector of Police,
Chekkanoorani Police Station,
Madurai District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.AJMAL ASSOCIATES Advocate in SR. No.53142
smn2

MK/SKN RSK/SAR-3/08.03.2018/4P/6C

Cr1.O.P. (MD) No.1509 of 2013
05.03.2018