



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2018

CORAM

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN**Crl.O.P. (MD) No.7286 of 2013****and****M.P. (MD) No.1 of 2013**

C.Arul Rajan @ Rajan

... Petitioner/ Accused No. 4

Vs.

1.The Inspector of Police,
Thuckalay Police Station,
Thuckalay,
Kanyakumari District.

...Respondent//Complainant

2.Rockesh

... Respondent
/Defacto Complainant

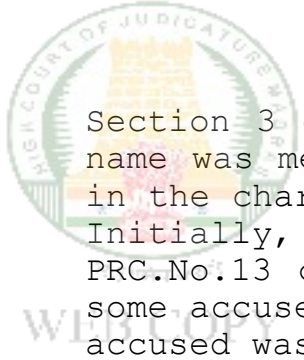
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the Charge Sheet filed in P.R.C.No.13 of 2004 pending on the file of the Judicial Magistrate at Padmanabapuram and to quash the same.

For Petitioner	:	Mr.R.Rajaraman
For R-1	:	Mr.A.Rabinson Government Advocate (Crl. Side)
For R-2	:	No appearance

O R D E R

This Criminal Original Petition has been filed to call for the records pertaining to the charge sheet filed in Crime No.563 of 1997 on the file of the first respondent police, now pending on the file of the Judicial Magistrate Court, Padamanabhapuram as P.R.C.No.36 of 2017 and to quash the same as illegal.

2.The petitioner herein is the fourth accused in P.R.C.No.36 of 2017 on the file of the Judicial Magistrate Court, Padmanabhapuram. Initially, the first respondent police registered a case in Crime No.563 of 1997 for the offences punishable under Sections 147, 148, 324, 307, 396, 448 and 427 IPC and Section 3 of Explosive Substance Act. After completing the investigation, charge sheet has been filed in this case on 20.01.1999, in which, 13 persons are arrayed as Accused Nos.1 to 13, under the provisions of Sections 147, 148, 324, 323, 307, 396, 450, 455 and 427 r/w. 307, 302 and 149 IPC and



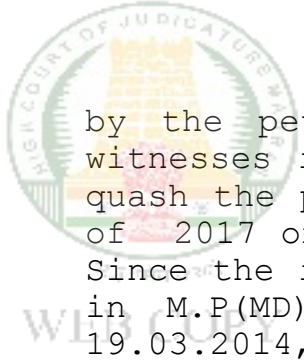
Section 3 of Explosive Substances Act. In the FIR, the petitioner name was mentioned as Rajan, brother of one Rajaram. Subsequently, in the charge sheet, his name was mentioned as Rajan, S/o.Chellaian. Initially, the case against all the accused was taken on file as PRC.No.13 of 2004 and subsequently, due to pendency of NBW against some accused, the case against the petitioner herein and three other accused was split up as P.R.C.No.36 of 2017.

3.Now, according to the report submitted by the learned District and Sessions Judge, Kanyakumari at Nagercoil, NBW was pending against four accused pertaining to P.R.C.No.36 of 2017. In fact, on 19.03.2014, this Court in M.P.(MD)No.2 of 2013 in Crl.O.P.(MD)No.7286 of 2013, passed an order to dispense with the appearance of the petitioner. So, basically, the issuance of NBW against this petitioner is nothing, but illegal. Now, the contention raised by the learned counsel appearing for the petitioner is that by using resemblance between the name of Rajan and Arul Rajan, this petitioner was wrongly added as an accused in this case. Further, he submitted that this petitioner is not having any previous antecedent and also he has not participated in the alleged occurrence pertaining to P.R.C.No.36 of 2017.

4.On the other hand, the learned Government Advocate (Criminal side) appearing for the State submitted that if the name of the petitioner is wrong, he is having the right to approach the Trial Court for considering the same. Further, he added that only during the time of trial, the identification of the petitioner has to be finalized. Without noticing that aspect, the petitioner herein filed this petition only to drag on the proceedings pending against him.

5.From the submissions advanced by either side, it would appear that in the charge sheet, the respondent police mentioned the name of the petitioner as Rajan. So, the only issue in this petition is whether the petitioner was wrongly included in this case instead of one Rajan. In order to prove the contention raised by the petitioner, the counsel representing him produced various documents, viz., Transfer Certificate, Driving Licence, Voter I.D. and Ration Card, with regard to the identification of the petitioner. All those documents reflected that the name of the petitioner is Arul Rajan. However, if really the petitioner name is not Rajan, there is no necessity for the petitioner to file this petition by mentioning the name as C.Arul Rajan @ Rajan. The petitioner herein filed one another application in Crl.O.P.(MD)No.16973 of 2012, in which, the name of the petitioner is mentioned as Rajan and thereafter, the very same petitioner filed this petition, in which, he mentioned his name as C.Arul Rajan @ Rajan.

6. If really, the petitioner herein has not involved in the alleged offence, there is no necessity for the petitioner to file those applications for recalling the warrant and to file a application for dispense with his appearance. So, the grievance made



by the petitioner will be solved only by way of examining the witnesses in the Trial Court. Hence, this Court is not inclined to quash the proceedings pending against the petitioner in P.R.C.No.36 of 2017 on the file of Judicial Magistrate Court, Padmanabhapuram. Since the issuance of NBW is against the order passed by this Court in M.P(MD).No.2 of 2013 in CrI.O.P(MD).No.7286 of 2013, dated 19.03.2014, the Magistrate himself is directed to take appropriate steps to recall the NBW pending against the petitioner.

7.With the above directions, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate,
Padmanabapuram.
- 2.The Inspector of Police,
Thuckalay Police Station,
Thuckalay,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO M/S.S.SATHISH RAJAN, ADVOCATE, SR NO.46313

CrI.O.P. (MD)No.7286 of 2013
and
M.P. (MD)No.1 of 2013
05.02.2018

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