



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.07.2019

Delivered on : 30.07.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.O.P. (MD) .No.9239 of 2019

and

Crl.M.P. (MD) Nos.5889 and 5890 of 2019

1.P.Murugesan

2.M.Muthulakshmi

: Petitioners/Accused Nos.2 to 3

Versus

1.The Deputy Superintendent of Police,
Virudhunagar Division,
Virudhunagar District.

2.The State Represented by,
The Inspector of Police,
Vachakkara Patti,
Virudhunagar District.
(Crime No.228 of 2012).

: Respondents 1 and 2/Complainants.

3.N.Sahayaraj Jeevan,
Village Administrative Officer,
V.Chokkalingapuram Village,
(Vaadi Village In-charge),
Virudhunagar District.

: 3rd Respondent/Defacto Complainant.

Prayer: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records in S.C.No.208 of 2015 on the file of the Sub Court, Virudhunagar and quash the same as against these petitioners.

For Petitioners : Mr.N.Mohideen Basha

For Respondents 1&2: Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.side)

O R D E R

The instant petition has been filed to quash the criminal proceedings in S.C.No.208 of 2015 on the file of the Sub Court, Virudhunagar. The petitioners are the second and third accused in the above criminal proceedings and they stood charged for the offences under Sections 286, 337, 338, 304, of the Indian Penal Code, Section 9(B) (I) (A) of the Explosives Act, 1884 and Section 5 of the Explosives Substances Act, 1908.



2. The brief facts leading to the filing of the present quash petition are as follows:

Accused No.1 in this case is a Partnership Firm engaged in manufacturing fire works. The petitioners are the partners of A-1 firm, the explosive licence was standing in the name of A-2, and it was in force till 31.03.2015. The Industry is located at Mudalipatti Village, Vaadi Village Panchayat, Virudhunagar District. The land has been taken on lease from A-4-Pandiyan (since deceased), who was also one of the partners in the A-1 firm. A-3 is the wife of A-2 and A-4 is the father of A-3. Subsequently, A-2, A-3, A-4 (since deceased) entered into an unregistered lease agreement with A-5, Paulpandi (now, arrayed as A-4) on 02.12.2011, leasing out the factory for three years and lease amount was fixed as Rs.30 Lakhs, and A-4 Paulpandi engaged more than 200 labours for manufacturing fire crackers. On 05.09.2012, at about 11.30 a.m., there was an explosion in the factory, which extended for nearly one hour. At that time, huge crowd has gathered near the factory. At about 12.30 p.m., room No.28, wherein huge stock of sulphur has been stored, got exploded and in the above explosion, 40 persons have died and 27 persons have been seriously injured and 61 persons have been suffered minor injuries. A-2 and A-3, who are the partners of A-1 firm, have illegally entered into an unregistered lease, in violation of the Explosives Rules, 2008, leased out the factory to A-4 Paulpandi, who has no proper training to run the industry, committed an offence under the Explosives Act, caused the death of 40 persons, and also caused injury to more than 88 persons. In the said circumstances, the petitioners along with 15 others were charged with for the aforementioned offences. Now, to quash the above criminal proceedings, the present petition has been filed.

3. The learned counsel appearing for the petitioners would contend that even though the petitioners are the partners of A-1 firm from 02.12.2011, they have leased out the factory to one Paulpandi, who has been arrayed as A-4 in this case. On the date of occurrence, only that Paulpandi was running the industry and the petitioners are no way responsible for the occurrence. Even though the explosive licence was standing in the name of A-2, only Paulpandi was exploiting the licence and running the industry. In the said circumstances, the petitioners herein cannot be made vicariously liable for the offence committed by him. The petitioners have been implicated in this crime with a *mala fide* intention yielding to public pressure, wherein 40 persons have died and more than 80 have been injured. It is only an accident, if at all there was any negligence, it is only attributable to A-4 Paulpandi. The petitioners are no way responsible for the accident and they cannot be charged with for the aforesaid offences.



4. Per contra, the learned Government Advocate (Criminal side) appearing for the first and second respondents would contend that, it is an admitted case that the petitioners are the partners of A-1 firm. The explosive licence was standing in the name of A-2. Even though the petitioners claimed that the factory was leased out to A-4 Paulpandi, the investigation reveals that the petitioners were also actively involved in the day-to-day affairs of the business of A-1 firm. That apart, an inspection was conducted in the factory premises on 28.08.2012. After noticing various violations of the explosive licence, based on the report of the Controller of Explosives, licence granted to A-2 was suspended on 04.09.2012. It was also duly informed to him. A-2 himself appeared before the Licensing Authorities on the very same day and he was directed to close the industry immediately. Despite the same, he was running the industry and the explosion has been taken place on 05.09.2012. In the above circumstances, the petitioners cannot escape from their liability, by merely saying that they have leased out the factory premises to A-4 Paulpandi. That apart, even assuming that the petitioners have leased out the factory to A-4, entering into the lease itself is violative of Rules 108 to 111 of the Explosives Rules, 2008 [hereinafter called as "Rules"] and they have committed the offences under Section 9-B (1)(a) of the Explosives Act, 1884 and Section 5 of the Explosives Substances Act, 1908. The entire materials collected during investigation clearly make out a *prima facie* case against the petitioners, and whether the petitioners are actually involved in the day-to-day affairs of the business of A-1 firm or not, can be proved only during trial. Merely because the petitioners have leased out the factory to A-4 Paulpandi, it is not a ground to quash the proceedings against the petitioners.

5. I have considered the rival submissions and perused the materials available on record carefully.

6. Law is well settled regarding quashing of criminal proceedings, exercising inherent power under Section 482 of the Code of Criminal Procedure. At this stage, the Court has to see whether the un-controverted allegations *prima facie* establish the offence against the accused. The inherent power of the High Court should not be exercised to stifle a legitimate prosecution and the power is to be used sparingly only in rare cases. It is not for this Court to appreciate the evidence and its truthfulness at this stage. This Court also should not enter into the disputed question of fact.

7. The Hon'ble Supreme Court, in **ARCI v. Nimra Cerglass Technics (P) Ltd.**, [2016(1) SCC 348], in Paragraph No.13, held as

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"The legal position is well settled that when a



prosecution at the initial stage is asked to be quashed, the test to be applied by the court is, as to whether uncontroverted allegations as made in the complaint establish the offence. The High Court being superior court of the State should refrain from analysing the materials which are yet to be adduced and seen in their true perspective. The inherent jurisdiction of the High Court under Section 482 CrPC should not be exercised to stifle a legitimate prosecution. The power under Section 482 CrPC is to be used sparingly only in rare cases. In a catena of cases, this Court reiterated that the powers of quashing criminal proceedings should be exercised very sparingly and quashing a complaint in criminal proceedings would depend upon the facts and circumstances of each case. (Vide State of Haryana v. Bhajan Lal, State of T.N. v. Thirukkural Perumal and CBI v. Ravi Shankar Srivastava).

8. In Varala Bharath Kumar v. State of Telangana 2017(9) SCC 413], the Supreme Court observed as follows:

"6. It is by now well settled that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the first information report/the complaint or the outcome of investigation as found in the charge-sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the first information report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure may be exercised.

7. While exercising power under Section 482 or under Article 226 in such matters, the court does not function as a court of appeal or revision. Inherent jurisdiction under Section 482 of the Code though wide has to be exercised sparingly, carefully or with caution and only



when such exercise is justified by the tests specifically laid down under Section 482 itself. It is to be exercised *ex debito justitiae* to do real and substantial justice, for the administration of which alone courts exist. The court must be careful and see that its decision in exercise of its power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage."

9. Keeping the above principles in mind, now, it has to be considered, as to whether it is a fit case to be quashed.

10. The admitted facts in this case are, A-1 is the partnership firm, which is engaged in manufacturing fire crackers. The petitioners/A-2 and A-3 are its partners and the explosive licence has been granted in favour of A-2. The licence was in existence on the date of occurrence. An explosion took place in the factory on 05.09.2012, wherein 40 innocent people have lost their precious lives and 88 persons were injured. Now, the petitioners came out with this petition to quash the above proceedings mainly on the ground that, before the occurrence, on 02.12.2011, the petitioners have leased out the factory premises in favour of A-4 Paulpandi, and on the date of occurrence, only A-4 was actually engaged in business and manufacturing fire crackers. In the above circumstances, the petitioners cannot be made vicariously liable for the alleged act of A-4. If at all anybody is liable, it is only A-4, who was running the industry and manufacturing fire crackers on the date of occurrence.

11. From the materials collected during investigation, it clearly reveals that the licence was standing in the name of A-2. During the course of investigation, the respondent police obtained a statement under Section 161 of the Code of Criminal Procedure from more than 300 witnesses and most of them are injured eye witnesses in the occurrence. That apart, the statements of Inspector of Factories and his subordinates were also recorded. Likewise, the statements of Controller of Explosives and his subordinates were also recorded during the course of investigation. The statements of official witnesses clearly reveal that apart from explosive licence, a licence under the Factories Act was also issued in favour of A-2. As per the licence, he was permitted to engage only 50 employees in the factory. But, at the time of accident, more than 210 labours were engaged. That apart, the petitioners have also unauthorisedly constructed more than 15 buildings in the factory premises and engaged A-4 for the purpose of manufacturing fire crackers. Now, for violation of various



conditions in the licence, another criminal case is also filed against A-2 under the Factories Act, which is pending against him.

12. So far as the offence under the Explosives Act is concerned, from the statements of Controller of Explosives and his subordinate officers, it could be seen that licence was standing in the name of A-2, and they have stocked explosives more than the permitted under the licence. It was also one of the reasons for the explosion. That apart, from the statement of Thiru.Vairamuthu (L.W.313), it could be seen that at the time of accident, more than 4700 kilos of sulphur have been stocked in the factory premises. From the statement of L.W.310, the Assistant Controller of Explosives, Sivakasi, it could be seen that the licence granted to A-2 has been suspended on 04.09.2012 alleging violations of licence conditions, based on the inspection conducted in the factory premises on 28.08.2012, and it was also duly informed to A-2, in fact, A-2 himself appeared in the office of the Assistant Controller of Explosives and he was directed to close the industry immediately. But the order was not obeyed and the explosion took place on 05.09.2012, the next day. All those materials *prima facie* show that there was a violation of the Explosives Act and the Explosives Substances Act, and also the Rules. That apart, the statements of witnesses also reveal that A-2 and A-3 have entered into an unregistered lease agreement without obtaining necessary permission from the authorities under the Explosives Substances Act and Rules. All those materials *prima facie* constitute an offence against the petitioners.

13. Now, it is the contention of the petitioners that they have entered into a lease agreement with A-4, and possession has been handed over to him and only the lessee, namely Paulpandi was running the industry on the date of occurrence, as such, the petitioners are not responsible for the occurrence, and they cannot be charged with for the aforesaid offences. The aforesaid argument cannot be countenanced, for the simple reason, that A-2 being a licensee, he is responsible for any contravention of the Explosives Act, the Explosives Rules and the Explosives Substances Act. The materials collected during investigation further reveal that at the time of accident, licence was suspended and A-2 was also duly informed about the same and he was directed to close the industry, but, he has not taken any steps to close the industry, which, ultimately, led to the occurrence, in which, 40 people lost their lives and many suffered grievous injuries.

14. The next contention of the learned counsel for the petitioners is that the petitioners are only the partners of A-1 firm, and now, they are not managing the affairs and they were not in-charge of and responsible for the conduct of business of A-1 firm. It is true that the business of A-1 firm has been leased out to A-4 Paulpandi. In the above circumstances, the petitioners cannot be vicariously made liable for the offence committed by A-1 firm.



15. It is true that there is no vicarious liability in criminal law unless the Statute provides for the same. In the instant case, the petitioners have been charged with not only for the offence under the Indian Penal Code and also under the Explosives Act, 1884 and the Explosives Substances Act, 1908. Section 9(C) of the Explosives Act, 1884, fastened a vicarious liability on the person, who was in-charge of, and responsible to the conduct of business of the company, for the offence committed by the company, where the company was made as an accused.

16. Now, it is useful to refer to the relevant provision of Section 9-C of the Explosives Act, 1884, which reads as follows:

"9-C. Offences by companies.- (1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

17. A cursory reading of the above provision would go to show that under Section 9(C) of the Explosives Act, 1884, every person, who was in charge of, or was responsible for the conduct of the business of the company, at the time the offence was committed, shall be deemed to be guilty of the offence. The burden is on the petitioners to prove that the offence has been committed without their knowledge or they have exercised all due diligence to prevent the commission of such offence. It is a matter for trial at this stage, in a quash petition, it cannot be decided whether the petitioners are in-charge of, or responsible for the conduct of the business of the company at the time of occurrence,



or the offence has been committed without their knowledge. Hence, the petitioners' argument in this regard cannot be countenanced.

18. In the above circumstances, the materials collected during investigation *prima facie* constitute an offence against the petitioners and it is not a case to be quashed at this stage. I find no merit in the quash petition. Hence, the Criminal Original Petition is liable to be dismissed. Accordingly, the same stands dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To

- 1.The Subordinate Judge,
Virudhunagar.
- 2.The Deputy Superintendent of Police,
Virudhunagar Division,
Virudhunagar District.
- 3.The Inspector of Police,
Vachakkara Patti,
Virudhunagar District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.MOHIDEEN BASHA, Advocate (SR-78710[F] dated 30/07/2019)

Order made in
Cr1.O.P. (MD) .No.9239 of 2019

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30.07.2019

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