

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.26944 of 2016
CRL.M.P.Nos.13558 & 13559 of 2016

Vijaya Baskar

... petitioner/6th Accused

Vs.

State rep.by
Inspector of Police,
Pallipattur Police Station,
Pallipattur,
Tiruvallur District.

... Respondents/Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in Charge Sheet in P.R.C.No.32/2012 pending on the file of the Judicial Magistrate, Pallipattu in Crime No.427/2009 on the file of the respondent.

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

O R D E R

The petitioner, who is A6 in P.R.C.No.32 of 2012 for offence under Sections 286, 337, 338, 304 IPC r/w 9(b), (1) (b) Explosives Act, 3 and 4 explosive substance Act, has filed this quash petition.

2. The case of the prosecution is that there are totally six accused. A1 and the petitioner/A6 are brothers. They were running an unlicensed cracker shop. A2 is the owner of the building, who rented out the building for running the unlicensed cracker shop. A3 to A5 are the employees of A1 and A6. On 16.10.2009, at about 18.30 hrs, the cracker business was actively going in the said unlicensed cracker shop. At that time, one side of the building was locked, in the entry point suddenly fire broke out and ensued to a blast. Due to which, 32 people inside the shop were unable to come out. The fire was continuous for more than two hours. The emission of smoke and fire engulfed the entire shop/shed and 32 people, who were inside the shop, died. The accused/A1 to A6, to avoid the theft of crackers, locked the exit doors, due to which, 32 people were burnt alive and died on the spot. Hence a complaint was registered.

3. The contention of the petitioner is that in the year 2008 itself, the family properties were divided. After the family partition, A1 and A6 are doing business independently. The license to the cracker shop was obtained in the name of A1's wife. A2 is the owner of the cracker shop. A4 and A5 are the employees of A1. The petitioner/A6 has no role in the business and he has not involved in running the cracker shop by A1. The petitioner was arrayed as an accused for the reason that he is the brother of A1. The petitioner name is not found in FIR, the petitioner is not a partner in the cracker business. There is no record or material produced by the Police to show that the petitioner is a partner of cracker shop. Further, it is submitted that the confession statement from A1 had been obtained twice. In the first confession, there is no mentioning about the petitioner. Thereafter, in the second confession statement, the petitioner name has been included. On the strength of the same, the petitioner has been made as an accused in this case. The petitioner was not called for enquiry and no clarification was sought from the petitioner. The manufacturers, who had supplied crackers to A1, had clearly stated that the cracker shop is owned by A1 and the petitioner is no way involved in any of the transaction. Hence, he prayed for quashing of the complaint.

4. The learned Additional Public Prosecutor submitted that P.R.C.No.32 of 2014 had been committed to the learned Additional Sessions Judge, Thiruvallur, which is pending trial in S.C.No.140 of 2019. In this case, charges have been framed and the case is posted for examination of witnesses. The petitioner's contention is that he is not a partner with A1, which is a stand taken now. The petitioner/A6 and A1 are jointly doing the cracker business, which has been spoken by witnesses. The petitioner along with other accused are running the unlicensed cracker shop. At that time, one side of the building was locked and fire broken out in the entry point, all the exits were closed. The blast was continuous for more than two hours and the entire fire engulfed 32 persons, died on the spot. The petitioner had not followed the precautionary measures and that is the reason for death of 32 persons. In this case, there are totally 114 witnesses. The points raised by the petitioner are to be decided during trial not in discharge petition. The prosecution, by oral and documentary evidence, had proved that the petitioner is involved in the above offence along with other accused. Further, the case is now committed to the Court of Sessions in S.C.No.140 of 2019, which is pending trial before the learned Additional Sessions Judge, Thiruvallur and posted for examination of witnesses. Hence, he prayed for dismissal of the petition.

5. Considering the rival submissions and on perusal of the materials, it is seen that the cracker shop was running in violation of rules. During the blast, the accused locked the exit door of the shop. Due to which, people got trapped,

unable to come out from the shop and died on the spot. The petitioner contention is that during the year 2008 itself, the family properties were partitioned and after that, the petitioner/A6 and A1 were doing business independently, which cannot be accepted, in the absence of any material or document. The petitioner's contention is to be decided only in trial. Further, there are prima facie materials to proceed against the petitioner. In view of the same, the quash petition cannot be entertained.

6. Considering the occurrence took place in the year 2009 and the investigation was completed and charge sheet filed in the year 2012, which has been taken on file as P.R.C.32 of 2012 and later, committed to the Court of the learned Additional Sessions Judge, Thiruvallur in the year 2019 and assigned as S.C.No.140 of 2019, almost 11 years lapsed from the date of occurrence. In view of the same, the Trial Court is directed to give preference and dispose the case within a stipulated time.

7. With these observations, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssb

To

1.The Inspector of Police,
Pallipattur Police Station,
Pallipattur,
Tiruvallur District.

2.The Public Prosecutor,
High Court, Madras.

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A.SK(07/10/2020)