



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP(MD)No.10402 of 2020

and

Crl.M.P. (MD)Nos.4790 and 4792 of 2020

WEB COPY

1.Karupaiah, S/o.Kalisamy
2.Seenivasan, S/o.Gurusamy
3.Meenakshisundaram, S/o.Balaiah Chettiyar ... Petitioners

Vs.

The State Rep. by
The Sub-Inspector of Police,
Soolakarai Police Station,
Virudhunagar District.
(Crime No.190 of 2020) ... Respondent

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to the proceedings in S.T.C.No.627 of 2020, on the file of the Judicial Magistrate Court No.II, Virudhunagar and quash the same.

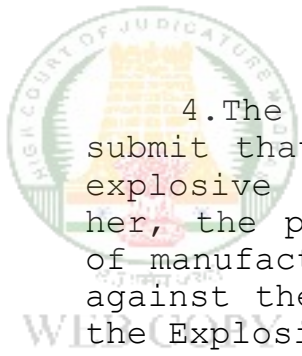
For Petitioners	: Mr.D.Rameshkumar
For Respondent	: Mr.A.P.G.Ohm Chairma Prabhu Government Advocate (Crl. side)

ORDER

This Criminal Original Petition has been filed to call for the records relating to the proceedings in S.T.C.No.627 of 2020, on the file of the Judicial Magistrate Court No.II, Virudhunagar and quash the same as against the petitioners herein.

2.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal side) appearing for the respondent Police.

3.Prior to filing of the final report, the respondent herein registered an F.I.R. in Crime No.190 of 2020, in which, the petitioners are arrayed as accused for the offence under Section 9 (B)(1)(b) of the Explosives Act, 1884. After concluding the investigation, final report has also been filed against the petitioners for the same offence and the same was taken on file in S.T.C.No.627 of 2020. Therefore, the petitioners are before this Court with the present Criminal Original Petition seeking to quash the proceedings in S.T.C.No.627 of 2020.



4.The learned counsel appearing for the petitioners would submit that the wife of the third petitioner is a Licensee to sell explosive substances and therefore, as per the direction given by her, the petitioners herein transported explosives for the purpose of manufacturing crackers and therefore, filing of the final report against the petitioners for the offence under Section 9(B) (1) (b) of the Explosives Act, 1884, is an abuse of process.

5.For considering the said submissions, it would be relevant to see Section 9(B) (1) (b) of the Explosives Act, 1884.

'9-B. Punishment for certain offences.-(1) Whoever, in contravention of rules made under Section 5 or of the conditions of a license granted under the said rules-

(b) possesses, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both;''

6.Further, Rule 5 of the Explosives Rules, 2008, reads as follows:-

'5.Safety distance categories of explosives.- (1) Explosives are divided into four categories according to the risks which they present when initiated, namely:-

(a) Category X - Those explosives, which have a fire or a slight explosion risk or both but the effect of which will be local.

(b) Category Y - Those explosives, which have a mass fire risk or a moderate explosion risk, but not the risk of mass explosion.

(c) Category Z - Those explosives, which have a mass explosion risk and major missile effect.

(d) Category ZZ - Those explosives, which have a mass explosion risk and minor missile effect.

(2) If any question arises as to whether any explosive belongs to Category X, Category Y, Category Z or Category ZZ, the matter shall be referred to the Chief Controller whose decision shall be final.

(3) The safety distances shall be followed as per tables specified in Schedule VIII.''

7.Therefore, on culling out the said provision with the case in our hand, here it is a case, where during the time of alleged occurrence, the petitioners transported 10,800 white wick in a vehicle, bearing Registration No.TN-30-BE-3024, which is in contravention with Section 9(B) (1) (b) of the Explosives Act, 1884.

8.Though it is submitted on the side of the petitioner as only with the consent of the Licensee, the petitioners herein have transported the same, it should be proved only during the time of trial, and not at this stage, after examining the Licensee. In the final



report filed by the respondent police, no such averment is found in respect of the consent having obtained by the petitioners. Therefore, since the grounds raised by the petitioners are based upon factual aspects, this Court cannot pass an order for quashing the charge sheet.

9. At this juncture, it is necessary and useful to see the judgment of our Hon'ble Apex Court in the case of **Sau. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and others [Criminal Appeal No.255 of 2019, dated 12.02.2019]**, wherein it has been held as follows:-

'9. A perusal of the complaint discloses that prima facie offences that are alleged against the respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Court to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused.'

10. Further, in **Ajay Kumar Das Vs. State of Jharkand and others** reported in **2011 (12) SCC 319**, our Hon'ble Apex Court has held that genuineness of the allegations/charge is an issue to be tried and the Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot delve into such factual controversy so as to quash the proceedings.

11. Therefore, by applying the principles set out by our Hon'ble Apex Court in the above referred judgments to the case on hand, this Court is of the view that the Trial Court has to identify the consent given by the Licensee. Hence, the petition filed by the petitioners, is devoid of merits and the same is liable to be dismissed. Accordingly, it is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1. The Judicial Magistrate No.II,
Virudhunagar.
2. The Sub-Inspector of Police,
Soolakarai Police Station,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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