IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.1142 and 1240 of 2020
and Crl.M.Ps.

Thangaraj ...Petitioner/Accused No.5 in Crl.R.C.No.1142 of 2020

1.Vijayaraj
2.Vijayan @ Vijayakumar
3.Kotteeswaran
4.Jagadeesan ... Petitioners/Accused 1 to 4 in Crl.R.C.1240 of 2020

Vs.

State rep. by the
The Inspector of Police
Kondalampatti Police Station
Salem City
Crime No.808 of 2013 ... Respondent/Complainant in Both Petitions

PRAYER : Criminal Revisions filed u/s.397 r/w.401 Cr.P.C., to set aside against the order in Crl.M.P.No.638 of 2019 (Crl.Rev.1142/2020) and Crl.M.P.No.260 of 2019 in S.C.No.340/2018 on the file of III Additional District Judge, Salem.

For Petitioner in Crl.RC.No.1142/2020 : M/s.I.Abrar Md.Abdullah

For Petitioners in Crl.RC.No.1240/2020 : Mrs.V.Revathy for Mr.R.Nalliyappan

For Respondent in Both Petitions : Mr.R.Suryaprakash Govt.Advocate(Criminal Side)

COMMON ORDER

Since the matters are arising out of the same charge sheet, the cases are taken up together by the III Additional District Judge, Salem and disposed of the petitions filed by the petitioners in Crl.M.P.Nos.260 of 2019 and Cr.M.P.638 of 2019.

Now, the said order is under challenge and this court, deems it fit to dispose of by this common order.

2. The respondent police registered the case in Crime No.808/2013 against the petitioners herein on the file of the respondent police. The respondent police investigated the matter. After investigating the matter, laid a charge sheet before Judicial Magistrate-V, Attur (Salem). The learned Magistrate taken the charge sheet on file in P.R.C.No.24/2018. After completing the formalities, committed the case to the learned Principal Sessions judge, Salem. The learned Principal Sessions Judge, Salem, taken the case on file in S.C.No.340 of 2018. Thereafter, made over the case to the III Additional District Judge, Salem.

3. During the pendency of the case in S.C.No.340 of 2018 on the file of the III Additional District Judge, Salem, the petitioners 1 to 4 filed a petition in Cr.M.P.Nos.260 of 2019 u/s.227 Cr.P.C., seeking discharge of the petitioners from the charges and the 5th petitioner filed petition in Cr.M.P.No.638 of 2019 u/s.227 of Cr.P.C., seeking discharge of the petitioner from the charges.

4. The learned Additional District Judge, Salem, after enquiry, dismissed both the petitions and challenging the same, the petitioners 1 to 4 filed the Criminal Revision No.1240 of 2020 and the 5th petitioner filed Criminal Revision No.1142 of 2020.

5. The learned counsel for the petitioners in Crl.R.C.1240 of 2020 would submit that the petitioners are A1 to A4 and they are facing charges under Sections 4, 5 and 6 of Explosives Substances Act and Section 420, 471, 511 IPC r/w. Section 4(a), 5 and 6 of Explosives Substances Act. A-3 is the owner of Sri Krishna Chemicals and he dealt with Ammonium Nitrate earlier for licence and even supplied to persons who placed orders through phone; as such A-3, based on order placed by A-5, informed the name of the purchaser in the bill. A-5 used to buy Ammonium Nitrate through Sri RR Agencies, Tiruchengode and sold it in retail market. The above said Ammonium Nitrate is not an explosive per se covered under Explosives Act. A separate Rules have been followed by the Government of India. The above said chemical is used for manufacturing of explosive for mines, quarries and infrastructure purposes and it is also used in making dyes and chemicals, fertilizer and safety air bags used in cars. As per Rule 5 of Ammonium Nitrate Rules 2012, the Central Government clarify that no licence shall be granted unless all THE relevant provisions laid down under these rules and all conditions contained in the licence forms under Part-2 of Schedule II annexed to these rules are complied with. Subsequently, the Rule was amended and notified on 09.07.2013 as

Ammonium Nitrate (Amendment) Rules 2013. Based on the original rule and amended rules, the Government of India had issued a public notice dated 03.12.2013 that manufacturer, convertor, transporter, possessor of same sale, use, import and export of ammonium nitrate without valid licence after 10.01.2014 will constitute violation of Ammonium Nitrate Rules, 2012 and it will attract penal action under Explosives Act,1884. Therefore, the sale, stock and transporting of ammounium nitrate on 23.12.2013, on the alleged date of occurrence is not an offence. The TIN number is very well available in the printed receipts/invoces. It is clearly shown in the said receipt that it is for own use and order was made over phone, mode of despatch was van and therefore, the question of forged receipt would not arise and therefore, Section 471 IPC would not be attracted. Since on the date of the occurrence, it is not an offence under Explosives Substance Act, the sanction of prosecution, is not vali. Therefore, there is no offence made out against the petitioners either under Explosive Substances Act or under the IPC. Therefore, the petitioners are liable to be discharged.

6. The learned Government Advocate (Criminal Side) would submit that admittedly A-3 is the owner of Sri Krishna Chemicals and A-4 is the Manager and A-2 is working under A-3. A-1 is the driver cum owner of Eicher Lorry bearing Reg.No.TN-38-AK-1695. A-5 is the buyer of Ammonium Nitrate from Sri Krishna Chemicals in the name of M/s.Sivaraman and M/s. Devaraj. On 23.12.2013, at about 1.20 p.m during the vehicle check duty, by informant/S.I.of Police Q Branch, along with Police party on Kondalampatty bye pass road, in Coimbatore High Way near Palanikumrn Cement and steel, they intercepted the lorry on suspicion. During the search, A-1 and A-2 have showed two receipt with No.1583 and 1584 and as per receipts 100 bags each containing 50 kg on ammonium nitrate meant to purchased by M/s.Sivaraman and Devaraj. On verification of the papers, it was found that those names Sivaraman and Devaraj were unknown persons and on enquiry, it is found packages of ammonium nitrate supplied to A-5 with bogus names and the same had not been kept by him for any lawful object. While A-1 and A-2 were taken on custody, they given confession statement and admitted their commission of offence and pointed out the roles of other accused and as per their confession, A-1, A-2 and A-5 were committed their offence punishable u/s.4, 5 Explosive Substances Act and A-3, A-4 were committed offence punishable u/s.6 Explosive Substance Act. A-1, A-2, A-5 used forged receipts in the name of Sivaraman and Devaraj. But in fact the said prosecution to be supplied to A5 and hence, A-1, A-2 and A-5 were committed offences punishable u/s.471, 420 r/w.511 IPC. Therefore, prima facie incriminating materials available against the petitioners. Therefore, their defence could be only considered after trial and not at this stage. Therefore, it is liable to be dismissed.

7. The learned counsel for the petitioner/A-5 in Revision Petition No.1142 of 2020 would submit that the case of this petitioner is entirely different from other petitions. Originally, the FIR in Crime No.808 of 2013 was registered on 23.12.2013 by the respondent Police for the offence u/s.420 IPC r/w. Sections 4, 5 of Explosive Substance Act against A-1, A-2 alone and thereafter on 08.07.2015, the offences were altered to 420, 471, Section 5, 11 IPC and Section 4(a), 5 and 6 of Indian Explosive Substances Act. Thereafter, chargesheet was filed before the learned Magistrate V, Athur, Salem and the same was taken on file in P.R.C.No.24o/2018 and after completing formalities, committed the case to the Sessions Judge, Salem. The Sessions Judge, Salem, taken the case on file in S.C.No.340 of 2018 and the same was made over to the III Additional District Judge, Salem. The petitioners filed an application u/s.227 Cr.P.C., seeking for discharge and the learned Sessions Judge failed to consider the ingredients of Section.4 5 and 6 of Explosive Substances Act and failed to consider the fact that on the date of occurrence, mere possessing of ammonium nitrate is not an offence. Further, he would submit that as per the Rules, Ammonium Nitrate is not an explosive either as per Explosives Act, 1884 or the Explosives Substance Act, 1908. He would further submit that the petition er A-5 has been roped in the offence solely based on the alleged confession of other accused, it will not stand judicial scrutiny.

8. Further, he would submit that there is absolutely no merit to show that the petitioner/A-5 is otherwise dealing with ammonium nitrate under any of the permitted categories manufacturer, distributor, transporter etc. He would further submit that possession of ammonium nitrate is not an offence on the alleged date of occurrence under the Ammonium Nitrate Rules 2012, brought into force on 11.07.2012 for the purpose of regulating manufacturer, conversion, export and other activities in relation to Ammonium Nitrate as per Rule 3 of the Rules. As per the said Rules, certain restrictions were placed as per Rule 6 (5) and Rule 6(6) of the Rules, without holding the required licence.

9. The alleged offences would not be attracted against the petitioner/A-5 for the simple reason that the Regulatory Authority had time and again issued guidelines with respect to obtaining licences as per Rule 5 of the Rules. The Regulatory authority had relaxed the time frame which was originally one year and had extended the time from one year to 18 months from the date of publication i.e., 11.07.2012 for compliance of provisions of the Rules. As per Explosives Act, 1884, only after 10th January 2014, violation of the Rules would attract penal action. There is no prima facie case against the petitioner/A-5 since he alleged to be a buyer and the said confession is not admissible and the case registered against the petitioner was

based on assumption. The said chemical is not banned one and is not an explosive and the same can be used for the preparation of explosives and other purposes.

10. According to the learned counsel for the petitioner/A-5, since on the date of the occurrence, as per relevant Rules, possession of ammonium nitrate or buying or selling of ammonium nitrate without licence is not an offence and only an offence after 10th January 2014, the learned III Additional District Judge, Salem, failed to consider these aspects and dismissed the petitions without any reasons which warrants interference.

11. Heard and perused the records.

12. The case of the prosecution is that on 23.12.2013 at about 1.20 p.m., Kondalampatty bye pass road, when P.W.1 and his party were conducting vehicle check up, they stopped one Eicher Lorry bearing Reg.No.TN-38-AK-1695 and the same was driven by the first petitioner, A-1 and the second petitioner A-2 and on enquiry, they showed receipts Nos.1583 and 1584 respectively containing 100 bags each containing 50 kgs of ammonium nitrate (5000 kgs) meant to purchased by M/s.Sivaraman and Devaraj and on verification of the papers, it was found that those names as M/s.Sivaraman and Devaraj, who are unknown and they are imaginary fictitious persons.

13. Further investigation revealed that A-3 is the owner of Sri Krishna Chemicals and A-4 is the Manager, A-2 is working under A-3 and A-1 is the owner cum driver of Eicher Lorry bearing Reg.No.TN-38-AK-1695 and A-5 is the buyer of Ammonium Nitrate from Sri Krishna Chemicals in the names of M/s.Sivaraman and Devaraj. Further A-5 Thangaraj was being supplied the seized ammonium nitrate and that he has not used to keep for any lawful object. Even though mere possession of ammonium nitrate is not punishable under Explosive Substances Act, Ammonium nitrate is used as ingredient in the manufacture of Explosives and Explosives is defined under Explosive Substances Act. Further the case of the prosecution is that on 23.12.2013, during the course of search, A-1 and A-2 were found in possession of 5000 kgs of ammonium nitrate in their custody and the same lead to reasonable suspicion that they were not in possession for any lawful object and thus A-1 and A-2 and A-5 committed offence punishable under Section 4 and 5 of Explosive Substances Act, 1908 and further A-3 and A-4 have committed offence punishable u/s.6 of the Explosive Substances Act, 1908.

14. A-1, A-2 and A-5 intentionally transported the ammonium nitrate and used forged receipt No.1583 and 184 as purported to be receipt in the name of Sivaraman S/o.Manthiriyappan, Erode, Devaraj S/o.Krishnan, Erode. The said 5000 kgs of ammonium nitrate was actually supplied to A-5 and

thus A-1, A-2 and A-5 committed offence of cheating punishable u/s.471, 420 r/w. 511 IPC.

15. The learned counsel for the petitioners would submit that FIR in crime No.808 of 2013 was registered on 23.12.2013 by the respondent police for the offence u/s.420 IPC r/w.Section 4, 5 of Indian Explosive Substances Act against A-1, A-2 alone and thereafter an alteration report was filed for the offence under Section 420, 471, 511 IPC and Sections 4(a), 5 and 6 of the Explosive Substances Act,1908 and thereafter, charge sheet has been filed in P.R.C.No.24/2018 on 12.06.2018.

16. The fact remains that on the date of occurrence, possession of ammouium nitrate is not an offence under the Explosive Substances Act and as per the Ammonium Nitrate Rules, 2012 and it was offence only after 10 January 2014.

17. Admittedly, A-3 is the owner of Sri Krishna Chemicals and A-4 is the Manager. A-2 is working under A-3. A-1 is the driver cum owner of the said Eicher Lorry bearing Reg.No.TN-38-AK-1695. A-5 is the buyer of ammonium nitrate from A-3 Sri Krishna Chemicals in the name of M/s.Sivaram and Devaraj. So according to the prosecution, without any valid licence, A-2 sold ammonium nitrate to A-5. However, the receipts shown that A-3 sold ammonium nitrate directly to A-5 and though they supplied to A-5 but in the name of M/s.Sivaraman and Devrajan; that forged receipts are purported to sell in the sale receipts in the name of M/s.Sivaraman and Devarajan. Though possession or selling or exporting of the ammonium nitrate is not an offence before 10.01.2014 as per Ammonium Nitrate Rules, 2012, the case of the prosecution is that they sold it to the imaginary person and they also prepared bogus and forged receipt and cheated the Government.

18. Further, the case of the prosecution is that the petitioner/A-3 has given the confession statement and therefore, they are using the ammonium nitrate for other illegal purpose and therefore, there is prima facie incriminating material against the petitioners. Therefore, the trial Judge has rightly dismissed the petitions filed u/s.227 Cr.P.c. However, the petitioners can take the defence only during trial and not at this stage.

19. The prosecution has clearly stated that A-1, A-2, A-5 used the forged receipts in the names of M/s.Sivaraman and M/s.Devaraj whereas actually they supplied only to A-5. Therefore, A-1, A-2, A-5 had committed the offence. Therefore, materials of ammonium nitrate were seized and investigation revealed that A-1 to A-5 alleged to have committed the above said offences. Though possession of ammonium nitrate before 10-01-2014 is not an offence as per Ammonium Nitrate Rules, since A-3 has given the confession statement and goods were supplied to A-5 but not in the name of A-5 and A-5 supplied to

Kerala and other persons and thereby used for illegal purposes. Whether confession statement given by A-3 is admissible or not is the issue that has to be decided only after trial and not at this stage. Prima facie materials available would prove the possession of 5000 kgs of ammonium nitrate in the custody of accused which is an explosive substance to give rise to reasonable suspicion that the said possession need not be for lawful object.

20. As per the case of prosecution, the transaction is not genuine one and further the bills and other documents show that M/s.Sivaraman and Devarajan are only imaginary persons with bogus address and therefore, suspicion arises that ammonium nitrate is not possessed by the accused for any lawful object. In such circumstances, this court is of the view that the sanction authority has applied his mind and granted sanction. Therefore, the validity of confession statement and sanction order can be decided only after trial and not at this stage.

21. Therefore, this court feels that there is enough materials available to frame charges against the petitioners and all the grounds raised by the learned counsel for the petitioners would be decided after trial and not at this stage. Therefore, this court is of the view that the learned III Additional District Judge, Salem, also discussed all the grounds raised by the petitioners and dismissed the petition filed u/s.227 of Cr.P.C., and this court does not find any perversity or infirmity in the order passed by the trial Judge. Therefore, there is no merit in the Revisions and the Criminal Revisions are dismissed accordingly. Consequently , connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The III Additional District Judge, Salem.
2.The Judicial Magistrate No.V, Attur, Salem.
3.-Do-Thro' The Principal Sessions Judge, Salem.
4.The Inspector of Police,
Kondalampatti Police Station, Salem City.
5.The Public Prosecutor, High Court of Madras, Chennai.
AKM/26.02.21/ 7P- 6C/

Crl.R.C.Nos.1142 and 1240 of 2020
29-01-2021