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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.4005 of 2017
and
Crl.M.P.Nos.2992 and 2993 of 2017

M.Ramasamy

...Petitioner

Vs.

State Rep by its
Inspector of Police,
Keelkuppam Police Station,
Villupuram District.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.247 of 2014 pending on the file of Judicial Magistrate, Kallakurichi and set aside the order passed in Crl.M.P.No.2162 of 2015 dated 09.12.2015 and consequently direct the trial Court to issue notice to the petitioner to show cause/ explain as to why the petitioner should not be implicated as an accused.

For Petitioner : Mr.Abudukumar Rajarathinam

For Respondent : Mr.S.Vinoth Kumar
Govt.Advocate(crl.side)

ORDER

This Criminal Original Petition has been filed to quash the summons issued by the learned Judicial Magistrate for the offences under Sections 286, 337, 338, 304(A) of IPC r/w 9B (i) (b) of Indian Explosives Act, 1884, against the present petitioner.

2.Originally, the prosecution laid a final report as against A1 and A2. Thereafter, on the basis of the evidence of P.W.1/VAO, the Trial Court has issued summons for adding this petitioner as A3 and one Mohan as A4.

3. The learned counsel for the petitioner submitted that he filed this petition only seeking an opportunity to appear before



the Trial Court and explain the reasons as to why he should not be implicated as an accused. It is brought to the notice of this Court the order that has been passed by this Court in CrI.O.P.No.25510 of 2016 filed by A4 in similar matter, wherein, this Court, in Paragraph Nos. 6 and 7, has held as follows:

" 6. In Jogendra Yadav v. State of Bihar [2015 (8) Scale 442], the Hon'ble Supreme Court has stated that the accused have to be heard before he is being implicated and once he is implicated, the accused does not have a second chance of filing discharge application under Section 239 or 227 Cr.P.C. In this case, admittedly, no notice was sent to the proposed accused. Had notice been sent to the proposed accused, he would have explained to the Court why he need not be prosecuted. This Court finds that there has been violation of fundamental principles of natural justice. Other grounds raised by Mr.A.Ramesh, learned Senior Counsel are left open for the trial Court to decide.

7. In the result, this Criminal Original Petition is allowed and the impugned order dated 09.12.2015 made in C.M.P.No.2162 of 2015 in C.C.No.247 of 2014 on the file of the learned Judicial Magistrate, Kallakurichi is hereby set aside. The petitioner is directed to surrender before the learned Judicial Magistrate, Kallakurichi within a period of two weeks from the date of receipt of a copy of this order and on such appearance, the learned Magistrate is directed to furnish to the petitioner, copy of the final report, accompanying documents and give an opportunity to the petitioner to show cause as to why he should be implicated as accused. On the petitioner giving his explanation, the trial Court should bear in mind the laid down by the Hon'ble Supreme Court in Hardeep Singh v. State of Punjab [2014 (1) Scale 291] and only if the evidence on record is satisfactory, can the petitioner be arrayed as accused. Consequently, connected miscellaneous petitions are closed."

4. As the petitioner (A4) in the above Criminal Original petition was also arrayed on the basis of the evidence of P.W.1, the same treatment should be given to the present petitioner who is arrayed as A3.

5. In the result, this Criminal Original Petition is allowed and the impugned order dated 09.12.2015 made in C.M.P.No.2162 of 2015 in C.C.No.247 of 2014 on the file of the learned Judicial Magistrate, Kallakurichi is hereby set aside. Consequently



connected miscellaneous petitions are closed.

6. The petitioner is directed to appear before the learned Judicial Magistrate, Kallakurichi within a period of two weeks from the date of receipt of a copy of this order and on such appearance, the learned Magistrate is directed to furnish to the petitioner, copy of the final report, accompanying documents and give an opportunity to the petitioner to show cause as to why he should not be implicated as accused. On the petitioner giving his explanation, the trial Court should bear in mind the laid down by the Hon'ble Supreme Court in Hardeep Singh v. State of Punjab [2014 (1) Scale 291] and only if the evidence on record is satisfactory, can the petitioner be arrayed as accused.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

msv/nr

To

1. The Inspector of Police,
Keelkuppam Police Station,
Villupuram District.
2. The Judicial Magistrate,
Kallakurichi
3. The Public Prosecutor
High Court, Madras.

+3cc to Mr.S.Ashokkumar, Advocate, S.R.No.69636, 69392

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and
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SR(CO)
RGA(19/01/2022)