BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.06.2021

Delivered on : 14.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.7879 of 2021

and

Crl.MP(MD)Nos.4034 and 4035 of 2021

C.Mallika .. Petitioner/Accused No.1

vs.

1.The Inspector of Police,
Vembakottai Police Station,
Vembakottai.
(Crime No.185/2015)

2.The Village Administrative Officer,
Kanachampatti, Sivakasi Taluk,
Virudhunagar District. .. Respondents/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in C.C.No.185 of 2016, on the file of the Judicial Magistrate No.II, Sattur, Virudhunagar District and quash the same as against the petitioner alone.

For Petitioner : Mr.R.Murugapoopathy

For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking for quashment of the proceedings in C.C.No.185 of 2016, on the file of the Judicial Magistrate No.II, Sattur, Virudhunagar District, as against the petitioner.

2.The case of the prosecution is that the Revenue Authorities from Virudhunagar District, conducted a surprise inspection in the premises of Ambika Fire Works, situated in V.Duraisamypuram Village, Sivakasi Taluk, on 30.04.2015, at about 5.00 p.m., and at that time, they found 3,000 Kg of Chorsa crackers, which exceeded the quantity of fire crackers, that is permitted to store, as per the license. They also stored inside the room and as well as in the premises stocked 280 Boxes. So, based upon this, a case in Crime No.185 of 2015, under Section 9B(1)(b) of the Explosives Act, has been registered. Investigation was conducted, materials were collected, statement of witnesses were recorded and finally final report has been filed before the Judicial Magistrate No.II, Sattur, which was taken on file as C.C.No.185 of 2016. This petitioner is arrayed as A1 in the case. Seeking quashment of the case, this petition is filed mainly on the ground that on the date of the alleged inspection, the petitioner was not in physical possession of the premises and it was already leased out to the second accused, namely, one Jeyapaul, as per the partnership agreement, dated 28.12.2014. So, as per the direction of the partnership agreement in Clause 7, the Management was vested with the second accused. So, no liability can be foisted upon to this petitioner and only the second accused if at all can be proceeded with. The next ground is that the allegation mentioned in the final report do not attract the ingredients of the offence as set out in the final report. The Rules and Procedures have not been properly followed, at the time of filing the final report and material witnesses have not been examined by the investigating officer.

3.Heard both sides.

4.Even though the above said grounds have been taken in the petition, the main ground, on which, the petition is filed is that as per the partnership agreement entered between herself and the second accused, the entire management and responsibilities were fixed by the second accused, namely, Jeyapaul. But the fact that the license from the Department of Explosives, Chief Controller of Explosives, Sivakasi, stands only in the name of this petitioner, wherein, it has been stated that she is the occupier of the premises and it is also noted that it is a partnership Firm, functioning in the name and style as “Ambika Fire Works”. So, from the license, it is seen that only the petitioner is shown as a occupier of the premises. As per the license, the quantity that can be stored for the purpose of 1000 Kg of quantity at any one point of time and permitted quantity of explosive to be purchased in a Calendar month is mentioned as 20 times as the above. It is also stated that there is one Store. So, it is seen that the license has been granted to the petitioner for the purpose of possessing fire works for the purpose of sale. This is not denied by the petitioner. But, it is seen that she is only a license holder, but, the partnership has been run by the second accused and so, she was not in charge of the day to day affairs, for that purpose, as I mentioned earlier, she would rely upon the partnership deed had been entered with the second accused. Clause 7 of the partnership deed, which reads as under.

7.Management: The party of the second shall have the sole and exclusive responsibilities to office administration: Production / Manufacture of Fire Works and Crackers: Statutory Compliance connected with the conduct of business / Firm and for any deviation, non-compliance or violation of any or all provision with regard to Explosives, Arms Act, Central Excise, Sales Tax, Income Tax, Factories Act, E.S.I., P.F., and all other Statutes governing the conduct of the business and the party of the first, as authorized signatory to the said firm shall have teh right to take legal and other appropriate action with regard to recovery of any statutory dues from the party of the second.”

3.Relying upon this clause, it is contended on behalf of the petitioner that no liability can be attached to her. So, the question, which arise for consideration, is whether this can be accepted. More over, any petition under Section 482 of Cr.P.C. the defense documents cannot be taken into account unless and until it is of a sterling quality. But, this document is not admitted by the prosecution. So, the contents of the document has to be proved before the trial Court, at the time of trial. More over, in Clause 9, the petitioner is vested with legal rights over the lands, buildings, fittings, etc., So, as a license holder, the petitioner has to face the trial and she cannot find an escape route for violation of the rules and license by foisting liability upon working partner.

4.The learned counsel for the petitioner would rely upon the following judgments for the purpose of arguments, in case of criminal liability, are as follows:

> “1.Judgment of the Hon'ble Supreme Court in Criminal Appeal No.1836 of 2012 in Sathish Mehra Vs. State of N.C.T. Of Delhi and another
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> 2.Judgment of the Hon'ble Supreme Court in Criminal Appeal No.813 of 2013 in Aparna A.Shah Vs. M/s. Sheth Developers Pvt. Ltd and another.
>
> 3.Judgment of the Hon'ble Supreme Court in Criminal Appeal No.573 of 2018 in Thesima Begam and another Vs. The State of Tamil Nadu Rep. By the Inspector of Police and others.
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> 4.Judgment of the High Court of Karnataka at Bengaluru, in Criminal Petition No.1749 of 2015 in Kuldip Singh Dhingra and others Vs. State of Karnataka and others.”

5.These cases have been referred and discussed, by the Judgment of the Hon'ble Supreme Court in Criminal Appeal No.813 of 2013 in Aparna A.Shah Vs. M/s. Sheth Developers Pvt. Ltd and another, no doubt that a Director cannot be held responsible for the offence committed by the Company, but, it is also settled law that a Company is to be represented by a person. In such event, only the Director can be held responsible and he cannot escape from the liability stating that he is only a Director and he is not responsible for the day-to-day affairs for the particular Company. Here, the case is that he is only a sleeping partner and Company is run by the second accused. But, as I mentioned earlier, this partnership deed is not an admitted document by the prosecution and the content has to be proved through proper evidence, at the time of trial. So, this document cannot be taken into account, at this stage, for discharging this petitioner from the criminal liability. Even if we take that this partnership deed has been duly proved, then the condition under Section 9-C of the Act must be satisfied. 9-C of the Explosives Act, reads as under:

> 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:
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> 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.
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> (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 of fence 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.

6.So, reading of the provision make the position is very clear and as well as the position of the petitioner, she has to prove the ingredients of the Section. That can be done only during the trial. So, I am of the considered view that the stand of the petitioner is that she is only a licensee and was not incharge of the day to day affairs, cannot be accepted, at this stage, even on the legal point.

7.The second argument with regard to violation of the rules, the petitioner would submit that weighing of the Fire materials is to be calculated by excluding inner and outer package of explosive boxes. According to him, it has been violated. Whether there is a violation, there is no record. So that ground cannot be taken into account. Similarly, the Inspection Officer - Deputy Collector, Virudhunagar was neither examined nor sent a written Intimation to the Controller of Explosives. The next argument is under Section 128 (2) Explosive Rules, 2008, the Seizure of Fire Crackers and the same has been intimated to the Controller of Explosives. There is no material on record to show this has been complied. Again, it is a matter for evidence. As on date, there is no such material available on record. So, none of the ground that has been made by the petitioner are sufficient enough to quash the final report against this petitioner. It is also seen that four witnesses have been examined before the trial Court. According to the learned counsel for the petitioner, this cannot be a ground for dismissal of the petition. For that purpose, he relies upon the judgment of the High Court of Karnataka at Bengaluru, in Criminal Petition No.1749 of 2015 [Kuldip Singh Dhingra and others Vs. State of Karnataka], dated 13.08.2019. But, no point has been raised by the prosecution, during the course of argument, on this point. So, we need not discuss on the question. So, the mere grounds that has been advanced by the petitioner are not convincing, this Criminal Original Petition deserves to be dismissed and accordingly, the same is **dismissed**. But, however, it is seen that the case is of the year 2016, so, there shall be a direction to the learned Judicial Magistrate No.II, Sattur, Virudhunagar District, to complete the trial process within a period of three months from the date of receipt of a copy of this order and dispose the same on merits and the compliance report has to be submitted to the Registry, thereafter. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (CS-II)

// 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,
Sattur,
Virudhunagar District.

2.The Inspector of Police,
Vembakottai Police Station,
Vembakottai.
(Crime No.185/2015)

3.The Village Administrative Officer,
Kanachampatti,
Sivakasi Taluk, Virudhunagar District.

Copy to

1.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

2.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
(To Watch compliance Report)

Crl.O.P.(MD)No.7879 of 2021
14.07.2021

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