



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2021

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WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.806 of 2021

and

Crl.M.P.(MD)No.9438 of 2021

M.Melnar

.. Petitioner/4th Accused/4th Accused

Vs.

1.The State of Tamil Nadu,
Rep. by its Inspector of Police,
Karungal Police Station,
Kanyakumari.

..Respondent/Complainant/Complainant

2.Chudalai Mani,
The Inspector of Police,
Nesamani Police Station,
Nagercoil.

..Respondent/Informant/Informant

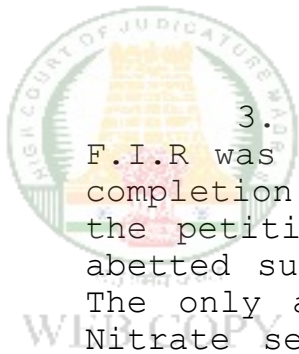
Prayer : This Revision Case is filed under Sections 397 r/w. Section 401 of Cr.P.C., to call for the records pertaining to the case pending in S.C.No.72 of 2018 on the file of the learned Assistant Sessions Judge, Eraniel and set aside the same insofar as the petitioner is concerned.

For Petitioner	: Mr.N.Dilipkumar
For R1	: Mr.K.Sanjay Gandhi
	Government Advocate

ORDER

This Criminal Revision has been filed to call for the records pertaining to the case pending in S.C.No.72 of 2018 on the file of the Assistant Sessions Judge, Eraniel.

2.The case against the petitioner is that he sold ammonium nitrate to the third accused in the case. A case against A1 to A3 was registered in Crime No.242 of 2012. On the confession statement given by A3, the petitioner was impleaded as A4. After the filing of the charge sheet, the case was taken on file as S.C.No.72 of 2018 on the file of the Special Court, Eraniel. The petitioner has filed a petition in Cr.M.P.No.94 of 2019, to discharge him from the charges. That petition was dismissed by the trial Court. Against that order, the petitioner has preferred this Criminal Revision Case.



3. On the side of the revision petitioner, it is stated that F.I.R was lodged only against three named accused. But, after the completion of investigation, the police laid charge sheet against the petitioner for unlawful possession of Explosive Substance and abetted such offence. Charge sheet was laid against three accused. The only allegation against this petitioner is that the Ammonium Nitrate seized by the police officials from the quarry site was alleged to have been supplied by the petitioner. The trial Court has failed to consider that the allegation in the final report did not disclose any cognizable offence against the petitioner. Except the confession statement, there is no material connecting the petitioner. There was no recovery, on the basis of the confession and the confession of A3 is not relevant against the petitioner. Ammonium Nitrate was notified as an Explosive only on 21.12.2012. But, the occurrence took place on 03.05.2012 and no offence is made out against the petitioner under the Explosive Substances Act. The petitioner was not mentioned as an Accused in the F.I.R. The offence under the Explosive Substances Act is to be investigated only by a Deputy Superintendent of Police.

4.The learned counsel for the revision petitioner has relied upon a judgment of this Court reported in **2018-SCC-Online-Madras-4969 (C.Arjune V. State)**, wherein, it is stated as follows:-

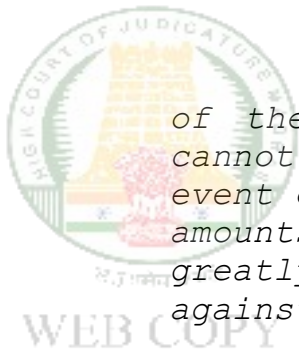
...(9) Since the Ammonium Nitrate Rules, 2012 came into force only on 11.07.2012, therefore, earlier to commencement of these rules ie. on 09.04.2009 is Ammonium Nitrate was found in the possession of the petitioner, no licence thereof was required since it was clarified by the Government of India vide its clarification, dated 18th March, 2009 wherein specifically it has been mentioned that Ammonium Nitrate per se is not an explosive and does not require any licence under either Explosives Act, 1884 or Explosive Substances Act, 1908 at present"

.....

11.Apart from the clarification given by the concerned department, the above judgments also make it clear that Ammonium Nitrate is not an explosive and the possession of the same will not amount to an offence."

5.Another judgment of this Court reported in **2014-SCC-Online-Madras-8100 (Anthony Gomez V. State)** is cited by the petitioner, wherein, it is stated as follows:-

"13.In the absence of any other material, except the confession statement of co-accused, the factual aspects as stated above, if are viewed in the light of necessary ingredients of section 5 of the Act, the same would undoubtedly lead to an inference that the allegations raised in the complaint do not attract any offence against the petitioner herein, who has nothing to do with the possession



of the explosives in the shed in question, as such, he cannot be subjected to face the ordeal of trial. In the event of the criminal proceedings being allowed to go on, it amounts to an abuse of process of law and the same would greatly prejudice the petitioner and the F.I.R registered against the petitioner is hence liable to be quashed."

6. On the side of the prosecution, it is stated that a case under Sections 5 and 6 of Explosive Substances Act was registered against the petitioner. On the confession of A3, the petitioner was impleaded as A4. The case is pending from the year 2018. Only after the completion of the trial, the case against the petitioner can be decided and prayed the petition to be dismissed.

7. The case is pending for the past 9 years. The points raised by the petitioner in this case can be raised by the petitioner before the trial Court. Discharging the petitioner before the trial is not proper.

8. In view of the same, this Criminal Revision Case is dismissed. The trial Court is directed to dispose of the case, in S.C.No.72 of 2018, within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

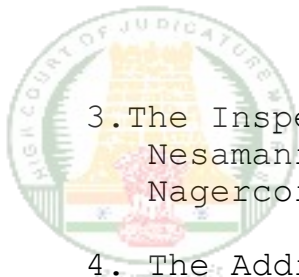
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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant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

To

1. The Assistant Sessions Judge,
Eraniel.

2. The Inspector of Police,
Karungal Police Station,
Kanyakumari.



3.The Inspector of Police,
Nesamani Police Station,
Nagercoil.

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

Copy to

The Section Officer, Criminal Section, (2C)
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.N. DILIPKUMAR, Advocate (SR-34018[F] dated
10/11/2021)

Crl. R.C. (MD) No.806 of 2021
10.11.2021

NSN (CO)
KB (08.12.2021) 4P 8C