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IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 04.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.O.P.NO.25328 OF 2021

IN

CRL.A.SR.NO.35158 OF 2021

The State represented by
The Inspector of Police,
Crime Branch CID.,
The Nilgiris Unit.
(Crime No.2 of 2008)

... Petitioner/Complainant

Versus

1. M.Mathusuthan
2. L.Thammannan
3. C.Selvaraj
4. K.Arumugam
5. S.Rangarajan
6. N.Mani
7. R.Durai @ Venkatachalam
8. C.Ramesh
9. K.Ravi
10. K.Pulikutty @ Shanmugam
11. P.Ravi @ Ravichandran
12. P.Ramakutty @ Ramamoorthy
13. G.Selvam @ Selvakumar
14. A.P.Perumal
15. K.Gopalan
16. M.Pappannan

... Respondents/Accused

PRAYER:-

Criminal Original Petition filed under Section 378(3) of Code of Criminal Procedure, to grant leave to file an appeal against the acquittal of the respondents/accused in S.C.No.17 of 2010 dated 31.01.2020 passed by the Sessions Judge of Magalir Neethimandram (FTMC), Udthagamandalam at Nilgiris.

For Petitioner : Mr.Leonard Arul Joseph Selvam
Government Advocate
(Criminal Side)



O R D E R

The Inspector of Police, Crime Branch CID, The Nilgiris Unit has filed this petition seeking to grant leave for filing an appeal before this Court as against the order of acquittal dated 31.01.2020 in S.C.No.17 of 2010 on the file of the Sessions Judge of Magalir Neethimandram (FTMC), Udhagamandalam at Nilgiris.

2. The petitioner herein, who is the complainant in the petition mentioned Sessions Case has filed a final report before the learned Judicial Magistrate, Udhagamandalam as against the respondents 1 to 16 for the offences punishable under Sections 3 (a) of the Explosive Substances Act, 1908 and 9-B(1)(b) of the Explosives Act, 1884 and Section 4 of TNPPDL Act, 1984. Further, it was alleged that the accused 1 to 3 are liable to be convicted under Section 379 of I.P.C.

3. The learned Judicial Magistrate after receipt of the final report assigned with the case in P.R.C.No.4 of 2010. After furnishing the case records to the respondents under Section 207 of Cr.P.C., committed the same to the Sessions Court, Udhagamandalam under Section 209 of Cr.P.C. The learned Sessions Judge, Magalir Neethimandram (FTMC), Udhagamandalam at Nilgiris, after the receipt of committal order, received the case records and assigned with case in S.C.No.17 of 2010. Afterwards he has framed charges as against A1 to A3 under Section 3(a) of The Explosive Substances Act, 1908 and A1 under Section 9-B(1)(b) of Explosives Act, 1884 and A1 to A3 under Section 4 of TNPPDL Act and A1 to A3 under Section 379 of IPC and A4 to A13 under Sections 3(a) of The Explosive Substances Act, 1908, 9-B(1)(b) of Explosives Act, 1884 and 4 of TNPPDL Act and A16 and A17 under Section 9-B(1)(b) of Explosives Act, 1884 and A14, A15 and A18 under Section 9-B(1)(b) of Explosives Act, 1884. After elaborate trial, he found that the respondents/accused are not guilty for the charges framed against them and on 31.01.2020, he delivered a judgment, wherein he acquitted all the accused from the respective charges.

4. Challenging the same, the Inspector of Police, Crime Branch CID intended to file a Criminal Appeal and for which, he preferred this leave application before this Court.

5. Today, when this petition came up for hearing, the learned Government Advocate (Crl. Side), appearing for the appellant/complainant would vehemently contend that the witnesses, who were examined on the side of the prosecution, narrated the alleged offences committed by the accused without any infirmity. But the trial Court without appreciating the whole evidence projected by the prosecution, acquitted the



accused. According to him, there are arguable points available in the appeal and hence, it would be necessary to grant leave for filing an appeal against the order of acquittal.

6. The submissions made by the learned counsels appearing on either side are considered along with relevant documents.

7. Before the trial Court, in order to prove the case of prosecution 63 witnesses were examined as P.W.1 to P.W.63 and 82 documents were marked as Exs.P1 to P82. Further, on the side of the defence two documents were marked as Exs.D1 and D2. Besides, material objects were marked as M.O.1 to M.O.25.

8. Now on going through the judgment rendered by the trial Court, all the official witnesses examined on the side of the prosecution would state about the issuance of license, recovery of objects, arrest of the accused, examination of witnesses and about the final report. Of course, the witnesses examined on the side of the prosecution to show the involvement of the accused, none of the prosecution witnesses gave evidence as the respondents/accused are committed an offence as alleged by the prosecution. In fact, P.W.29-Girijan is a Highways Contractor, P.W.31-Nagaraj is a Ooty Municipality Contractor, P.W.50-Prabhukumar is a Private Building Contractor and they were all cited as witnesses to speak about purchasing of rough stones from A1, A3 and deceased A2 and A4 during the occurrence period and all of them did not give any evidence as against the accused. On scrutiny of evidence given by those persons, it is not up to implicate the accused in the alleged occurrence. Further, before the trial Court, they were all treated as hostile witnesses. Apart from that, the quarry, which was situated in S.Nos. 894/3 and 895/1 of Hullathi Village, is not in the name of the accused. Accordingly, before the trial Court, the nexus between the accused and crime has not been established and thereby the trial Court had acquitted the accused.

9. In the said circumstances, I am of the considered opinion that there was no arguable points available in the appeal presented. Hence, it is not necessary to grant leave for filing an appeal against the order of acquittal dated 31.01.2020.

Accordingly, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



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To

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1. The Sessions Judge of Magalir
Neethimandram (FTMC),
Udhagamandalam at Nilgiris.
2. The Inspector of Police,
Crime Branch CID.,
The Nilgiris Unit.
3. The Public Prosecutor,
High Court, Madras.

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SPD(CO)
PBS/13/04/2022