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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.17027 of 2021
and Crl.MP.No.9315 of 2021

P.Rajeswaran ... Petitioner

Vs.

1. State by
   The Inspector of Police,
   Thanipadi Police Station,
   Thanipadi,
   Thiruvannamalai District
   (cr.No.74 of 2021)
2. Dhanalakshmi ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records concerned in cr.No.74 of 2021 on the file of the Inspector of Police, Thanipadi Police Station, Thanipadi, Thiruvannamalai District and to quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.C.Prakasam

For Respondents
For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

O R D E R

This petition has been filed to quash the F.I.R. in Crime No.74 of 2021

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registered by the first respondent / police for offences under Sections 5 & 6 of Explosive Substances Act, 1908, as against the petitioner.

2. The case of the prosecution is that on 23.02.2021 at about 13.45 hrs, the first respondent / police received a secret information about transport of explosives. Immediately, they went to nearby Ilayangannai Village Government School for vehicle checking along with police team. At that time, one vehicle bearing registration No.TN 25 BE 7882 Bajaj CT 100 came and on seeing the police, the driver made attempt to escape and immediately the police caught him and on search, they found Ideal power 90 – 25 Nos., ED-25 Nos. He also confessed that the said explosives were purchased from the petitioner's shop. When the petitioner's explosives godown was inspected, they found ideal power 90 – 33 box weighing 825 kg, sun-90 weighing 131 kg, safety fuse-2 box, Neo MS DD Fues-2 Bo (2000 Nos.), CDET-1 Box (1500 nos.), CDET-Loose 900 nos and SOD-3 Box(300 Nos.) and seized the explosives in the presence of witnesses.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is having licence issued under the Explosive Substances Act by the Government of India. He is also running a business in the name and

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style of Rajeswaran Explosives and selling the explosives for deepening agricultural well and stone quarry for the past several years. While being so, on 23.02.2021, the first respondent / police while doing regular vehicle check up, the first accused attempted to escape from their hands and thereafter they seized the vehicle. On his confession, the petitioner has been implicated as the second accused. As per the licence issued in favour of the petitioner he is permitted to keep 1000 kg of substance in his godown on the day of seizure i.e. 23.02.2021. He was in possession of 956 kg of explosives and as such, no offence is made out under Explosive Substances Act. He further submitted that the seized items from the lorry are not explosives as defined under Section 4(d) of Explosives Act. Therefore, he prayed for quashment of FIR.

4. Heard, the learned counsel appearing for the petitioner and Mr.A.Gopinath, Government Advocate(crl.side) appearing for the first respondent / police.

5. On perusal of the counter filed by the first respondent / police, revealed that the petitioner is arrayed as A2. Search was made in the presence of Village Administrative Officer of Melbaksar Village and his Assitant. Inspecting the petitioner's godown, they found ideal power 90 – 33 box

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weighing 825 kg, sun-90 weighing 131 kg, safety fuse-2 box, Neo MS DD Fues-2 Bo (2000 Nos.), CDET-1 Box (1500 nos.), CDET-Loose 900 nos and SOD-3 Box(300 Nos.). The petitioner is a licence holder under form LE-3, which is issued under Explosives Rules, 2008. Accordingly, licence is valid only for the following kinds and quantity of explosives:

S.No	Name and Description	Class & Division	Sub-division	Quantity at any one time
1	Nitrate Mixture	2.0	0	1000 kg
2	Safety Fuse	6.1	0	10000 mtrs
3	Detonators	6.3	0	40000 Nos.
4	Detonating Fuse	6.2	0	10000 Mtrs

That apart, licence shall remain valid till 31.03.2019. Thereafter, it was renewed. Even as per the licence, the petitioner is not supposed to transport the seized explosives from the godown. Therefore, there is material to attract the offence under Sections 5 & 6 of Explosive Substances Act, 1908, which has to be investigated in depth. Further the FIR is not an encyclopedia and it need not contain all facts and it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

6. It is relevant to rely upon the judgment of the Hon'ble Supreme

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Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** in the case of ***Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.,*** as follows:-

> *"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.*
>
> *5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the*

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allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

7. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, the first respondent / police is directed to complete the investigation in Crime No.74 of 2021 and file a final report

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within a period of eight weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed. Consequently, connected miscellaneous petition is closed.

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Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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G.K.ILANTHIRAIYAN, J.
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To

1. The Inspector of Police,
   Thanipadi Police Station,
   Thanipadi,
   Thiruvannamalai District

2. The Public Prosecutor,
   High Court, Madras.

Crl.O.P.No.17027 of 2021

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