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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.03.2022

PRONOUNCED ON : 23.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.2127 of 2022

and

Crl.M.P(MD)No.1592 of 2022

G.Gopalakirshnan

... Petitioner/Accused No.3

Vs.

1.The State represented by,
The Deputy Superintendent of Police,
District Crime Branch,
Madurai.

2.The State represented by,
The Inspector of Police,
B2, Keelavalavu Police Station,
Madurai.

(In Crime No.206 of 2012). ... Respondents 1 & 2/ Complainants

2.Manikandan

... 3rd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records of Spl.S.C.No.36 of 2021 pending on the file of the Special Court to Deal with the Cases of Offences in Contravention of the Provisions of the Mines and Minerals (D & R) Act, 1957, Madurai and quash the same as illegal in respect of the petitioner.

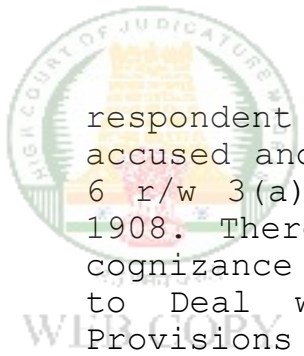
For Petitioner : Mr.C.Arul Vadivel @ Sekar

For RR 1 & 2 : Mr.S.Ravi
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Spl.S.C.No.36 of 2021 on the file of the Special Court to Deal with the Cases of Offences in Contravention of the Provisions of the Mines and Minerals (D & R) Act, 1957, Madurai.

2. On the complaint lodged by the third respondent, the second respondent registered a case in Crime No.206 of 2012 for the offences under Sections 4 and 5(a) of the Explosive Substances Act, 1908 as against the petitioner and two others. The petitioner is arraigned as third accused. While the investigation, the first



respondent filed an alteration report thereby added four more accused and also altered the offences into Section 120(b) of I.P.C, 6 r/w 3(a), 4(a), 4(b) and 5(a) of the Explosive Substances Act, 1908. Thereafter, filed final report and the same has been taken cognizance in Spl.S.C.No.36 of 2021 on the file of the Special Court to Deal with the Cases of Offences in Contravention of the Provisions of the Mines and Minerals (D & R) Act, 1957, Madurai.

3. The Court below framed charges as against the accused persons are as follows:-

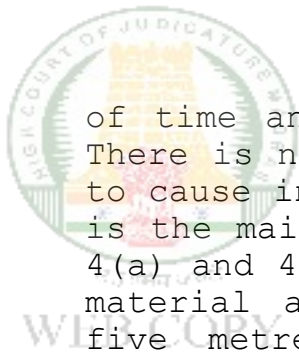
a) The first accused Om Sri Granites was granted lease to quarry granite stones in S.F.Nos.48/1A, 49/1B, 49/2A, 49/2B, 48 and 46/3C (part) in Vellaloor Village and in Survey Nos.S/215/5A, 215/2B in Thaniyamangalam Village vide G.O.3(D)No.38, dated 04.03.2004.

b) The petitioner in the name of G.G.Granites (second accused) made a raising contract agreement with first accused. The fourth accused Palanisamy and the fifth accused Ramakrishnan are the owners of the land in Survey No.215/5B. The sixth accused Devadoss is the owner of one Anjaneya Traders, who issued Explosive Substances to A.1 to A.3. The seventh accused Baskaran is a technical person doing blasting work.

c) From March 2004 to September 2012, on various dates, on the inducement of A.1 to A.3, A.6 and A.7 blasted the rocks in Survey No.215/5B of Thaniyamangalam Village for the purpose of excavating granites. By conspiring together, they excavated the granites stones by blasting and thereby committed the offence under Section 120(b) of I.P.C, Section 6 r/w Sections 3(a), 4(a) and 4(b) of the Explosive Substances Act, 1908.

d) On 28.07.2012 at about 10.00 a.m., on the inducement of A.1 to A.3, A.6 and A.7 came with explosives in a vehicle bearing Registration No.TN-37F-6058 and blasted the rocks, knowing fully well that it was an illegal act. After completing the blasting work, A.6 and A.7 kept a cortex wire measuring 5 meters length in an iron box measuring 4 X 4 X 4 in S.F.No.215/5B, in between the granite stones and thereby A.1 to A.3 and A.6 and A.7 have committed the offences under Sections 3(a), 4(a) and 4(b) of the Explosive Substances Act, 1908. A.4 and A.5 by allowing to keep the cortex wire in their land have committed the offences under Section 6 r/w 4 (a) and 4(b) of the Explosive Substances Act.

4. The learned counsel appearing for the petitioner would submit that even according to the case of the prosecution, no offence is made out as against the petitioner and there is no material to take cognizance as against the petitioner. The petitioner is being a contractor induced A.6 and A.7 to blast the rocks to excavate granite stones on various dates between March 2004



of time and place should be specifically mentioned in the charge. There is no material on record that the petitioner has an intention to cause injury to any person or property by using explosives, which is the main ingredient to attract the offences under Sections 3(a), 4(a) and 4(b) of the Explosive Substances Act. Further, there is no material available on record to substantiate the allegation that five metre cortex wire is an explosive substance. Except the statement under Section 161(3) of Cr.P.C, there is no chemical analysis report of the expert.

5. The learned counsel appearing for the petitioner further submitted that the trial Court has no jurisdiction to try the offences under Section 6 r/w Sections 3(a), 4(a) and 4(b) of the Explosive Substances Act, 1908, since the trial Court is meant for to try the cases of offences in contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957.

6. There is no seizure mahazar for recovery of five meter cortex wire and the iron box in which the wire was allegedly kept in the place of occurrence. In fact, the said materials were neither seized nor produced before the trial Court. Accused No.6 is the licensee and the respondent seized the license issued by the Joint Chief Controller of Explosives, Chennai, wantonly suppressed the same in the final report and charged as if he indulged in illegal blasting activities. Accused No.7 is having a valid blaster's Certificate issued by the Board of Mining examinations and as such, the petitioner induced Accused Nos.6 and 7 to blast the rocks to excavate the granite illegally cannot be sustained as against the petitioner. In support of his contention, he relied upon the following Judgments of the Honourable Supreme Court of India:-

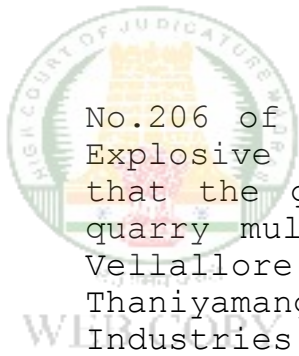
(i) ***R.P.Karur Vs. State of Punjab*** reported in **1960 (3) SCR 388**.

(ii) ***Pradeep S.Wodeyar Vs. State of Karnataka*** reported in **2021 SCC Online SC 1140**.

(iii) ***Bhajahari Mondal Vs. State of West Bengal*** reported in **AIR 1959 SC 8**.

7. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents 1 and 2 and perused the materials available on record.

8. The third respondent lodged a complaint alleged that the explosives were stored in Survey No.215/5B to an extent of 0.38.0 ares owned by both P.R.Palanichamy and Ramakrishnan. A strong sealed steel box was placed in the centre of the granite blocks and found that five metre long cortex wire was inside the steel box. It was used for the purpose of activating explosives in the granite quarries. On receipt of the same, F.I.R has been registered in Crime



No.206 of 2012 for the offences under Sections 4 and 5(a) of the Explosive Substances Act, 1908. During investigation, it was found that the granite company Messrs.Om Sri Granites had got lease to quarry multi-coloured granite to an extent of 2.67.0 hectares in Vellalore in SF.Nos.49/1A, 49/1B, 49/2A, 49/2B, 48, 46/3C(P) and in Thaniyamangalam in SF.Nos.215/5A and 215/5B under G.O(3D)No.38, Industries (MMB1) Department, dated 04.03.2004. During quarry operation, the accused persons trespassed into the adjacent Government land and quarried illegally by using explosive substances with the help of A.6 and A.7 and the remaining explosive substance was stored in the quarry premises in a iron box in between the granite stones in the land of A.4 and A.5. The explosive substance viz., 5 metres of cortex wire was recovered in the land of A.4 and A.5, which is located adjacent to the first accused quarry. The explosive substances were illegally used by the accused persons for illicit quarrying operation.

9. It is also seen that after using explosive substances for excavating granites from the land, the land owner should not store the explosive substances in quarry premises. Rule 90 of the Explosive Rule, 2008, reads as follows:

"90.Restriction on conveyance of explosives to or at the blasting site.-

(1) Explosives shall only be conveyed from the licensed storage premises to near the site in original unopened packages or in closed containers used solely for that purpose and securely locked. No manufacturer shall directly supply the cartridged explosives for charging of boreholes at the blasting site.

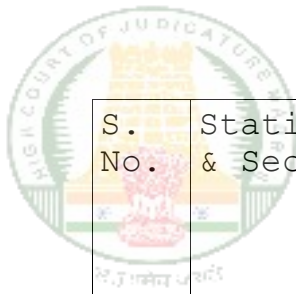
(2) Explosives shall not be taken to a point nearer than fifty metres from any site until such site is ready for charging.

(3) Explosives shall not be conveyed in any vehicle with any other materials, tools or implements other than that required for the purpose of blasting.

(4) Explosives left over after the day's work shall be returned to the licensed premises from which the same was taken."

In the case on hand, the petitioner and other accused had illegally stored explosive in the quarry premises in between granite blocks.

10. That apart, the petitioner involved in another three criminal cases, which are as follows:-



S. No.	Station, Crime No & Section of Law	Date of Registration of FIR	Total loss to the Government as per Evaluation Report/Damage Certificate	Stage of the case/Pending in the Court
1.	Othakadai PS Crime No.411/2012 under Sections 447, 201, 379, 420, 430, 434, 465, 467, 468, 471, 304(ii) of I.P.C r/w 511, 109, 114 of I.P.C and 3(i), 3(ii), 4 of TNPPDL Act, 1992 and 6 r/w 3 (a), 4(a) of Explosive Substances Act, 1908 r/w 120(B) of I.P.C.	06.08.2012	Rs.695.56 crores and Damage cost Rs.440.094 lakhs	For framing of charges. Next hearing date 05.03.2022 Spl.SC.No.57 of 2021 of Special Court for MM (D & R) Act, Madurai.
2.	Keelavalavu Police Station Crime No.222 of 2012 under Sections 120 (B), 147, 447, 430, 434 of I.P.C 3(i), 3(ii) of TNPPDL Act 1992 r/w 109 & 149 of I.P.C.	27.09.2012	Damage Cost Rs.76 lakhs	For framing of charges. Next hearing date 03.03.2022 Spl.SC.No.08 of 2021 of Special Court for MM (D & R) Act, Madurai.
3.	Keelavalavu Police Station Crime No.158 of 2012 under Sections 47, 379, 420, 434, 465, 467, 468, 471, 304(ii) of I.P.C r/w 511, 109, 114 of I.P.C and 3(i), (ii) & 4 of TNPPDL Act, 1992 Section 6 r/w 3(a) 4(a) of Explosive Substances Act, 1908 r/w 120B of I.P.C	06.08.2012	Rs.215.36 crores and Damage Cost Rs.8.51 lakhs	For framing of charges date 03.03.2022 Spl.SC.No.23 of 2021 of Special Court for MM (D & R) Act, Madurai.



11. The petitioner along with other accused persons trespassed into the Government poramboke land and removed the boundary stones with machineries and quarried granite stones illegally by using dangerous explosive substances and committed theft of granite stones along with other accused persons, thereby they caused loss to the Government to the tune of Rs.910.92 crores as per the valuation report and as per the damage certificate given by the Public Works Department.

12. Insofar as the jurisdiction is concerned, the Investigating Officer laid charge-sheet for the offences under Section 120(B) of I.P.C., 6 r/w 3(a), 4(a), 4(b) and 5(a) of Explosives Substance Act, 1908 before the learned Judicial Magistrate, Melur in P.R.C.No.52 of 2016. The learned Judicial Magistrate committed to the Principal District and Sessions Court, Madurai and has taken cognizance in S.C.No.368 of 2020. On 26.02.2021, the Tamil Nadu Government has formed the Special Court in the cadre of District Judge at Madurai to deal with the offences for contravention of Provisions of the Mines and Minerals (Development and Regulation) Amendment, Act, 2015. On the same day, the entire records were transferred to the file of the Special Court, by proceedings of the learned Principal District and Sessions Court, Madurai in A.No.27 of 2021, dated 24.02.2021.

13. That apart, there are substantive evidences to show about the involvement of the petitioner and other accused in this case. The Investigating Officer seized the material objects and collected all the documents in connection with commission of offence. The material object of cortex wire were sent for Forensic Science Department and the report says that "detected Penta Erythritol Tetra Nitrate (PETN)" Note: 1.Penta Erythritol Tetra Nitrate (PETN) is the major ingredient used in the manufacture of Detonators, Detonating cords (cordtex/prima cord), Boosters etc and it is high explosive. 2. High Explosive when exploded endanger human life and properties".

14. Further, in the final report, the occurrence date and time was mentioned as 28.07.2012 at about 10.00 a.m. On 16.09.2012, the cortex wire was seized and produced before the Judicial Magistrate Court, Melur in RPR No.277 of 2012. Only thereafter, it was sent to the Forensic Science Department.

15. The learned counsel appearing for the petitioner mainly contended that the trial Court has no jurisdiction to try the offences under the Explosive Substances Act and relied upon the Judgement of the Honourable Supreme Court of India in **Pradeep S.Wodeyar Vs. State of Karnataka** reported in **2021 SCC Online SC 1140**, in which, the Honourable Supreme Court of India held that the Special Court has the power to take cognizance of offences under



MMDR Act and conduct a joint trial with other offences if permissible under Section 220 CrPC. There is no express provision in the MMDR Act which indicates that Section 220 Cr.P.C does not apply to proceedings under the MMDR Act. Further, held that Section 30B of the MMDR Act does not impliedly repeal Section 220 CrPC. Both the provisions can be read harmoniously and such an interpretation further justice and prevents hardship since it prevents a multiplicity of proceedings. Therefore, on a combined reading of Sections 4 and 5 of CrPC along with Section 30C of the MMDR Act, it is apparent that the procedure prescribed under the Code shall be applicable to proceedings before the Special Court unless the MMDR Act provides anything to the contrary. These provisions incorporate the principle of express repeal namely unless any provision of the CrPC is expressly repealed by the provisions of the MMDR Act, the procedure prescribed under the CrPC would apply to the proceedings before the Special Court.

16. Therefore, the point raised by the learned counsel appearing for the petitioner insofar as the jurisdiction is concerned is hereby negatived. Moreover, there are specific allegations as against the petitioner to attract the offences under Section 120(b) of I.P.C, Section 6 r/w 3(a), 4(a), 4(b) and 5(a) of the Explosive Substances Act, 1908 revealed from the statement recorded under Section 161(3) of Cr.P.C.

17. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, wherein the Honourable Supreme Court of India held as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on



merits in accordance with law.

18. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein the Honourable Supreme Court of India held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

19. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, wherein the Honourable Supreme Court of India held as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the



allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

20. In view of the above discussion, this Court is not inclined to quash the proceedings in Spl.S.C.No.36 of 2021 pending on the file of the Special Court to Deal with the Cases of Offences in Contravention of the Provisions of the Mines and Minerals (D & R) Act, 1957, Madurai. The petitioner is at liberty to raise all the grounds before the trial Court.

21. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

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 Special Court to Deal with the Cases of Offences
in Contravention of the Provisions of the
Mines and Minerals (D & R) Act, 1957,
Madurai.



2.The Deputy Superintendent of Police,
District Crime Branch,
Madurai.

3.The Inspector of Police,
B2, Keelavalavu Police Station,
Madurai.

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

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-13713[F] dated
23/03/2022)

CrI.O.P (MD) No.2127 of 2022
23.03.2022

RD(04.04.2022) 10P 6C