



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2022

CORAM:

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

Crl.O.P.(MD) No.5720 of 2021

and

Crl.M.P(MD) Nos.3313 and 3314 of 2021

A.P.Selvaraj

...Petitioner/Accused No.1

Vs.

1. The State represented by
The Inspector of Police,
Thiruvengadam Police Station,
Tirunelveli District.
(Crime No.44 of 2020)

...1st Respondent/
Complainant

2. C.Abirami
Village Administrative Officer,
Naduvapatti Village,
Tirunelveli District.

...2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records and quash the charge sheet in P.R.C.No.36 of 2020 on the file of the learned Judicial Magistrate, Sankarankovil, Tirunelveli District, as against the petitioner herein.

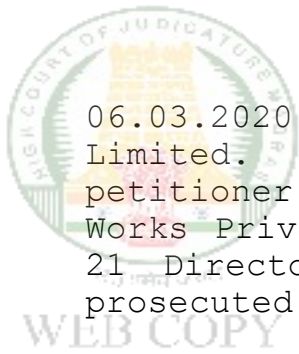
For Petitioner : Mr.N.Ananthapadmanaban
for APN Law Associates

For R1 andn R2 : Mr.B.Thanga Aravindh
Government Advocate(Crl.Side)

ORDER

The criminal original petition has been filed seeking to quash the PRC.No.36/2020 on the file of the learned Judicial Magistrate, Sankarankovil, Tirunelveli District.

2.There are totally two accused in which, the petitioner is arrayed as the first accused. The case of the prosecution is that the accused persons without following the safety measures for the employees, who are working in their units and they were not provided with sufficient safeguards, thereby, resulted in death of two persons in pursuant to the fire accident, which had occurred on



06.03.2020 at about 12.30 pm in M/s.Sri Kaliswari Fire Works Private Limited. The petitioner is arrayed as the first accused. The petitioner is the one of the Directors, M/s. Sri Kaliswari Fire Works Private Limited. It is a private company and it has totally 21 Directors. Among them, only the petitioner herein, is now prosecuted leaving out the other Directors.

3.On perusal of the entire charge sheet, it revealed that the M/s. Sri Kaliswari Fireworks Private Limited is managed by the petitioner herein and the second accused is the Supervisor, who was engaged to supervise the work done by the employees. Further, there is no material had been produced by the prosecution to the effect that the petitioner herein, who was in-charge on the day-to-day affairs of the said Company. Further vicarious liability cannot be fastened on the Director of the Company for the offence under Penal Code provision unless and until the statute contemplates vicarious liability. It cannot be fastened upon an individual without legal sanity. Even if the averments in the charge sheet are taken at their face value, the petitioner cannot be charged for the offence. There is absolutely no material to show that the petitioner is being in-charge or responsible for the conduct of the business of the company. Now, the petitioner and another are charge sheeted for the offence under Section 304(ii) of IPC and r/w Section 9(b)(1)(a) of the Explosives Act, 1884. Admittedly, the petitioner is the license holder of the M/s.Sri Kaliswari Fireworks private Limited and it is valid up to 31.12.2023.

4.On perusal of the list of the Directors of the M/s.Sri Kaliswari Fireworks Private Limited revealed that the petitioner is the one of the Directors and it is also evident from the articles of the Association of M/s.Sri Kaliswari Fireworks Private Limited.

5.That apart on perusal of the entire charge sheet and the other materials annexed along with the charge sheet revealed that the prosecution has not produced any material to show that the petitioner had acted in violation of the rules and statutes thereby, causing endangerment to the workers. Except the statement of the Village Administrative Officer, no one has spoken about violation of the rules and non providing any safety measures to its employees. Even assuming that the accused persons failed to provide any safety measures and without following the rules, the prosecution does not even whisper about what rules were violated and what safety measures were not provided to its employees. According to the Rule 10(1)(a) of the Explosives Rules 2008, no explosive shall be manufactured at any place except at a licensed factory with manufacturing process duly approved by the licensing authority. Then, the Rule 10(1)(A) says that the buildings to be used for manufacture of explosives shall comply with the specification laid down in Schedule 4 annexed to these rules. However, the prosecution was failed to place any material to show that the petitioner's company violated such and



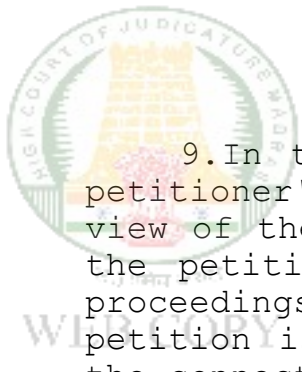
6. That apart, the wife of the deceased filed affidavit before this Court and revealed that they have received a sum of Rs.5,00,000/- (each) from M/s.Sri Kaliswari Fireworks Private Limited in addition to that, Rs.25,000/- by a separate voucher. They also received various benefits from its employer such as employers' provident fund, employer's state insurance scheme, group insurance etc., They have no interest to prosecute the accused persons in this case.

7. In this regard, the learned Counsel appearing for the petitioner rely upon the judgment reported in 2008 SCC 568, in which, the Hon'ble Supreme Court of India held as follows:

'Learned counsel for the respondent State made an endeavour to bring the case within the ambit of the third alternative, as the case cannot possibly be brought under any of the other two. The act proved to have been committed by the appellant alongwith Babu Khan in this case is manufacture of explosive substances like bombs. Hence what is to be established is, the above act must have been done with the knowledge that such act by itself was likely to cause death. If some other act had intervened which the offender did not do consciously which triggered the explosions that could not be counted as the act for that offender. No evidence had been let in by the prosecution to show that mere manufacture of such bombs is likely to cause death of any person, nor any evidence for showing that appellant had the knowledge that by manufacturing bombs death would possibly be caused to any human being without any other act being done.'

We may also point out that prosecution has not brought out any circumstance by which the Court could remotely attribute knowledge to the appellant that by manufacturing and possessing bombs death of any person was a likely consequence. By manufacturing a bomb, alone no one can normally think that it would explode without anything more done. Here something more would have happened which caused the explosion, what was that additional act is unknown to us. At any rate there is no material to show that the appellant had done that additional act.'

8. The Hon'ble Supreme Court of India held that the act must have been done with a knowledge that such act by itself was likely to cause death. If some other act had intervened which the offender did not do consciously which triggered the explosions that could not be counted as the act for that offender.



9. In the case on hand, there is no evidence to show that the petitioner's act was likely to cause death of two employees. In view of the above, the entire proceedings cannot sustain as against the petitioner and it is liable to be quashed. Accordingly the proceedings in PRC.No.36/2020 are quashed and the criminal original petition is allowed as against the petitioner alone. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

lr

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,
Sankarankovil, Tirunelveli District.
2. The Inspector of Police,
Thiruvengadam Police Station,
Tirunelveli District.
(Crime No.44 of 2020)
3. The Village Administrative Officer,
Naduvapatti Village,
Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.A.P.N. LAW ASSOCIATES, Advocate (SR-18732[F] dated 13/04/2022)

Crl.O.P.(MD) No.5720 of 2021
12.04.2022

RK(04/05/2022) 4P 7C