

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.08.2022

Pronounced on : 12.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.689 of 2022
in
Crl.M.P(MD)Nos.8535 and 8536 of 2022

1.Shanthi

2.Surya Prakash

... Petitioners/A2 & A3

Vs.

The State rep.by
The Inspector of Police,
Melur Police Station,
Melur, Madurai.
(Crime No.670 of 2012)

... Respondent/Complainant

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the impugned order, dated 04.07.2022 made in Cr.M.P.No.18 of 2021 in Spl.S.C.No.7 of 2021 on the file of the Special Court to deal with the cases of offences in Contravention of the MM(D&R) Act Cases, Madurai and set aside the same by allowing the above Criminal Revision and to discharge the petitioner/A2 & A3 from the charges levelled against them.

For Petitioners : Mr.G.Mariappan
For Respondent : Mr.A.Thiruvadikumar,
Additional Public Prosecutor.

ORDER

This Criminal Revision Petition is directed against the order passed in in Cr.M.P.No.18 of 2021 in Spl.S.C.No.7 of 2021, dated 04.07.202, 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 Cases, Madurai, in dismissing the petition for discharge filed under Section 227 of the Code of Criminal Procedure.

2.The petitioners are the accused 2 and 3 in special case in Spl.S.C.No.7 of 2021 on the file of the said Special Court. The respondent registered a case in Crime No.670 of 2012, dated 30.08.2012 against one P.K.Selvaraj of Sindhu Granites under Sections 4(a), 5(b) and 6 Explosive Substance Act, 1908 r/w Section 120 B of IPC and the case was taken on file and subsequently, the case was committed to the Principal Sessions Court, Madurai. After the Constitution of the Special Court to deal with the cases

of offences in contravention of the provisions of the Mines and Minerals (D&R) Act Cases, the above case was transferred to the Special Court and the case was taken on file in Spl.S.C.No.7 of 2021.

3. Admittedly, the second petitioner is the wife and the third petitioner is the son of the first accused Selvaraj. When the case is pending before the Special Court, the accused 2 and 3 have filed a petition in Cr.M.P.No.18 of 2021 under Section 227 of Cr.P.C, seeking discharge from the charges against the petitioners/accused 2 and 3.

4.The respondent has filed a counter affidavit raising serious objections. The learned Special Judge, after enquiry, has passed the impugned order, dated 04.07.2022, dismissing the discharge petition. Aggrieved by the dismissal, the accused 2 and 3 have come forward with the present revision.

5.The case of the prosecution in FIR is that on 30.08.2012 as per the direction of the District Collector, Madurai, the complainant, Tahsildar along with Village Administrative Officer and Village Assistants inspected the

Thiruvathavur Sindhu Granite Quarry at about 11.40 am and found explosives in the toilet situated in the east-western side of the said quarry; that the same was informed to the Superintendent of Police, Madurai District, the BDDS team along with Police dog inspected the toilet in the presence of the witnesses and seized (i) Cortex wire - 42,250 mtrs; (ii) Ammonium Nitrate 150 Kg; (iii) Gun Powder 30 Kg; (iv) Ordinary Detonator -1800 Pcs; (v) Electrical Detonator 425 Pcs; (vi) Gel 90-719 Kgs; (vii) Power Source -1 and (viii) Safety Fuses -719 mtr; that the same were produced before the learned Judicial Magistrate, Melur and thereafter, the same was sent to Forensic Laboratory and obtained an opinion that the High Explosives when detonated and Low Explosives when exploded endanger human life and properties.

6. According to the prosecution, the investigating Officer had examined 33 witnesses and collected 14 documents and thereafter, laid the final report. In the charge sheet, it has been stated that all the accused 1 to 9 with common intention to enter into Government poramboke land and to steal the granite stones by using explosives substances, had stored the explosives substances without any permission.

7. The petitioners 2 and 3 by alleging that they have no connection whatever with the first accused concerned and that proper sanction was not obtained, have filed the petition seeking discharge. The Special Court by observing that the legality of the possession of the explosive substance can only be gone into at the trial and also the validity of the sanction obtained can also be considered only at the trial, came to the decision that the petitioners are not entitled to get the relief of discharge.

8.At the out set, it is pertinent to note that the petitioners have challenged the very jurisdiction of the Special Court to try the offences shown in the charge sheet.

9.The learned counsel for the petitioners would contend that for the cases relating to Mines and Minerals, a Special Court was constituted as Special Court to deal with the cases of offences in Contravention of the Mines and Minerals (Development & Regulation) Act and that this Court cannot try the offences under the Explosives Substances Act and that therefore, the very transfer of the said case from the file of the Principal

Sessions Court to the Special Court and the proceedings held in the Special Court are liable to be quashed.

10.No doubt, as rightly contended by the learned Additional Public Prosecutor, the said plea was not at all raised by the petitioners in their discharge application. But, as rightly contended by the learned counsel for the petitioners, this being a jurisdiction issue, can be raised at any point of time.

11. The Government of Tamil Nadu has issued a Government Order in G.O.Ms.No.355, dated 11.04.2017, granting sanction for Constitution of a Special Court in the cadre of District Judge at Madurai to deal with the cases of offences in contravention of the provisions of the Mines and Minerals (Development and Regulation) Amendment Act, 2015.

12.Even in the said Government Order, it has been specifically mentioned that the Special Court is being constituted to deal with the cases of the offences in contravention of the provisions of the Mines and Minerals (D&R) Act 2015. Subsequently, the Government issued another Government

Order in G.O.Ms.1564, dated 14.09.2018, for Constitution of a Special Court in the cadre of District Judge at Madurai, to deal with the cases of offences in contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 in Madurai District. Another Government Order in G.O.Ms.No.298, dated 13.06.2019, came to be issued for designating the Court of Principal Judge / City Civil Court, Chennai and the Principal District Courts / District Courts in each Judicial District, in the State of Tamil Nadu as Special Courts to try the cases filed under the Mines and Minerals (Development and Regulation) Act, 1957 (as amended by Act 10 of 2015).

13. The learned Additional Public Prosecutor has relied on the decision of this Court in Crl.O.P.(MD)No.2127 of 2022, wherein a similar issue was also raised, questioning the jurisdiction of the Special Court and a learned Judge of this Court, after referring to the decision of the Hon'ble Supreme Court in ***Pradeep S.Wodeyar Vs. State of Karnataka*** reported in ***2021 SCC online SC 1140***, has negated the said contention.

14. In the said decision case, the third charge framed against the accused therein is “From March 2004 to September 2012, on various dates,

on the inducement of A1 to A3, A6 and A7 blasted the rocks in Survey No.215/5B of Thaniyamangalam Village for the purpose of excavating granites and by conspiring together, they excavated the granite stones by blasting and thereby committed the offence under Section 120(b) IPC and under Section 6 r/w 3(a), 4 (a) and 4(b) of the Explosives Substances Act, 1908.”

15. Moreover, the learned Judge of this Court, in paragraph No.11 of the order, has specifically observed that 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.

16.No doubt, in the said case, charge sheet has been laid only for the offence under the Explosives Substances Act along with 120(b) IPC and not under the provisions of MMDR Act.

17.As already pointed out, it is clearly evident from the said order that there were materials to frame charges for the offence under MMDR Act and in that situation, the learned Judge has negated the contention with regard to the jurisdiction of the Court. But in the case on hand, there are absolutely no materials available to frame the charges under the provisions of MMDR Act.

18.It is not the case of the prosecution that the accused have blasted the rocks with the help of the explosive substances and quarried the granite stones illegally and committed theft of granite stones and that thereby caused loss to the Government.

19. As already pointed out, the prosecution has raised necessary averments and produced the materials so as to attract the provisions of the Explosives Substances Act.

20.At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Pradeep S.Wodeyar's*** case and the relevant passages are extracted hereunder :

“Cognizance by the Special Court of offences under the IPC

58. The appellant had raised a contention that even if the Special Judge had the power to take cognizance of the offence, he could only have taken cognizance of offences under the [MMDR Act](#) and could not have taken cognizance (and conduct trial) of the offences under the provisions of [IPC](#). For this purpose, the counsel for the appellant referred to [Section 30B\(1\)](#) of the MMDR Act which states that the State Government may for providing speedy trial of offences under [Sections 4\(1\)](#) or [Section 4\(1A\)](#) of the MMDR Act constitute Special Courts. [Section 30B\(1\)](#) reads as follows:

“30 B. Constitution of Special Courts.-(1) The State Government may, for the purposes of providing speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1A) of [section 4](#), constitute, by notification, as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

.....

101.

....

(vi) The Special Court has the power to take cognizance of offences under MMDR Act 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 CrPC does not apply to proceedings under the MMDR Act;

(vii) Section 30B of the MMDR Act does not impliedly repeal Section 220 CrPC. Both the provisions can be read harmoniously and such an interpretation PART D furthers justice and prevents hardship since it prevents a multiplicity of proceedings;

21. Considering the above, it is very much clear that the Supreme Court has clarified that the Special Court has the power to take cognizance of the offences under MMDR Act along with offences of another enactment. But only condition is that it must be permissible under Section 220 Cr.P.C.

22. In the case on hand, it is not the case of the prosecution that the charges under MMDR Act were also added in the charge sheet along with the offences under the Explosives Substances Act. Admittedly, the charge sheet does not contain any offence under MMDR Act, but on the other hand, the offence under the Explosives Substances Act alone finds place therein.

23. As rightly contended by the learned counsel for the petitioners, even the name given to the Special Court would only suggest that the Special Court is to deal with the cases of offences in contravention of the provisions of the Mines and Minerals (Development and Regulation) Act.

24. As already pointed out, the Government Orders issued with respect to the constitution of the Special Court and the Government Order designating the Principal District Judge/District Judges as Special Judges and in the Circular issued by the High Court, the Special Court was formed only for dealing with the cases of offences in contravention of the provisions of the MMDR Act.

25.No doubt, in case if charge sheet is filed for the offence under MMDR Act along with the offences under Explosives Substances Act, then as per the dictum of the Hon'ble Supreme Court, the Special Court can take cognizance of the said offences subject to the provision of Section 220 of Cr.P.C.

26. As already pointed out, in the present case, charge sheet has been laid only for the offences under the Explosives Substances Act. Since the Special Court was constituted only to deal with the cases of offence in contravention of provisions of Mines and Minerals (Development and Regulation) Act, the Special Court has no jurisdiction to try the offences under the Explosives Substances Act.

27. Considering the above, this Court is of the view that the order transferring the case to the Special Court and the proceedings held in the Special Court including the framing of charges are not legal and as such, the same are liable to be quashed. Consequently, the Special Court is to be directed to return the case bundle to the Principal Sessions Court, Madurai and the learned Principal Sessions Judge, Madurai is to be directed either to retain the case on his file or to made over the case to the Additional District Judge in accordance with law.

28. In the result, the Criminal Revision Petition is allowed and the order transferring the above case from the file of the Principal Sessions Court, Madurai to the file of the Special Court to deal with the cases of offences in Contravention of the Mines and Minerals (Development & Regulation) Act and the proceedings held in the Special Court including framing of charges are hereby quashed. The Special Court is directed to return the case bundle to the Principal Sessions Court, Madurai and the Principal Sessions Judge, Madurai is directed either to retain the case or to made over the same to the Additional District Judge in accordance with law.

The petitioner is at liberty to file a discharge petition, if so advised, before the concerned Court. Consequently, connected Miscellaneous Petitions are closed.

12.10.2022

Index : Yes/No
Internet : Yes/No
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To:-

- 1.The Principal District and Sessions Judge, Madurai.
2. The Special Judge, to deal with the cases of offences in Contravention of the MM(D&R) Act Cases, Madurai.
- 3.The Inspector of Police,
Melur Police Station,
Melur, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.R.C.(MD) No.689 of 2022

K.MURALI SHANKAR, J.

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