



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.13846 of 2019

and

Crl.MP(MD)Nos.8445 and 8446 of 2019

Duraipandi : Petitioner/Sole Accused

Vs.

The State represented by
The Inspector of Police,
Chekkanoorani Police Station,
Madurai District.
Crime No.295 of 2009)

: Respondent /Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records relating to the order, dated 17/09/2019 made in CC No.59 of 2019, now converted to PRC No.11 of 2019 in Crime No.295 of 2009 on the file of the Judicial Magistrate Court No.II, Usilampatti and set aside the same.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

O R D E R

This criminal original petition is filed seeking to set the order, dated 17/09/2019 made in CC No.59 of 2019, now converted to PRC No.11 of 2019 in Crime No.295 of 2009 on the file of the Judicial Magistrate Court No.II, Usilampatti.

2.The petitioner is the sole accused in PRC No.11 of 2019, which was registered on the basis of the compliant given by the de-facto complainant, in Crime No.295 of 2009 for the offences punishable under sections 304(ii), 286, 337, 338 IPC and sections 4 and 5 of the Indian Explosives Act.

3.The case of the prosecution is that on 07/07/2009, the de-facto complainant along with his co-workers were working in the fire works Unit. At about 6.30 pm, there was heavy explosion due to the mishandling of fire works by an unknown worker. Due to the explosion, fire spread over the factory and caused loss of life to about 14 persons and several persons have also got injury. After



completing the investigation, the police has filed a final report setting out the very same facts. It was taken cognizance by the committal court under section 304(ii) IPC.

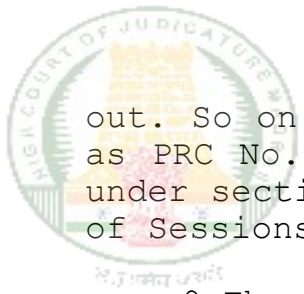
4.Finding that it is exclusively triable by the Court of Sessions, CC No.59 of 2012 was converted into PRC No.60 of 2012 and further proceedings were ordered, by order, dated 17/09/2012. That was challenged by the petitioner by way of filing Crl.OP(MD)No.1509 of 2013 and summon was issued to the petitioner and that was challenged by filing Crl.OP(MD)No.1509 of 2013 and that was allowed by this court, on 05/03/2018, by directing the District Munsif-cum-Judicial Magistrate, Usilampatti to take the case on file for the offences mentioned in the final report and if for any reason, it comes to the conclusion that it is necessary to alter the section of law, proper proceedings must be conducted at the time of framing of charges.

5.In pursuance of the above said order, the District Munsif-cum-Judicial Magistrate, Usilampatti, taken cognizance of the offences under sections 304(ii), 286, 337, 338 r/w section 5 of the Indian Explosive Act, and again it was taken on file in PRC No.11 of 2019. So challenging the above said case, again this petitioner moved this court.

6.Heard both sides.

7.It is an unfortunate case that took place in 2012, which claimed the life of more than 14 persons and caused injury to several persons, has not seen light of the conclusion of the trial so far and on every occasion trouble has arisen. Originally, FIR was registered for the offences under sections 304(ii), 286, 337, 338 IPC r/w section 5 of the Explosives Act, on 08/07/2009 and final report was filed before the Magistrate Court by deleting the offence under section 304(ii) IPC and that was objected by the then Magistrate. He opined, on going through the records that 304(ii) IPC is clearly made out. He directed the Investigating Officer to file an alteration report. In pursuance of which, alteration report was also filed and that was challenged by the accused before this court, by way of filing Crl.OP(MD)No.1509 of 2013 and that was heard by this court, passed an order, on 05/03/2018 directing the concerned Judicial Magistrate to take cognizance of the offences, as mentioned by the police, in the final report and if during the course of framing charges, the Magistrate was given liberty to adopt the process and frame the charges. So on that ground, cognizance under section 304(ii) IPC was set aside.

8.Again the matter went to the learned trial Judge, again on going through the records, after taking the same in CC No.59 of 2019, once again opined that in the facts and circumstances of the case and in the light of the materials that have been collected



out. So on that ground, he converted the case and numbered the same as PRC No.11 of 2019 and continued the proceedings for the offence under section 304(ii) IPC, which is exclusively triable by the Court of Sessions. So that was challenged by way of filing this petition.

9.The learned Senior counsel appearing for the petitioner would straightway submit that the committal court has carried away purely on sympathy way, since more than 14 persons lost their life in the occurrence. According to him, sympathy should not be taken into account for depriving the right of accused persons. According to him, absolutely, no material is available on record to attract the offence under section 304(ii) IPC.

10.Section 304 IPC reads as follows:-

"304. Punishment for culpable homicide not amounting to murder.-Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

11.To attract the main ingredient of section 304(ii) IPC, the prosecution must prove the knowledge on the part of the accused that their act likely to cause death to others. This is a core issue. Whether there was knowledge on the part of the accused can be taken into consideration at this stage, is a point for consideration. Knowledge attributed to a particular offence can be gathered only from the circumstances and the conduct of the parties. Since, it is purely a mental state of the accused, that cannot be transferred in the form of text in the final report. It requires thorough process of reasoning etc. So it can be undertaken only during the course of trial and this is too a premature stage, of course, to set aside the proceedings passed by the trial Judge. Ample opportunity is available to the petitioner, after committal proceedings is over to put forth his argument or defence. At this juncture, the court may consider the same on merits and frame appropriate charge. There is no material to frame the charge for the offence under section 306(ii) IPC against the accused, the court is well within its power to remit the matter back to the trial Judge/the concerned Magistrate. So such an opportunity is very well available to the petitioner. Simply because the right



of appeal before the Sessions Court is likely to be lost, if the trial is conducted by the Sessions Court, may not be a ground for setting aside the order.

12. So, I am of the considered view that the offence of such nature requires thorough due process and on technicalities, this matter should not be dealt with by this court. I find absolutely no merit in this petition and accordingly, it is liable to be dismissed.

13. In the result, this criminal original petition is **dismissed**. Of course, liberty is available to the petitioner to put forth his defence at the time of framing charges, at the appropriate time. Since it is a old matter, there shall be a direction to the Committal Court to complete the process within a period of two months from the date of receipt of a copy of this order and the compliance report must be submitted to the Registry. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/06/2022

Sub Assistant Registrar (CS)

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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 No.II,
Usilampatti.

2. The Inspector of Police,
Chekkanoorani Police Station,
Madurai District.

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

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-17429[F] dated 08/04/2022)

Crl.O.P. (MD) Nos.13846 of 2019

06/04/2022

RD(22.06.2022) 4P 5C

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