



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.15277 of 2019

and

Crl.MP(MD)Nos.9126 and 9127 of 2019

WEB COPY

S.Arumugam

: Petitioner/Sole Accused

Vs.

State through
The Inspector of Police,
Town Police Station,
Tirunelveli District.
(Crime No.122 of 2019)

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.1444 of 2019 on the file of the Judicial Magistrate No.IV, Tirunelveli and quash the same.

For Petitioner : Mr.K.Prabhu

For Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor

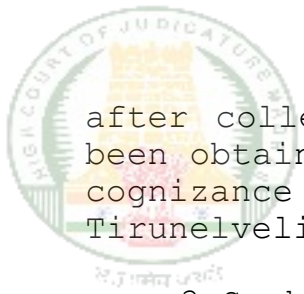
O R D E R

This criminal original petition has been filed by the petitioner seeking quashment of the CC No.1444 of 2019 on the file of Judicial Magistrate No.IV, Tirunelveli.

2.The case of the prosecution in brief:-

The de-facto complainant is the Special Sub Inspector of Police, attached to the respondent police station. He along with the team of police officials inspected the Raj Agency located in shop No.319, Ratha Veedi, Tenkasi, on 12/04/2019 at about 2.00 pm, at that time, this petitioner was found in the shop. On enquiry, this petitioner informed that the license-holder is his brother by name Palaniappan and fire crackers worth about Rs.2,00,000/- are available in the shop. Finding that the no proper licence by the petitioner or the above said Palaniappan were obtained all the crackers were seized. Based upon which, the case in Crime No.122 of 2019 for the offence under section 9(B)(1)(b) of the Explosives Act, 1984 was registered and the investigation has also been ordered and

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after collecting the materials, finding that no proper licence has been obtained, the final report has been filed and it has been taken cognizance in CC No.1444 of 2019 by the Judicial Magistrate No.4, Tirunelveli.

3. Seeking quashment of the criminal proceedings, this petition has been filed on the sole ground that on the date of the inspection, the petitioner's brother by name Palanisamy was the licence holder and applied renewal of the licence and was also pending before the appropriate authorities.

4. Heard both sides.

5. It is not in dispute that the licence is required under section 5 of the Explosives Act, 1884 for storing, selling and possessing fire crackers and if no permission has been obtained, it is punishable under section 19(B) (1) (b) of the Act.

6. Now we will straightway go to the document that has been filed by the petitioner. The renewal licence, dated 03/11/2015 was standing in the name of Palaniappan, who is the brother of the petitioner. It was periodically renewed, by order, dated 03/11/2015. Renewal Licence in COP./TIN/78/2011 was extended upto 31/03/2016. That renewal was effected after going through the proper procedure and by producing relevant documents and 'No Objection certificate' from the Fire Department and as per the licence, he was permitted to store 25 kgs of explosives. Later in 2017, he filed WP(MD)No.19158 of 2017 seeking a direction to the Commissioner of Police, Tirunelveli to renew the fire crackers licence and that was ordered by making the authorities to consider the representation. He was directed to re-submit his licence renewal application to the first respondent and on such submission, the first respondent was directed to consider the same and pass orders on merits. Till then, namely 20/01/2018, the temporary licence was ordered to be extended. But later, it appears that show cause notice was issued on 11/08/2018 and subsequently, a show cause notice was issued and before that, by order, dated 09/04/2019, the licence was ordered to be cancelled, after enquiry in and considering the representation in pursuance of the order passed by this court in WP(MD)NO.19158 of 2019. Later he made a representation, on 28/04/2018 seeking renewal of licence. He has also submitted that he paid proper fee, on 28/02/2019. He made a request to renew the licence upto 31/03/2020. But what happened after that is not clear on record. Even though 'No Objection Certificate' has been issued by the Fire Service Department, on 10/04/2019, whether that was subsequently renewed or not is not clear on record.

7. The learned counsel appearing for the petitioner would submit that on the date of the alleged inspection, the renewal of licence was pending with the concerned authorities. Since the renewal



the offence cannot be stated to have been made out. A similar question was answered in the affirmative in the case of Sammantham Vs. State rep. By the Inspector of Police, Tindivanam Police Station, Villupuram District, on 01/10/2019.

8. When the matter was reserved for order, during the course of perusal of the records, this court entertained doubt with regard to the certificate issued as to whether on the date of the alleged occurrence, the licence that was granted to the brother of the petitioner was in existence or expired. The petitioner can take advantage of the order passed in Crl.OP No.26412 of 2019 only if the petitioner is able to establish that on the date of the alleged occurrence, even though the licence that was granted in favour of his brother expired, but the renewal application was applied even before the expiry date and pending before the concerned authority. Because as per the rules, renewal of licence application must be submitted before the expiry of the licence period. So this was an observation made by this court in Crl.OP(MD)No.4215 of 2017, dated 12/06/2017, wherein this court has observed that as per the Rule 112 (5) of the Explosives Rules, 2008, renewal application must be submitted on or before the date of expiry of the licence. If that was so, then the renewal deemed to be in force until such date as the licensing authority renews the licence or until the intimation is communicated with reference to the renewal.

9. In the light of the above said facts, now we go to the factual aspect. The date of occurrence is stated to be on 12/04/2019. Perusal of the typed set of papers shows that the fee for renewal of licence in COP/TIN/78/2011 for the period from 01/04/2019 to 31/03/2011 was ordered on 22/02/2019 well within the date of the expiry of licence. No Objection Certificate was also issued by the Fire Service Department, on 09/06/2019. Originally, the licence was issued on 24/10/2011 and that was periodically extended. So perusal of the renewal dates shows that it was renewed upto 31/03/2018. Then it was renewed from 01/04/2018 to 31/03/2019 and after that, there is a gap between 01/04/2019 to 20/10/2020. So the learned counsel appearing for the petitioner would submit that for this period only, the above said application was pending with the concerned authorities. This is with reference to the shop, which is owned by the petitioner and the occurrence shop was owned by his brother.

10. In respect of his brother, the original licence was obtained on 03/11/2015 upto 31/03/2019. From 01/04/2018, the licence was not approved. But however, fee was paid for the period from 01/04/2019 to 31/03/2020. The renewal was applied on 28/02/2019 which is before the expiry date, for the period from 01/04/2019 to 31/03/2020. So, No Objection Certificate was also issued by the Fire Service Department.

11. It is seen that on the date of the alleged occurrence, the application for renewal of licence was pending and the fee was also paid. So,



automatically the judgments cited by the learned counsel appearing for the petitioner shall stand applicable. In the light of the above facts, this petition is liable to be allowed.

12. In the result, this criminal original petition is **allowed**. The impugned proceedings in CC No.1444 of 2019 pending on the file of the Judicial Magistrate No.IV, Tirunelveli is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Protocol)

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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.IV,
Tirunelveli.
2. The Inspector of Police,
Town Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-22240[F] dated 28/04/2022)

Crl.O.P. (MD)No.15277 of 2019
28/04/2022

MGJ(14.06.2022) 4P 5C