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Crl.O.P.No.4472 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM

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

Crl.O.P.No.4472 of 2021

and

Crl.M.P.No.2840 of 2021

Murugan

... Petitioner

-Vs-

1. The State represented by
Deputy Superintendent of Police,
Chengam Sub Division,
Tiruvannamalai District.
Crime No.399 of 2013.
2. G.Kuppusamy
(Impleaded as per order dated 17.08.2023 in
Crl.M.P.No.12437 of 2023 in Crl.O.P.No.4472 of 2021)

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C.
praying to call for the entire records pursuant to the Spl.S.C.No.02 of
2020 on the file of the Special Court for the Exclusive Trial of SC and
ST Act Cases, Tiruvannamalai and quash the same.



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For Petitioner : Mr. M.Mariappan
For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)
For R2 : No appearance

ORDER

This petition has been filed to quash the proceedings in Spl.S.C.No.02 of 2020 on the file of the Special Court for the Exclusive Trial of SC and ST Act Cases, Tiruvannamalai and quash the same.

2. The case of the prosecution is that, first accused, who is a licensed seller of crackers (retail License No.09 of 2004) running a shop at No.56 Raja Street Chengam and his warehouse is also located in the back side of the shop. On 04.10.2013 at bout 03.00.p.m., his warehouse started to fire and exposed. Thereafter, defacto complainant came to the place of occurrence and enquired about the incident. During the enquiry, it was found that, first accused had some explosive powder without license and started to make crackers without getting permission from the concerned authority by employing inexperienced and young persons for manufacturing of the crackers. Due to the said incident,



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three persons died and eight persons sustained severe injuries. On receipt of the said complaint, first respondent registered FIR in Crime No. 399 of 2013 for the offence under Sections 286, 304(ii) of IPC read with Section 9 B(I)(A) of Indian Explosive substances Act, 1984 subsequently, offences has been altered into Sections 286, 304(ii) of IPC read with Section 9 B(I) (A) of Indian Explosive Act and under Section 3 & 5 of Explosives Substances Act read with Section 109 of IPC and Section 3(2)(v) of SC/ST (Prevention of Atrocities Act), 1984. After completion of investigation, first respondent filed final report and the same has been taken cognizance in Spl.S.C.No.02 of 2020. Now, the case has been transferred to District and Sessions Judge, Tiruvannamalai in S.C.No.161 of 2021. There are totally two accused and the petitioner is arrayed as second accused. First accused died and as such, all the charges were abetted against the deceased.

3. Section 5 of Explosive Substances Act, 1908 reads as follows:

Punishment for making or possessing explosives under suspicious circumstances.—Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to



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give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—1[5. Punishment for making or possessing explosives under suspicious circumstances.—Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—" ‘

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.]

4. It is the submission of the learned counsel for the petitioner that, petitioner is a license holder to sell sulphur from the concerned authorities and therefore, he had not violated any terms and conditions as contemplated under Section 5 of Explosive Substances Act. He is an authorized party to sell the Sulphur and other explosive raw material in his area. That apart, except the confession statement, there is no peace of



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evidence against the petitioner that he was in illegal possession of explosive substances.

5. On perusal of the statement recorded from the District Revenue Officer, he categorically deposed that, petitioner is a valid licensee to sell sulphur in the places comprised in S.No.20/11A in Patta No.561 (0.26.0 hectare) situated at Manalurpet, Tirukkivilur, Villupuram District for the period from 06.12.2012 to 30.11.2013 by a proceedings in பி.மு. (சு.3)/36993/2011. Therefore, it is clear that petitioner has got license from the competent authority to possess and sell sulphur at the relevant point of time.

6. In so far as other charges are concerned, it was only as against the first accused and now he is died. So far as petitioner is concerned, he was only charged for the offence under Section 5 of Explosive Substances Act. It is also cannot be sustained as against the petitioner, since, petitioner is a licensee to possess and sell the sulphur. Unfortunately, there were many persons died and so many persons sustained injuries. Petitioner is no way responsible for the accident



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occurred in the shop owned by the first accused. Thus, this Court is of the view that, the proceedings in S.C.No.161 of 2021 is not sustainable as against the petitioner and it liable to be quashed.

7. Accordingly, this Criminal Original Petition is allowed. The proceedings in S.C.No.161 of 2021 on the file of the learned District and Sessions Judge, Tiruvannamalai is hereby quashed as against the petitioner. Consequently, connected miscellaneous petition is closed.

10.10.2023.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

Sma



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To
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1. Deputy Superintendent of Police,
Chengam Sub Division,
Tiruvannamalai District.

2. District and Sessions Judge,
Tiruvannamalai.

3. The Public Prosecutor,
Madras High Court.



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