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Crl.RC.No.398 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.398 of 2017

M.Duraisamy

...Petitioner/Appellant/Accused No.1

.Vs.

State Rep.by

The Inspector of Police

Mahudanchavadi Police Station

Salem District.

... Respondent/Respondent/ Complainant/

Crime No.216 of 2012.

Criminal Revision filed under Sections 397 & 401 of the Code of Criminal Procedure, setting aside the judgment dated 28.11.2016 in Crl.A.No.59 of 2016, on the file of II Additional District and Sessions Judge, Salem by confirming the judgment passed in S.C.No.296 of 2014, on the file of Assistant Sessions Court, Sankari dated 30.03.2016.

For Petitioner Mr.R.Marudhachalamurthy

For Respondent Mr. L.Baskaran
Government Advocate (Crl.side)



ORDER

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This Criminal Revision Case has been filed against the judgement and order passed by the II Additional District and Sessions Judge, Salem in Crl.A.No.59 of 2016, dated 28.11.2016, confirming the judgment and order passed by the Assistant Sessions Judge, Sankari in S.C.No.296 of 2014, dated 30.03.2016, convicting the petitioner for offence under Section 5 of the Explosive Substances Act, 1908 and sentencing him to undergo one year simple imprisonment and to pay a fine of Rs.10,000/- and in default to undergo three months simple imprisonment.

2.The case of the prosecution is that the Inspector of Police and his police party were on a patrolling duty on 24.02.2012 at about 2.30 pm., at Vellalapuram Village. They found the petitioner moving in a suspicious manner, therefore they caught the petitioner and enquired him and the petitioner is said to have admitted that he is in possession of explosive substances viz., 3 live electronic detonators and 50 safety fuse wires. The same was recovered from the petitioner and it was found that the petitioner was in possession of these explosive substances without any valid license.



3.The detonator was in capacitated and the same was recovered along with the fuse wires. An FIR (Ex.P-8) came to be registered by PW-9 in Crime No.216 of 2012. The investigation was taken up by PW-12. There were totally two accused persons shown in the FIR and the petitioner was ranked as A-1. The statements were recorded from the witnesses under Section 161(3) Cr.PC., and the necessary reports were also collected from the experts. On completion of the investigation, the final report was placed before the District Collector, Salem. The District Collector, through proceedings dated 08.07.2013, accorded sanction to PW-14, to file the final report and to prosecute the case. Accordingly, the final report was filed before the Judicial Magistrate No.II, Sankari.

4.The Trial Court framed charges against the petitioner and another for offence under Section 5 of the Explosive Substances Act and also under Section 9(B) of the Explosives Act.

5.The prosecution examined PW-1 to PW-14 and marked Exs.P-1 to P-16. The incriminating evidence that was collected during the course of trial was put to the accused persons and they denied the same as false.



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6.The Trial Court on considering the facts and circumstances of the case and on appreciating the oral and documentary evidence, came to a conclusion that the prosecution has made out the case beyond reasonable doubts as against the petitioner and accordingly, convicted and sentenced the petitioner for offence under Section 5 of the Explosive Substances Act. A-2 was acquitted from all charges.

7.Aggrieved by the judgment and order passed by the Trial Court, the petitioner filed an appeal before the II Additional District and Sessions Judge, Salem and the same was taken on file in Crl.A.No.59 fo 2016. The Appellate Court on reappraisal of evidence and after considering the findings of the Trial Court, confirmed the judgment and order passed by the Trial Court through judgment dated 28.11.2016. Aggrieved by the same, the present Criminal Revision Case has been filed before this Court.

8.Heard Mr.R.Marudhachalamurthy, learned counsel for the petitioner and Mr. L.Baskaran, learned Government Advocate (Crl.side) appearing on behalf of the respondent.



9.This Court has carefully considered the submissions made on either side and the materials available on record.

10.On carefully going through the evidence and the documents that were marked before the Trial Court, it is seen that the petitioner was in possession of Explosive Substances and he was in possession of the same without any valid license. To that extent, the findings of both the Courts below is unassailable.

11.To constitute an offence under Section 5 of the Explosive Substances Act, 1908, the prosecution has to prove three ingredients and they are ;

- (I) That the substance in question is explosive substance.
- (II) That the accused makes or knowingly has in possession or under his control explosive substance ; and
- (III) That he does so under such circumstances as to give rise to a reasonable suspicion that he is not doing so for a lawful object.

12.The burden of proof of the above three ingredients is solely on the prosecution. The moment the prosecution has discharged that burden , it shifts to the accused person to show that he was making or possessing the explosive substance for a lawful object. Useful reference can be made to the judgment of the



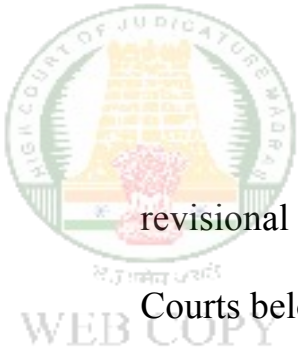
Apex Court in this regard in ***Mohamad Usman Mohammad Hussain Maniyar***

and Ors .vs. The State of Maharashtra, reported in *AIR (1981) SC 1062*.

13.In the instant case, the first two ingredients has been proved as already stated supra. The third ingredient has not been proved by the prosecution against the petitioner. The prosecution no where has proved that the petitioner, who was in possession of the explosive substance had created the reasonable suspicion that he is possessing the same for an unlawful object. Even as per the confession statement that was recorded from the petitioner, it is clear that the petitioner was having the explosive substance to blast the rock inside his well.

14.Both the Courts below did not consider this crucial aspect and they went ahead and convicted and sentenced the petitioner merely on the ground that the petitioner was possessing explosive substances without any valid license. The third ingredient has not been proved by the prosecution and the offence under Section 5 of the Explosive Substances Act, 1908, is not made out.

15.In the light of the above discussion, this Court finds that the conviction and sentence imposed by both the Courts below against the petitioner suffers from illegality and the same is liable to be interfered by this Court in exercise of its



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revisional jurisdiction. Accordingly, the judgment and order passed by both the Courts below are hereby set aside.

16.In the result, this Criminal Revision Case stands allowed. During the pendency of this criminal revision, the sentence was suspended by this Court by an order dated 17.03.2017 in Crl.MP.Nos.3678 and 3877 of 2017 in Crl.Rc.No.398 of 2017. Since the petitioner is acquitted from the charge, the bail bond shall stand cancelled and fine amount, if any, paid by the petitioner shall be refunded.

02.03.2023

Index : Yes
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes
kp

To
1.II Additional District and Sessions Judge,
Salem

2.Assistant Sessions Court,
Sankari.

3.The Inspector of Police
Mahudanchavadi Police Station
Salem District.

4.The Public Prosecutor
High Court, Madras.



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N. ANAND VENKATESH, J.

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