



Crl.O.P.(MD)No.475 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2023

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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.475 of 2020

1.Desingurajan

2.Thirupathi @ Baskaran

... Petitioners

Vs.

1.The State represented by
The Inspector of Police,
Amathur Police Station,
Virudhunagar District.
(Crime No.143 of 2014)

2.Chinnaraj

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the Charge Sheet in S.C.No.171 of 2018 on the file of the Additional District and Sessions Court, Virudhunagar and quash the same as illegal so far as the petitioners are concerned.

(Prayer portion amended as per order of the Court dated 19.02.2020 in Crl.M.P.(MD)No.696 of 2020 in Crl.O.P.(MD)No.475 of 2020)



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For Petitioners : Mr.J.Karthikeyan
For R1 : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)
For R2 : No Appearance

ORDER

This Criminal Original Petition has been filed to quash the Charge Sheet in S.C.No.171 of 2018 on the file of the Additional District and Sessions Court, Virudhunagar as against the petitioners herein.

2.According to the petitioners, they have been arrayed as A25 and A28 in Cr.No.143 of 2014, which was registered by the first respondent police, for the offence under Sections 304, 338 IPC and Sections 3 & 4 of the Explosive Substances Act. The defacto complainant gave a complaint stating that black fire rope manufacturing factories were running illegally at Kanmaipatti Colony and on 27.06.2014, at 05.30 pm., an explosion took place, due to the mishandling of Black Fire Rope factory owned by the first accused. Due to the explosion, fire spread over nearby factories and caused loss of life to many people. Due to the



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factory building collapse, six people died on the spot and 10 persons were injured. Based on the complaint, the first respondent registered a case and after investigation, filed charge sheet as against 30 accused persons. Now, the case is pending on the file of the Additional District and Sessions Court, Virudhunagar in S.C.No.171 of 2018. The first petitioner is the proprietor of Bhathirakalli Fire Workds and he is doing fire crackers business without any violations. The first petitioner neither committed any offence nor involved in the crime as alleged by the prosecution. The allegation as against the first petitioner is that he purchased black fire rope from the factory running by A1 illegally and abetted the crime committed by the other accused persons. The second petitioner is the proprietor of Thirupathi & Co., and he is doing a business by selling explosive raw materials to the fire cracker manufacturing having valid licence from the concerned authorities and he is doing business by following the norms and regulations as framed by the Government. The second petitioner neither committed any offence nor involved in the crime as alleged by the prosecution. The first respondent implicated the second petitioner by alleging that he was selling black fire rope to the illegally running fire rope factory by A1 and



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abetted the crime committed by the other accused persons. In order to attract the offence under Section 9B(1)(b) r/w 12 of the Explosive Act, there is no ingredients in FIR as well as in charge sheet. Therefore, the petitioners need not face the trial and pending charge sheet in S.C. No.171 of 2018 is liable to be quashed.

3.No counter was filed by the respondents.

4.The learned counsel appearing for the petitioners would contend that the petitioners have been arrayed as A25 and A28 in the final report. The allegation as against them is that they supplied materials to the factory running illegally by A1 and thereby, they also abetted to commit the above said offence. In fact, the petitioners are licence holders and they did not commit any offence as alleged in the charge sheet. The first respondent, without conducting proper investigation, mechanically filed the charge sheet as against the petitioners. Even according to the charge sheet, there is no ingredients to attract the offence as alleged by the prosecution. Therefore, the case as against the petitioner in S.C.No.171 of 2018 is liable to be quashed. In support of his contention, the learned



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counsel for the petitioner relied upon the judgment of this Court in a case of Jayapal Vs. State by Inspector of Police, Kothavalchavadi Police Station, Chennai made in Crl.O.P.No.30961 of 2019 and decisions of Hon'ble Supreme Court, in a case of A.U.Raghurama Panicker Vs. Bijil and another reported in 2021 SCC online Ker 15614 and in a case of Kahkashan Kausar Alias Sonam and others Vs. State of Bihar and others reported in (2022) 6 SCC 599.

5.The learned Government Advocate(Crl.side) appearing for the first respondent would contend that the petitioners along with others committed serious offence and due to illegal acts of the petitioners and others, 6 persons died and 10 persons injured. Already elaborate investigation was done by the investigating authority and as per investigation, there are prima facie materials available as against the petitioners. Hence, at this stage, this petition is liable to be dismissed and the petitioners have to face the trial.

6.Heard both sides and perused the materials available in the records.



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7. On perusal of records reveals that in this case, due to fire explosion, six persons died and 10 persons injured. Hence, the second respondent lodged a complaint and based on the same FIR registered and after elaborate investigation, final report filed before the learned Judicial Magistrate No.I, Virudhunagar in PRC.No.22 of 2017 and the same was committed to the Sessions Court and now the case is pending on the file of the Additional District and Sessions Court, Virudhunagar in SC. No.171 of 2018.

8. According to the petitioners, there is no averments to constitute to constitute the offence under Section 9B(1)(b) r/w 12 of the Explosive Act. According to the respondents, the petitioners abetted to commit the offence with other accused. The first respondent investigated the case and filed final report. As per final report, prima facie materials available as against the petitioners. Since the offences are grave in nature, without trial the case cannot be decided. As far as the judgment relied on by the petitioners' counsel in a case of Jayapal Vs. State by Inspector of Police, Kothavalchavadi Police Station, Chennai made in CrI.O.P.No.30961 of



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2019 is concerned, this Court quashed the proceedings based on the nature of offence by holding that there is no allegations as against the accused and he was not present at the place of occurrence. But, in the case on hand, the allegation as against the petitioners is that they illegally sold material to A1 and thereby, they abetted to commit the offence. Therefore, the above said case law will not be applicable to the present facts of the case.

9.As far as judgment in a case of in a case of A.U.Raghurama Panicker Vs. Bijil and another reported in 2021 SCC online Ker 15614 is concerned, the prosecution has to mention about the particular violation of conditions. The petitioners herein abetted to commit the offence by other accused and thereby, the above said case law will not be applicable to the present facts of the case. As far as omnibus and bald allegations are concerned, the petitioners' counsel relied upon the judgement in a case of Kahkashan Kausar Alias Sonam and others Vs. State of Bihar and others reported in (2022) 6 SCC 599. The said case law also will not be applicable to the present facts of the case, since this case is pertaining to the explosives and not a case of general or omnibus allegations.



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10. Since there are prima facie materials available as against the petitioners, they have to face the trial. At this stage, this Court is declined to quash the proceedings. At this juncture, the learned counsel appearing for the petitioners requested to dispense with the personal appearance of the petitioners before the trial Court. As far as dispensing the personal appearance is concerned, it is for the trial Court to decide. If any application filed by the petitioners in this regard, the trial Court has to consider the same, in accordance with law. If there are no materials as against them in respect of particular offence then, they can approach the trial Court by way of filing discharge application before framing charges. Accordingly, this criminal original petition is dismissed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Additional District and Sessions Court,
Virudhunagar.
- 2.The Inspector of Police,
Amathur Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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