



Crl.R.C(MD)No.148 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.148 of 2019

and

Crl.M.P(MD)Nos.2342 & 2343 of 2019

Maruthupandi

... Petitioner/Accused No.1

Vs.

The State represented by,
The Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District.
(Crime No.497 of 2016).

... Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the entire records pertaining to the order passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur in Cr.M.P.No.2253 of 2017 in S.C.No.78 of 2017 dated 03.10.2018 and set aside the same and consequently the petitioner may be discharged from all the charges arisen in the said case.

For Petitioner : Mr.S.M.Anantha Murugan

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



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ORDER

This revision has been filed as against the order passed in Cr.M.P.No.2253 of 2017 in S.C.No.78 of 2017 dated 03.10.2018, on the file of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur, thereby dismissed the petition filed for discharge.

2.The case of the prosecution is that the petitioner is the owner of the commercial complex situated at PKN Road, Sivakasi and let out the complex to many persons for doing business. Two shops had been let out in favour of the second accused to do fireworks raw material business. While being so, on 02.07.2016 at about 09.15 p.m., when the second accused was switching on the light in his shop, there was a fire spark due to the electricity leakage from the power line and a fire accident happened. In the said accident, four persons died and four persons sustained injury. On the complaint lodged by the adjacent shop owner, the respondent registered the F.I.R in Crime No.497 of 2016 for the offences under Section 3 of the Explosive Substances Act, 1908, Section 3 of the Tamil Nadu Public Property [Prevention of Damages and Loss] Act,



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1992 and Sections 337 and 304 of I.P.C as against the petitioner and other accused.

3.After completion of the investigation, the respondent filed a final report for the offences under Sections 286, 337 and 304 of I.P.C, Section 9B(1)(a) of the Explosives Act, 1884 and Section 3 of the Tamil Nadu Public Property [Prevention of Damages and Loss] Act, 1992 as against the petitioner and other accused.

4.There are totally five accused, in which the petitioner is arraigned as the first accused. The second accused is the owner of Muthu Trading Company. Accused Nos.3 to 5 are the employees of the second accused. Before framing charges by the trial Court, the petitioner filed a petition in Cr.M.P.No.2253 of 2017 in S.C.No.78 of 2017 on the file of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur, to discharge him from all the charges on the ground that he is the owner of the commercial complex which was let out in favour of the second accused. The second accused alone was running the cracker shop and selling chemicals in the name of Muthu Trading Company. It is a Proprietor concern and the petitioner is no way connected with the business



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conducted by the second accused. Except the ownership of the commercial complex, the petitioner is nothing to do with the allegations levelled as against the petitioner. Even according to the case of the prosecution, the second accused was running a fire workshop and due to electricity leakage, there was a fire accident while switching on the light. Therefore, no charge is made out as against the petitioner, since there is absolutely no *mens rea* on the cause of the petitioner for causing such an unfortunate accident. However, the same was dismissed. Aggrieved by the same, the present revision.

5.The learned counsel appearing for the petitioner would submit that except the ownership of the commercial complex, the petitioner is nothing to do with the allegations as alleged by the prosecution. Admittedly, the second accused was let out of two shops owned by the petitioner for rent. In the said two shops, the second accused was running a cracker shop and selling chemicals in the name and style of Muthu Trading Company. The petitioner, neither owner cum Proprietor of the Muthu Trading Company nor an employee of the second accused shop. The prosecution had examined 40 witnesses, out of which, no one had spoken about any



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overt act of the petitioner except ownership of the commercial complex. Therefore, no charge is made out. Unfortunately, the trial Court, without considering the same, dismissed the petition to discharge the petitioner.

6.The respondent filed a counter-affidavit.

7.The learned Additional Public Prosecutor appearing for the respondent would submit that there are totally five accused, in which the petitioner is arraigned as first accused. On 02.07.2016, there was an explosion in the building owned by the petitioner, which led to the death of four persons and properties also damaged including vehicles. Therefore, the respondent registered the F.I.R in Crime No.497 of 2016 and after completion of the investigation, the respondent filed a final report and framed charges for the offences under Sections 286, 337 and 304 of I.P.C, Section 9B(1)(a) of the Explosives Act, 1884 and Section 3 of the Tamil Nadu Public Property [Prevention of Damages and Loss] Act, 1992 as against the petitioner and other accused. The same has been taken cognizance by the trial Court in S.C.No.78 of 2017. L.W.1 categorically stated that the petitioner only had given the building to the second



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accused to run the business illegally. Therefore, the petitioner herein had knowledge that the second accused had no license to run the firecracker business. Therefore, there are incriminating materials as against the petitioner to convict him of all the charges. That apart, only after testing the evidence of the witnesses, the Court can come to a conclusion with regard to the involvement of the petitioner in the crime. Therefore, the trial Court rightly dismissed the petition filed by the petitioner and the same does not warrant any interference by this Court.

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.There are totally five accused, in which the petitioner is arraigned as first accused. The case of the prosecution is that on 02.07.2016, there was an explosion in the building owned by the petitioner, which led to the death of four persons and properties were also damaged including vehicles. There was a leakage of electricity power in the shop run by the second accused. Without knowing the same, the second accused switched on the light and there was a fire spark due to the electricity leakage from the power



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line and a fire accident happened. Accused Nos.3 to 5 are the employees of Accused No.2. Insofar as the petitioner is concerned, he is the owner of the entire commercial complex, in which two shops were let out in favour of the second accused. In the rented shop, the second accused had been running a cracker shop and selling chemicals in the name and style of Muthu Trading Company, in which Accused Nos.3 to 5 are working as employees under the second accused. As far as the petitioner is concerned, he owned the commercial complex and he is neither a proprietor/partner of Muthu Trading Company nor an employee of the Muthu Trading company. Except the relationship of ownership of the building, the petitioner is nothing to do with the business run by the second accused. Even according to the case of the prosecution, when the second accused switched on the light, there was fire sparked due to electricity leakage from the power line and got fire. Unfortunately, four persons died and the properties were also got damaged. Now, the petitioner is facing charges along with other accused for the offences under Sections 286, 337 and 304 of I.P.C, Section 9B(1)(a) of the Explosives Act, 1884 and Section 3 of the Tamil Nadu Public Property [Prevention of Damages and Loss] Act, 1992.



10.It is relevant to extract the provision under Section

304 of I.P.C, which 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.Thus, it is clear that for charging a person under Section 304 of I.P.C, the person must have the intention to cause bodily injury as it is likely to cause death or the knowledge that the injury would cause death. Therefore, he must have *mens rea* to cause the culpable homicide. *Mens rea* is an essential ingredient of a criminal offence. Doubtless, a statute may exclude the element of *mens rea*, but it is a sound rule of construction adopted in England



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and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded *mens rea*. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of the guilty mind is excluded from the ingredients of an offence. *Mens rea* by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. It would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof.

12.Further, the most important consideration upon a trial for this offence is the intention or knowledge with which the act which caused death was done. The intention to cause death or the knowledge that death will probably be caused is essential and is that to which the law principally looks. It is of the utmost importance that those who may be entrusted with judicial powers should clearly understand that no conviction ought to take place unless such intention or knowledge from the evidence be concluded to have



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really existed, as observed by the Honourable Supreme Court of India.

13. Therefore, there is no intention on the part of the petitioner either to cause death or to cause bodily injury as is likely to cause death. He owned the commercial complex, in which two shops were let out in favour of the second accused. In this regard, it is relevant to rely upon the Judgment in Shamsheer Khan Vs. State (NCT of Delhi) reported in 2000 (8) SCC 568, in which, the Honourable Supreme Court of India held as follows:-

"Learned counsel for the respondent State made an endeavour to bring the case within the ambit of the third alternative, as the case cannot possibly be brought under any of the other two. The act proved to have been committed by the appellant alongwith Babu Khan in this case is manufacture of explosive substances like bombs. Hence what is to be established is, the above act must have been done with the knowledge that such act by itself was likely to cause death. If some other act had intervened which the offender did not do consciously which triggered the explosions that could not be counted as the act for that offender. No evidence had been let in by the prosecution to show that mere



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manufacture of such bombs is likely to cause death of any person, nor any evidence for showing that appellant had the knowledge that by manufacturing bombs death would possibly be caused to any human being without any other act being done.

We may also point out that prosecution has not brought out any circumstance by which the Court could remotely attribute knowledge to the appellant that by manufacturing and possessing bombs death of any person was a likely consequence. By manufacturing a bomb, alone no one can normally think that it would explode without anything more done. Here something more would have happened which caused the explosion, what was that additional act is unknown to us. At any rate there is no material to show that the appellant had done that additional act”.

Thus, it is clear that such an act must have been done with the knowledge that such an act by itself was likely to cause death. If some other act had intervened which the offender did not do consciously which triggered the explosions, that could not be counted as the act for that offender.



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14. Admittedly, the petitioner is the owner of the commercial complex and he let out two shops in favour of the second accused for running a cracker shop and selling chemicals in the name of Muthu Trading Company. Accused Nos.3 to 5 are employees of the said Muthu Trading Company. That apart, on perusal of the statement recorded under Section 161 of Cr.P.C revealed that L.W.1 categorically stated that the petitioner owned the LM complex in which, Accused No.2 was running a firecracker shop in the name and style of Muthu Trading Company. There is absolutely no material to charge the petitioner for the offences under Sections 286, 337 and 304 of I.P.C, Section 9B(1)(a) of the Explosives Act, 1884 and Section 3 of the Tamil Nadu Public Property [Prevention of Damages and Loss] Act, 1992. Therefore, no charge is made out as against the petitioner and the petitioner is liable to be discharged from all the charges since without material there is absolutely no possibility for the trial Court to convict the petitioner for those offences.

15. Accordingly, the Criminal Revision Case is allowed and the order passed in Cr.M.P.No.2253 of 2017 in S.C.No.78 of 2017 dated 03.10.2018, on the file of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur, is set aside and the



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petitioner is discharged from all the charges. The trial Court is directed to proceed with the trial as against other accused persons and complete the trial within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

19.06.2023

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

- 1.The Principal Sessions Judge,
Virudhunagar District at Srivilliputhur.
- 2.The Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Vernacular Records (V.R Section),
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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