



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.174 of 2016

1.Navaneetha Krishnan
2.Edward Jayakumar
3.Elangainathan @ Nathan @ Rajan
@ Sindu @ Ilango @ Sivalingam
... Appellants/Accused Nos.1 to 3

Vs.

The Inspector of Police,
'Q' Branch CID Police Station,
Madurai.

In Crime No.1 of 2008. ... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the conviction and Judgment passed by the IV Additional District and Sessions Court, Madurai in S.C.No.334 of 2010, dated 28.04.2016.

For A – 1 : Mr.G.Bhagavath Singh

For A – 2 : Mr.C.Arul Vadivel @ Sekar

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



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JUDGMENT

This appeal has been preferred as against the Judgment and conviction passed in S.C.No.334 of 2010 on the file of the IV Additional District and Sessions Court, Madurai, dated 28.04.2016.

2.The case of the prosecution is that all the accused, hailing from Sri Lanka, wanted to procure materials with the intent to prepare explosive substances for the purpose of use by the Liberation Tigers of Tamil Eelam (LTTE) Organization. For this common conspiracy, the second accused had purchased chemicals and alloys at the shop of P.W.15 in Bangalore. At the time of purchase, Accused No.2 had given his college identity card and driving license and sent the chemical materials through TVS Lorry booking office at Bangalore, addressed to the addressee at Madurai. The consignment copy was received by Accused Nos.1 and 3 and the materials were transported through P.W.9's Van and unloaded at P.W.6 Pandian's house at Samathuvapuram, Sakkimangalam in Madurai District. Accused No.3 is the uncle of P.W.6. On information, on the next day, the contraband was seized by the Police, witnessed by P.W.5. Accused No.1 was arrested for being in possession of chemical materials to prepare explosives without any good and bona



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fide reason for possession of explosive substances. On the basis of the confession of Accused No.1, subsequently, Accused No.2 was arrested and incriminating materials were seized from him. Subsequently, Accused No.3 was also arrested. The chemical materials were sent for examination and P.W.20 analyzed the same and had given a report opining that the content of the seized materials comes under the purview of the Explosive Substances as contemplated under the Explosive Substances Act, 1908. The accused denied the charges, and the relevant witnesses proved the culpability of the offence committed by the accused.

3.On the side of the prosecution, they had examined P.W.1 to P.W.28 and marked Exs.P.1 to P.26 and also marked material objects M.O.1 to M.O.10 and on the side of the respondent, no one was examined and marked Ex.D.1.

4.On perusal of the oral and documentary evidence, the trial Court convicted accused Nos.1 to 3 for the offence punishable under Section 5(a) of the Explosive Substances Act, 1908 and sentenced them to undergo three years Imprisonment each and also imposed a fine of Rs.1,000/- each and in default to undergo one month Simple Imprisonment each and also convicted them for the offence under Section 6 of the Explosive Substances Act, 1908



r/w 120(b) of I.P.C and sentenced them to undergo three years Imprisonment each and also imposed a fine of Rs.1,000/- each and in default to undergo one month Simple Imprisonment each. Aggrieved by the same, the present Appeal.

5.The learned counsels appearing for appellants 1 and 2 would submit that as per the opinion of P.W.20/the scientific expert that M.O.10 Diphenylamine is not a prohibited material to sell. The material objects M.O.7 to M.O.10 are not explosives under the Explosive Substances Act. In fact, those objects were kept in the police station from 08.04.2008 even till today. The police station is situated in a residential area. That apart, one of the cans carrying Acetone got damaged at the bottom while stored in the police station, to which all the liquid was drained, and it did not cause any hindrance to anybody. Therefore, the charge itself is baseless, and the appellants are liable to be acquitted. The shop owner was examined as P.W.15 by the prosecution. He categorically deposed that the material objects M.O.7 to M.O.10 are salable to the general public. Therefore, to carry and sell the same, there is no need to get any licence under the Explosive Substances Act. Initially, the case was registered only under the Unlawful Activities (Prevention) Act, 1967 and not under the Explosive Substances Act and no offence is made out under the Explosive Substances Act. Therefore, the trial



Court ought not to have convicted the appellants and they are liable to be acquitted.

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6.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the appellants were charged for the offences under the Unlawful Activities (Prevention) Act, 1967 and the Explosive Substances Act, 1908 and also under Section 120(B) of I.P.C. The chemicals sent for examination are used for the explosive substances, and they could be prepared by individual chemicals and a combination of multi chemicals. Another material objection was glycerin, which was an explosive under the Explosive Act in Schedule III. These chemicals are explosive substances as per Section 2(a) of the Explosive Substances Act and it shall be deemed to include any materials making any explosive substance only any apparatus, machine or implement or material used or intended to be used are adapted in or with any explosive substances also any part of such apparatus, machine or implement. M.O.7 to M.O.10 are not individual explosives, but the combination of these chemicals would become explosive substances. Though those materials are individually not dangerous, when combined, they would become explosive substances. Therefore, the prosecution proved its case beyond any doubt, and it does not warrant any interference by this Court.



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

8.There are totally three accused, in which the appellants are arraigned as Accused Nos.1 to 3. Admittedly, they are hailing from Srilanka. They wanted to procure materials with the intent to prepare explosive substances for the purpose of being used by the Liberation Tigers of Tamil Eelam (LTTE) organization. All the accused conspired together, and the second appellant had purchased chemicals and alloy from the shop owned by P.W.15 situated in Bangalore. The second appellant while purchasing the chemical materials produced his college identity card and driving license. After purchasing the chemical materials, they were transported to Madurai by TVS Lorry booking office. The consignment copy was received by appellants 1 and 3. On secret information, the contraband was seized by the respondent and arrested the first appellant while he was in possession of materials to procure explosive substances. On the strength of the confession statement made by the first appellant, the second appellant was arrested and incriminating materials were seized from him. Subsequently, the third appellant was also arrested and remanded to judicial custody. The materials were sent for expert opinion. The



Assistant Examiner of the Forensic Sciences Department opined that the content of seized materials comes under the purview of explosive substances as contemplated under the Explosive Substances Act, 1908.

9.As rightly pointed out by the learned Additional Public Prosecutor appearing for the respondent that M.O.7 to M.10 are not individually explosives substances, but their combination would become explosive substances. It is clarified by P.W.20, who had analyzed M.O.7 to M.O.10 and opined that the combination of the chemicals is coming under the Explosive Substances Act, 1908. Admittedly, the second appellant had purchased M.O.7 to M.O.10 from the shop owner owned by P.W.15. P.W.15 also categorically deposed that the substances were purchased by the second appellant and booked from Bangalore to Madurai. Thereafter, the first appellant and third appellant collected the same, and they were found in possession of the same. Therefore, the prosecution categorically proved its case and the trial Court rightly convicted the appellants for the offence under Section 5(a) of the Explosive Substances Act, 1908 and also under Section 6 of the Explosive Substances Act, 1908 r/w 120(b) of I.P.C. Hence, it does not warrant any interference by this Court. However, the learned counsels appearing for appellants 1 and 2 would submit that the



appellants were in judicial custody, and also they were put in a Special camp. Therefore, they prayed for reducing the sentence to the period which was already undergone by the appellants. Though the appellants are not entitled to consider the period spent in the Special camp as judicial custody, considering the period of incarceration by the appellants in the prison, this Court is inclined to reduce the sentence to the period which was already undergone by the appellants.

10. In view of the above, the conviction imposed as against the appellants by the trial Court for the offence under Section 5(a) of the Explosive Substances Act, 1908 and also under Section 6 of the Explosive Substances Act, 1908 r/w 120(b) of I.P.C is hereby confirmed. Insofar as the sentence imposed by the trial Court is hereby modified to the period which was already undergone by the appellants. Accordingly, the Criminal Appeal is partly allowed.

06.04.2023

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