



CrI.O.P.No.26738 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.26738 of 2023
and CrI.M.P.No.18611 of 2023

1. M/s. Karaikkal Chlorates,
(Unit of M/s.MEPCO Industries Limited),
Factory at Melakasakudy Village,
Karaikal District, Puducherry,
Regd. Office at 17-A, Vallabhai Road,
Chokkikulam, Madurai - 625 002.

2. Manoharraj

3. L.Sethuramalingapandian

... Petitioners

Vs.

State represented by,
The Inspector of Police,
CBI : EOW : Chennai,
Rajaji Bhavan Complex,
Besant Nagar,
Chennai - 600 090.

FIR No.RC.15/E/2009/CBI/EOW/Chennai

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleaded to quash the proceedings pending against the petitioners, namely A1, A2 and A9 in C.C.No.333 of 2010 on the file of the learned Judicial Magistrate No.I, Karaikal.



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CrI.O.P.No.26738 of 2023

For Petitioners : Mr.B.Kumar, Senior Advocate
for Mr.A.M.Rahamath Ali
For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings pending against the petitioners, namely A1, A2 and A9 in C.C.No.333 of 2010 on the file of the learned Judicial Magistrate No.I, Karaikal.

2. The petitioners are arrayed as A1, A2 and A9 respectively. The first accused is the Company, the second and third accused are the Managing Director and Director of the first accused Company respectively. The charges against the petitioners as per the final report are extracted hereunder :-

" The first accused firm M/s Karaikal Chlorates, a Unit of M/s MEPCO Industries Ltd, Melakasakudy, Nedungadu Commune, Karaikal, is a company which produces Potassium Chlorate, the raw material for match and crackers industries. It was reported that the industry was utilizing fertilizer grade Potassium Chloride smuggled from Tamil Nadu and purchased at subsidized cost, as raw material, instead of purchasing at the rate meant for industrial purpose. It was alleged that this was in violation of the Clause 25 (1) and (2) of the



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Fertilizer (Control) Order, 1985 which insists for obtaining permission/or license from the Government of India, for industrial use of fertilizer or procurement of fertilizer grade as raw material for industrial use. The subsidized cost of the fertilizer grade Potassium Chloride is Rs.5,400/- per M.T. and the actual cost of the Potassium Chloride meant for industrial purpose is Rs.30,000/- per M.T. It was alleged that the company was purchasing their raw material at a cost of Rs.5,400/- per M.T. thereby enjoying the Government subsidy of Rs.24,600/- per M.T. by mere procurement of raw material alone thus causing loss to the Govt. of India.

Investigation revealed that A-1 M/s Karaikal Chlorates, a Unit of M/s MEPCO Industries Ltd, is having its registered office at No.17-B Vallabhai Road, Chokkikulam, Madurai-2 and factory at Melakasakudy, Nedungadu Commune, Karaikal District, Puducherry. A-2 D. Manohar Raj, is the Managing Director, A-3 S Annamalai is the Vice-Chairman and A-4 Vijayasingh Chelladurai, A-5 G Adipathy, A-6 S Senthil Kumar, A-7 T Wellington and A-8 S Rajarathinam are the other directors of this company. A-9 L Sethuramalinga Pandian is the Manager and In-charge of the factory of A-1 Company. The company is involved in manufacture of Potassium Chlorate which is used as raw material for match and fire cracker industries. For manufacturing Potassium Chlorate, Potassium Chloride is used as raw material. Potassium Chloride is also used as fertilizer and is commonly known as Muriate of Potash (MOP). Potassium Chloride is not manufactured in India and is imported by Indian Potash Ltd. and other



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Fertilizer Companies authorised by the Government of India for use as fertilizer.

That the Government of India was importing Potassium Chloride at varying rates of Rs.10,257 per MT in Dec, 2006 to Rs. 32,195 per MT in Mar, 2009. However, the same was sold by Government of India at a subsidised rate of Rs.4425/- plus handling charges and commission for the dealers. That the Potassium Chloride imported by the authorised companies was being distributed through licensed fertilizer dealers and then to retailers who ultimately sell the Muriate of Potash (MOP) to the farmers. As Potassium Chloride (MOP) is a controlled item having heavy subsidy, it is to be sold only by the persons licensed under the Fertilizer (Control) Order, 1985. These licences are given on a condition that the fertilizer should be sold only to the farmers for agricultural purpose.

That the difference in the import value and the sale value of the Government of India is initially borne by the importing company and then reimbursed by the Government of India only on the certification of the Agricultural Department of the State Government concerned, when the imported fertilizer is used for agricultural purpose. Investigation revealed that the MOP imported for agricultural purpose was illegally diverted by the licensed dealers to different agents who dealt with Potassium Chloride as a chemical and then sold the same for industrial purpose without having any licence.

That the various agents who were registered under Central Sales Tax (CST) Act and Value Added Tax (VAT) Act for dealing with



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various chemicals were illegally purchasing the MOP from various licensed agents and were regularly supplying the same to the accused company. That these unscrupulous agents were fraudulently dealing with the essential commodity without having the required licence. Investigation revealed that during the period from 2006 to 2009, A-2 D. Manohar Raj, Managing Director and A-3 to A-8 the other Directors and A-9 L Sethuramalinga Pandian, Manager of the A-1 company, on behalf of the company entered into a criminal conspiracy with A-10 to A-21 to purchase only the subsidized MOP as raw material for the company to wrongfully gain the benefit of subsidy of the Govt. of India in procuring Potassium Chloride.

That in pursuance of the criminal conspiracy, during the relevant period from Dec. 2006 to Mar. 2009, the A-1 company purchased its raw material of Potassium Chloride from illegal dealers, A-10 K.Shanmugam, A-11 K. Selvaraj, A-12 Vasantha Lavanya, A-13 K.P.Palaniswamy A-14 G. Murali, A-15 K.Jayapriya, A-16 K.Rajapandian, A-17 P. Yesurajan, A-18 S. Jai Jawahar, A-19 K.Ravichandran, A-20 Jai Shankar and A-21 M.Nageswaran who were not having any licence to sell Potassium Chloride for industrial use. That all the dealers A-10 and A-21 had no any industrial licence to deal with the fertilizer as per the provisions of Clause-9 of the Fertilizer (Control) Order, 1985.

That A-10 K. Shanmugam was a licenced dealer for selling MOP to farmers in the name of his firm M/s. K. Shanmugam & Co., Investigation revealed that he illegally diverted the MOP received from



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Indian Potash Limited (IPL) through M/s. Krishna Agencies owned by A-11 K. Selvaraj and M/s. Tirupathy Agencies owned by A-19 K. Ravichandran, both being the brothers of A-10 K. Shanmugam. The diverted MOP was supplied by A-11 and A-19 to the A-1 Company for industrial use.

That A-13 K.P. Palaniswamy was also a licenced dealer for selling MOP to farmers in the name of his firm M/s. Karthika Agro Center, but diverted the MOP through his other firm M/s. Karthika Trading Company and supplied the same to the accused company M/s. Karaikal Chlorates of M/s MEPCO. That even after the Fertilizer Licence was cancelled in March, 2008 A-13 K.P. Palaniswamy continued to procure the MOP from other dealers purporting to be a fertilizer dealer and illegally supplied the same through M/s. Rukmani Agencies, the firm of his daughter A-15 K. Jaya Priya to the A-1 Company for industrial use.

That A-10 and A-13 had fraudulently maintained the records as if the Potassium Chloride was sold to various farmers and other dealers on different dates but the same was diverted and supplied to the accused company A-1.

That A-11, A-12, A-14 to A-21 who supplied Potassium Chloride to the A-1 Company were not at all having any licence to sell Potassium Chloride for agricultural purpose or for industrial use. That all these dealers had no any industrial licence to deal with the fertilizer as per the provisions of Clause-9 of the Fertilizer (Control) Order, 1985. The firms of A-11, A-12, A-14 to A-21 were registered only



under CST Act and VAT Act in Tamil Nadu. That the firms of A-11, A-12, A-14 to A-21 who illegally procured MOP from unscrupulous dealers had fraudulently maintained the records as if the Potassium Chloride was purchased from various farmers on different dates and the same was supplied to the accused company A-1.

The accused company A-1 during the period from December 2006 to March 2009 illegally procured a quantity of 14,271.60 MTs of Potassium Chloride from A-11 to A-21 as under : -

<i>Sl. No.</i>	<i>Name of the supplier</i>	<i>Period</i>	<i>Quantity Supplied in M.T</i>	<i>Purchase value by the company In Rs.</i>	<i>Import value by the IPL In Rs.</i>	<i>Sale Value by the IPL In Rs.</i>	<i>Subsidy Loss to the Govt. In Rs</i>
1	A-11 K.Selvaraj, Prop. Krishna Agency, Madurai,	Mar '07 to Mar '09	5446	3,08,71,379	8,87,09,377	2,35,02,238	6,52,07,139
2	A-12 Vasantha Lavanya, Prop. Lavan Agencies, Madurai	Jan '08 to Oct 08	3,528	2,03,86,900	8,57,60,413	1,56,61,089	7,00,99,324
3	A-13 K.P.Palaniswamy, Partner, Karthika Trading Co. Somanur	Dec '06 to May '08	2,795.6	1,61,28,056	3,00,68,910	1,23,75,054	1,76,93,856
4	A-14 G. Murali, Prop. P.S.G.Agenices, Madurai	Aug 07 to Jul 08	636	41,33,700	1,38,74,486	28,15,381	1,10,59,105
5	A-15 K.Jayapriya, Prop. Rukmani Agenices, Somanur	Nov '08 to Feb '09	618	46,26,700	2,01,75,790	27,17,959	1,74,57,831
6.	A-16 K.Rajapandian, Prop. Vivekam Traders, Madurai	Jan '07 to Sep 07	520	30,25,300	55,29,928	23,01,000	32,28,928
7	A-17 P. Yesurajan,	Dec '06 to	351	22,80,385	37,91,957	16,19,550	21,72,407



SI. No.	Name of the supplier	Period	Quantity Supplied in M.T	Purchase value by the company In Rs.	Import value by the IPL In Rs.	Sale Value by the IPL In Rs.	Subsidy Loss to the Govt. In Rs
	Prop. Subha Agencies, Madurai	Sep '07					
8	A-18 S. Jai Jawahar, Prop. S.J.Agency, Madurai	Jan '07 to Dec '07	190	10,53,000	20,74,470	8,44,338	12,30,132
9	A-19 K.Ravichandran, Prop. Thirupathy Agencies, Madurai	Dec '06 to Jan '07	80	5,35,500	8,20,560	3,54,000	4,66,560
10	A-20 S. Jai Shankar Prop. Meenakshi Agencies, Nilakottai	Mar '07	60	3,57,000	6,15,420	2,65,500	3,49,920
11	A-21 M.Nageswaran, Prop. Thirumurthy Traders, Chennai	Jan '07	47	3,30,050	4,83,104	2,08,417	2,74,687
	TOTAL		14,271.6	8,37,27,970	25,19,04,415	6,26,64,526	18,92,39,889

That the import value of 14,271.6 MTs of MOP was Rs. 2519.04 lakhs. However, the accused company purchased the same for Rs. 837.28 lakhs, just nearly for the sale value of the MOP for the farmers (i.e. Rs. 626.64 lakhs). That for the import of 14271.16 MTs of MOP for agricultural purpose, the Government of India had borne a subsidy of Rs. 1892.40 lakhs. **That by diverting the MOP meant for agricultural purpose for industrial use, the accused persons caused a wrongful loss of Rs 1892.40 lakhs to the Government of India and corresponding wrongful gain to themselves. Thus, the accused**



persons also cheated the farmers who are the intended beneficiaries of the MOP.

That for manufacturing Potassium Chlorate, a licence under the Arms Act, 1959 and the Arms Rules, 1962 is mandatory. That the A-1 Company was granted a licence under the Arms Act, 1959 by the District Collector, Karaikal in 1993 for producing 5000 MTs of Potassium Chlorate per year. However, the accused company was illegally manufacturing Potassium Chlorate exceeding the licensed quantity in violation of the conditions of licence as follows:

<i>Sl.No.</i>	<i>Period</i>	<i>Quantity of Manufacture (In MTs)</i>	<i>Excess Production (In MTs)</i>
1	2004-05	6,716	1,716
2	2005-06	8,856	3,856
3	2006-07	9,634	4,634
4	2007-08	10,225	5,225
5	2008-09	10,307	5,307
6	2009-10	4,543*	-----
	Total	50,281	20,738

(* The factory was closed from July to October 2009)

That at the time of renewal of licence by the end of 2007, the accused company falsely projected a quantity of 4,969 MTs as the produce of the calendar year 2007, whereas the actual production was 10,972 MTs during the calendar year.

That the licence was renewed by the competent authority based on the false figures given by the accused company while the company was producing Potassium Chlorate exceeding the prescribed limit of



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5000 MTs in violation of licence issued under the Arms Act.

That the above facts and circumstances disclose that A-1 Karaikal Chlorates, a division of M/s. MEPCO Industries Ltd., A-2 D. Manohar Raj, A-3 S Annamalai, A-4 Vijayasingh Chelladurai, A-5 G Adipathy, A-6 S Senthil Kumar, A-7 T Wellington, A-8 S Rajarathinam, A-9 L Sethuramalinga Pandian A-10 K. Shanmugam, A-11 K.Selvaraj, A-12 Vasantha Lavanya, A-13 K.P.Palaniswamy A-14 G. Murali, A-15 K.Jayapriya, A-16 K.Rajapandian, A-17 P. Yesurajan, A-18 S. Jai Jawahar, A-19 K.Ravichandran, A-20 S. Jai Shankar and A-21 M.Nageswaran entered into criminal conspiracy to cheat the Government of India by selling / purchasing the subsidized Potassium Chloride meant for the farmers and willfully violated Clause 25(1) & (2) of Fertilizer (Control) Order, 1985 by sale / use of fertilizer for industrial use without having any licence for the same as required under Clause 8 & 9 of the Order. That the accused company illegally produced Potassium Chlorate in violation of the licence issued under the Arms Act in excess of the prescribed quantity.

The above acts of the accused persons A-1 to A-21, prima facie, constitute the offences punishable U/s 120-B r/w 420 IPC, Sec. 7(1)(a)(ii) & 10 r/w Sec.3 of the Essential Commodities, Act 1955 r/w Clause 25(1)&(2) of Fertilizer (Control) Order, 1985 and Sec.25(1)(a) & 33 r/w Sec. 5 of the Arms Act, 1959 and substantive offences as under:

A-1 to A-9 - U/s. 420 IPC, Sec. 7(1)(a)(ii) & 10 r/w Sec. 3 of the Essential Commodities Act, 1955 r/w Clause 25(1) & (2) of the



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Fertilizer (Control) Order, 1985 and Sec. 25(1)(a) & 33 r/w Sec. 5 of the Arms Act, 1959.

A-10 to A-21 - U/s. 420 IPC, Sec. 7 (1)(a) (ii) r/w (3) of the Essential Commodities Act, 1955 r/w Clause 25(1)&(2) of the Fertilizer (Control) Order, 1985."

3. The submissions of Mr.B.Kumar, learned Senior Counsel representing the learned counsel for the petitioners are as follows :-

3.1. The first petitioner/AI is a Public Limited Joint Sector Company named M/s. Karaikal Chlorates (Unit of MEPCO Industries Limited), which is a manufacturer of Potassium Chlorate used in the Match Industry. Potassium Chloride is a raw material which is freely available in the country in open market and it is used as fertilizer as well as used in industries and it is both imported and manufactured in India. The two grades of Potassium Chloride are distinguished from each other by the variation of Potassium Chloride concentration among other elements like Sodium Chloride etc. Potassium Chloride used as fertilizer (known as Muriate of Potash or MOP) is imported and sold to farmers at a concessional price fixed by the Government while the Potassium Chloride for industrial use is not available at concessional price.



Dealing in MOP as fertilizer is subject to the Fertilizer Control Order while dealing of the same material for industrial use is not subject to Fertilizer Control Order or the Essential Commodities Act. Both the types of Potassium Chloride are similar in physical appearance and available in the open market freely and the difference between the two is very slight and can be distinguished only by chemical analysis.

3.2. On a complaint given by the Additional Director of Agriculture, Agriculture Department, Karaikal, a case came to be registered for the offence under Section 7(1)(a)(ii) of the Essential Commodities Act r/w Clause 25(1) & (2) of Fertilizer Control Order, 1985. The respondent, after completion of investigation, has filed the final report against the petitioners and others for the offence under Section 120B r/w 420 IPC, Section 7(1)(a)(ii) & (10) r/w Section 3 of the Essential Commodities Act, 1955 r/w Clause 25(1) & (2) of Fertilizer Control Order, 1985 and Section 25(1)(a) & 33 r/w Section 5 of the Arms Act, 1959.

3.3. The allegation, in short, against the petitioner is that they had purchased the raw material (Potassium Chloride) used as fertilizer and known as Muriate of Potash (MOP) illegally from the farmers and the dealers to whom it is



given at a subsidized rate and that they have also manufactured Potassium Chloride exceeding the limit granted under the licence under the Arms Act.

3.4. So far as the charge of purchase of Potassium Chloride from the farmers is concerned, earlier, when the raw material/Potassium Chloride of the company were confiscated, claiming to be fertilizer intended for farmers at concessional rate, the first petitioner company had challenged the order of confiscation before this Court in W.P.No.14492 of 2011 and this Court, finding that the chemical analysis report does not satisfy to prove that the Potassium Chloride was purchased from the farmers, had quashed the confiscation order. Thereby, there is absolutely no material to show that the petitioners have violated the provisions of the Essential Commodities Act, 1955 or the Fertilizer (Control) Order.

3.5. Further, in respect of the excess production of Potassium Chlorate is concerned, the documents filed along with the final report under Section 173(2) Cr.P.C., which are the ER1 returns would show that the petitioners have not exceeded the production of Potassium Chlorate than the permitted limit as per the license i.e., 5000 M.Tonnes. The respondent has calculated the production including the crude salt, which was manufactured and



if the crude salt is segregated, the amount of Potassium Chlorate produced will be less than 5000 M.Tonnes per annum. Further, if year wise production is segregated and the crude salt is segregated, the amount of Potassium Chlorate produced is much less than the permitted limit i.e., 5000 metric tonnes per annum.

3.6. Further, the first petitioner company had sought for information under the Right to Information Act, 2005 from the office of the Assistant Commissioner of Central Excise, Karaikal with regard to the production particulars of Potassium Chlorate by the first petitioner company during 2004 to 2010 and they were furnished with a letter in C.No.IV/16/33/2010-RTI, dated 19.04.2011 stating that the production was less than 5000 Metric Tonnes during those years and the same is extracted hereunder:-

<i>Financial Year</i>	<i>Production in M. Tonnes</i>
2004-05	4856.300
2005-06	4749.050
2006-07	4828.350
2007-08	4935.900
2008-09	4635.350
2009-10	4202.600

The certificate received from the office of the Assistant Commissioner of Central



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Excise, Karaikal, is a document which nature impeccable and it may be taken as proof.

3.7. Finding that the production of the petitioner Company was not in excess, the licensing authority had periodically renewed the licence for the subsequent periods.

3.8. The case is registered during the year 2009 and the final report was filed in the year 2010 and the case is pending for more than 10 years. When there is no proof to show that the petitioner Company had produced the Potassium Chlorate in excess limit by utilizing the fertilizer grade Potassium Chloride meant for farmers, no offence under Section 120B r/w 420 IPC, Section 7(1)(a)(ii) & (10) r/w Section 3 of the Essential Commodities Act, 1955 r/w Clause 25(1) & (2) of Fertilizer Control Order, 1985 and Section 25(1)(a) & 33 read with Section 5 of the Arms Act, 1959 has been made out against the petitioners and thereby the proceedings as against the petitioners are liable to be quashed.

4. The respondent has filed a detailed counter. The relevant portions of the counter is extracted hereunder :-



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"16. That the averments made by the petitioners/Accused in their petition at Para no.12 (b) & 14 are denied as incorrect. It is relevant mention that, investigation has established through the oral and documentary evidence that for manufacturing Potassium Chlorate, a license under the Arms Act, 1959 and the Arms Rules, 1962 is mandatory, It is pertinent to mention that A-1 company was granted a license under the Arms Act 1959 by the District collector, Karaikal in 1993 for producing 5000MT of Potassium Chlorate per year. However, the accused company manufactured Potassium Chlorate illegally and exceeded the licensed quantity in violation of the conditions of license. Further at the time of renewal of license by the end of 2007, the accused company falsely projected a quantity of 4969 MT as the produce of the Calendar year 2007, whereas the actual production was 10,972 MT during the Calendar year. Hence, it is clear that the license was renewed by the competent authority based on the false figures furnished by the accused company while the company was producing Potassium Chlorate exceeding the prescribed limit of 5000MT in violation of license issued under the Arms Act. It is submitted that, the letter dated 19.04.2011 from Central Excise department received by the Petitioners/Accused was a reply furnished to the petitioners /Accused under RTI which is a self declaration made to the Department by the Petitioners/Accused during the relevant period for the purpose of renewal of his license in the year 2007. Further, this ground cannot be raised by the petitioners/accused



to pray for quash of all the proceedings.

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17. That the averments made by the petitioners/Accused A-1, A-2 & A-9 in their petition at Para no.12(c) are denied as in correct and misleading. During investigation it is revealed that the accused company illegally produced Potassium Chloride in violation of the license issued under the Arms Act in excess of the prescribed quantity. Hence, the charge under Arms Act is maintainable.

19. That the averments made by the petitioners/Accused in their petition at Para no. 14 to 16 are denied. That A-1 company was granted a license under the Arms Act, 1959 by the District Collector, Karaikal in 1993 for producing 5000 MT of Potassium Chlorate per year. However, the accused company manufactured Potassium Chlorate illegally and exceeded the licensed quantity in violation of the conditions of license. Further, at the time of renewal of license by the end of 2007, the accused company falsely projected a quantity of 4969 MT as the produce of the Calendar year 2007, whereas the actual production was 10,972 MT during the Calendar year. Hence, it is clear that the license was renewed by the competent authority based on the false figures furnished by the accused company while the company was producing Potassium Chlorate exceeding the prescribed limit of 5000 MT in violation of license issued under the Arms Act."



5. Learned Special Public Prosecutor for CBI submitted that as far as the charges under the Essential Commodities Act is concerned, the petitioner had entered into criminal conspiracy with certain illegal dealers and with certain persons licensed to deal with MOP for farmers and diverted the same to the petitioner company. Ex.A10 and A13 have fraudulently maintained the records as if the Potassium Chloride was sold to various farmers and other dealers on different dates but the same was diverted and supplied to the first accused company. The first petitioner company had challenged the confiscation order in W.P.No.14492 of 2011 and this Court, finding that the chemical analysis report does not satisfy that the Potassium Chloride (raw material) was purchased from the farmers, has quashed the confiscation order and no appeal has been filed against the same, thereby, it attained finality and the products are directed to be released to the first petitioner company. He would further submit that the statement of LW43 and LW44 are to the effect that the product seized is MOP for agricultural use. He would further submit that as far as the excess production of Potassium Chlorate is concerned, LW4 is the Senior Plant Manager of the first petitioner company and his statement is to the effect of excess production by A1 company and the manipulation done by the company in removing the excess



production of Potassium Chlorate concealing the same alongwith crude salt and again segregating the same at their Madurai plant. There are other materials available to show that the crude salt contains 70% of Potassium Chlorate. The learned Special Public Prosecutor would submit that the statement of LW4 and the statement of LW7 Commissioner of Excise would show that apart from the production of Potassium Chloride, they have also cleared a total amount in the form of crude sale and as stated above, the statement of LW4, the crude salt was once taken to their factory at Madurai and that Potassium Chlorate was segregated by a process as spoken by PW4. Admittedly, the crude salt contains 70% of Potassium Chlorate and calculating 70% of the Potassium Chlorate from the crude salt, it exceeds the limit of production per year for which licence was granted. He would submit that though a communication from the Office of the Assistant Commissioner of Central Excise, Karaikal with regard to the production particulars of Potassium Chlorate by the first petitioner company during 2004 to 2010 has been produced by the petitioners, obtaining the same under the Right to Information Act, 2005, to contend that their production was less than 5000 M.Tonnes during the relevant time, it is a matter for evidence and this court cannot decide the same based on such documents at this stage.



6. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor for CBI and perused the materials available on record.

7. The allegation against the present petitioners is one of illegal procurement of a raw material meant for supply as fertilizer to the farmers at a subsidized price and production of a chemical therefrom for industrial use and thereby making a huge profit by defrauding and causing loss to the Government of India and the further allegation is that they had manufactured Potassium Chlorate in excess of the permission granted under the licence thereby violating the provisions of the Arms Act

8. In this regard, it would be relevant to see what has been spoken by the witnesses sought to be examined by the prosecution. The relevant portion of the statement of LW4, Senior Plant Engineer of the first petitioner company, which would throw light on the issue is extracted hereunder for ready reference:-

"On being asked I am to state that as a Sr. Plant Engineer. My duties are to look after the electrical, mechanical maintenance and safety. In addition I am also looking after the process of the production. The initial process of the production is to cleaning



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the raw materials. Then direct current will be passed into cell tank which is having NACL(Sodium Chloride) when the DC passed it will be converted as NACLO3 (Sodium Chlorate) then the NACLO3 and refined potassium chloride mixed in the DD Composition and heating upto 90° then the mixture become potassium chlorate as liquid. Further, through heat exchanger the liquid will be make cool from 90 degree to 30 degree and separated potassium chlorate. Then this potassium chlorate will centrifuge and remove the moisture in the material. After removing the moisture the material goes to pulverizer for making powder the final finish product comes out from the process. On being asked I am to state that before making the finished products we used to remove the semi finished products i.e., crude salt from the DD composition after reducing the temperature from 90 degree to 30 degree. The same will be utilized by our company or if it excess production the same will be sent to Tamil Nadu Chlorites of Madurai There it will be centrifuge and remove the moisture and dried in the plant and remove as



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finished products. Today I have shown the returns filed by the M/s.Karatkal Chlorites to Central Excise. On perusal I am to state that the period from April 2004 - March 2005, April 2005 - March 2006 and April 2009 to Feb. 2010. During this period the plant produced excess quantity and they separated the semi finished products i.e. Crude Salt and the same was sent to sister concern i.e., Tamil Nadu Chlorites at Madurai."

9. The Assistant Commissioner of Central Excise, Karakal Range, Karaikal, has given statement as LW7 furnishing the information with regard to the production and clearance of the first petitioner and the relevant statistical data provided by him is extracted hereunder:-

M/s.Karaikal Chlorates, Melakasakudy Village, Karaikal.
Total Annual Production and Clearance.

Year	Production (MTs)	Clearance (MTs)
2004-05 Total	6716.550	6800.050
2005-06 Total	8856.600	8348.450
2006-07 Total	9634.350	9928.450
2007-08 Total	10225.500	10967.350
2008-09 Total	10307.450	10532.600
2009-10 Total	4543.950	3941.850



10. On perusal of the above materials produced by the prosecution in the light of the submissions made by the learned counsel appearing for either side, this Court is of the view that there exists a prima facie case for the prosecution to pursue the criminal proceedings against the petitioners and the grounds raised by the petitioners are matter for trial and thereby, this Court is not inclined to quash the proceedings in C.C.No.333 of 2010 pending on the file of the learned Judicial Magistrate No.I, Karaikal at the threshold. However, taking note of the fact that the case is pending from the year 2009 and also considering that the case of the prosecution is borne out of documents, the presence of the petitioners before the trial Court shall be dispensed with, on condition that they shall be present before the trial Court on initial questioning, reply to charges and at the time of framing charges and questioning under Section 313 of Cr.P.C., and at the time of passing judgment and whenever insisted upon by the trial court.

11. The petitioners are further directed to give an undertaking in the form of affidavit that they will be duly represented by a counsel on all hearing dates and that the Counsel representing them will cross examine the prosecution witnesses on the same day they are examined in chief or any other day fixed by



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the trial Judge. The petitioners shall not dispute the identity of the witnesses. The petitioners shall appear before the Court in the event their presence is insisted by the trial Judge for the purpose of identification or progress of the trial. If the petitioners adopts any dilatory tactics, it is open to the trial Court to insist for his appearance and deal with the petitioners in accordance with law.

12. With the above observation, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

28.03.2024

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To
WEB COPY

1. Judicial Magistrate I,
Karaikkal.
2. The Inspector of Police,
CBI : EOW : Chennai,
Rajaji Bhavan Complex,
Besant Nagar,
Chennai - 600 090.
3. The Special Public Prosecutor for CBI,
High Court, Madras.



WEB COPY



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A.D.JAGADISH CHANDIRA, J.

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and Crl.M.P.No.18611 of 2023***

28.03.2024