



**Crl.O.P.(MD) No.5668 of 2024**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 10.07.2024**

**CORAM**

**THE HON'BLE MR.JUSTICE B.PUGALENDHI**

**CRL.O.P (MD) No.5668 of 2024**

**and**

**CRL.M.P (MD) Nos.4363 and 4365 of 2024**

**M.Arumugathai**

**... Petitioner**

**Vs**

**1. The Inspector of Police,  
Vembakottai Police Station,  
Virudhunagar District.**

**2. D.Kamaraj  
Village Administrative Officer,  
Thayilpatti Village, Sivakasi Taluk,  
Virudhunagar District.**

**... Respondents**

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the case in S.C No. 188/2023 on the file of the Sub Court, Sattur in connection with Crime No. 20/2023 on the file of the respondent police and quash the same as illegal as far as the petitioner concerned.



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For Petitioner : Mr.J.Jeyakumaran,  
For R1 : Mr.T.Senthil Kumar  
Additional Public Prosecutor

### **ORDER**

The petitioner has filed this petition, seeking to quash the proceedings in S.C.No.188 of 2023 on the file of the Sub Court, Sattur.

2. The case of the prosecution is that due to the negligence of the foreman, on 19.01.2023, Baby Fireworks was blasted. Hence the case.

3.Today, when the matter is taken up for hearing, the learned Counsel for the petitioner seeks permission of this Court to withdraw this petition.

4.The learned Additional Public Prosecutor filed a detailed counter affidavit and also relied on the orders of this Court passed in CrI.O,P(MD)No.9239 of 2019 and contended that after filing of the counter affidavit by the respondent police, the petitioner has sought permission of this Court to withdraw the petition.



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5.Since the counter affidavit has been filed, this Court is not inclined to permit the petitioner to withdraw the petition.

6.The main contention of the petitioner is that the petitioner is a silent partner and no way related to the day-to-day administration of the fire cracker unit, where the accident took place. However, the respondent police has mechanically filed the final report as against the petitioner.

7.The learned Additional Public Prosecutor has pointed out that though the petitioner claims that she is a silent partner, during the course of investigation, it is found that the petitioner is a major share holder, who is holding 45% of the share in the factory. The other share holders are one T.Mayakannan, who is having 50% of the share and another one Mariappan, who is having 5% of share. The licence was issued by the authorities only in the name of Mayakannan and M.Arumugathai. The petitioner has leased out the premises to the first and second accused against the conditions of the licence and the accused Nos.1 and 2 have conducted the factory in such a manner that the occurrence had taken place. He further submits that in the accident, 24 persons were injured, 5 persons died. He relied on the counter



affidavit filed by the respondent, which runs as under:

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*"10.It is further submitted that partner in the fireworks industry can have criminal liabilities, including:*

**a)Illegal manufacturing or sale of fireworks:** *if the business is operating without proper license or permits, or if the fireworks are being manufactured or sold in violation of salty regulations, the partner can be held criminally liable.*

**b). Negligence or recklessness:** *If the business is found to be negligent or reckless in the manufacturing or sale of fireworks. leading to injuries or deaths, the partner can face criminal charges.*

**C)Environmental damage:** *If the business is found to be causing environmental harm due to improper disposal of waste or other practices, the partner can face criminal liability.*

**d) Tax evasion:** *If the business is found to be evading taxes or engaging in other financial improprieties, the partner can face criminal charges.*

**e) Conspiracy:** *If the partner is found to be involved in a conspiracy to commit illegal acts, such as fraud or illegal manufacturing, they can face criminal liability*



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*The case in hand, the petitioner herein was entered into the partnership under partnership deed dt: 09/01/2014. While perusing the entire deed document carefully, it clearly stated about the remuneration to the partners and interest to partners shall be divided as follows:*

| <i>Sl.No</i> | <i>Name of the partners</i> | <i>Part of the partners</i> | <i>Percentage</i> |
|--------------|-----------------------------|-----------------------------|-------------------|
| <i>1</i>     | <i>T.Mariappan</i>          | <i>First part</i>           | <i>5%</i>         |
| <i>2</i>     | <i>T.Mayakannan</i>         | <i>Second Part</i>          | <i>50%</i>        |
| <i>3</i>     | <i>M.Arumugathai</i>        | <i>Third part</i>           | <i>45%</i>        |

*Hence the averments made by the petitioner in the ground (b) that the petitioner is a silent partner in the factory are unsustainable."*

8.The learned Additional Public Prosecutor has also relied on the orders of this Court in Crl.O,P(MD)No.9239 of 2019, wherein, this Court has dismissed the application as under:



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"15. It is true that there is no vicarious liability in criminal law unless the Statute provides for the same. In the instant case, the petitioners have been charged with not only for the offence under the Indian Penal Code and also under the Explosives Act, 1884 and the Explosives Substances Act, 1908. Section 9(C) of the Explosives Act, 1884, fastened a vicarious liability on the person, who was in-charge of, and responsible to the conduct of business of the company, for the offence committed by the company, where the company was made as an accused.

16. Now, it is useful to refer to the relevant provision of Section 9-C of the Explosives Act, 1884, which reads as follows:

**"9-C. Offences by companies.- (1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:**

**Provided that nothing contained in this subsection shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.**

**(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."**

17. A cursory reading of the above provision would go to show that under Section 9(C) of the Explosives Act, 1884, every person, who was in charge of, or was responsible for the conduct of the business of the company, at the time the offence was



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*committed, shall be deemed to be guilty of the offence. The burden is on the petitioners to prove that the offence has been committed without their knowledge or they have exercised all due diligence to prevent the commission of such offence. It is a matter for trial, at this stage, in a quash petition, it cannot be decided whether the petitioners are in-charge of, or responsible for the conduct of the business of the company at the time of occurrence, or the offence has been committed without their knowledge. Hence, the petitioners' argument in this regard cannot be countenanced.*

*18. In the above circumstances, the materials collected during investigation prima facie constitute an offence against the petitioners and it is not a case to be quashed at this stage. I find no merit in the quash petition. Hence, the Criminal Original Petition is liable to be dismissed. Accordingly, the same stands dismissed. Consequently, the connected miscellaneous petitions are closed."*

9.The licence for the factory units has been granted with certain conditions. Apart from that under the Labour Act, several safety measures have been suggested by the Labour and Welfare Department. The manufacturing process in any cracker unit has to be conducted by strictly complying with the safety measures. However, the petitioners and the other manufacturers are particular about making money rather than complying with the safety measures. On account of that, the accidents do occur. Almost every week cases are reported and several precious human lives are lost. Virudhunagar District is one of the most drought districts in India.



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There is no proper rainfall and sufficient water facilities and therefore, the people in Virudhunagar District is not having any other option than to work in these cracker units. The workers knowing well that they would be a victim in any fire accident, are working and the licensee and the other foreman, who are expected to ensure the safety measures in doing the work are not implementing the safety measures as provided under the Act and rules. Therefore, these occurrences are taken place. Hence, this Court is not inclined to quash the proceedings.

10. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

11. The Trial Court shall decide the matter on its merits, uninfluenced by any of the observations made in this order.

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

1. The Sub Court,  
Sattur.
- 2.The Inspector of Police,  
Vembakottai Police Station,  
Virudhunagar District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**B.PUGALENDHI, J.**

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