
(2010) 01 MAD CK 0144

Madras High Court

Case No: Criminal R.C. No. 1161 of 2009 and M.P. No. 1 of 2009

V. Nagappan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision: Jan. 21, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 227
- Explosives Act, 1884 - Section 9B(1)(3)
- Explosives Substance (Amendment) Act, 2001 - Section 3
- Penal Code, 1860 (IPC) - Section 109, 268, 286, 299, 304
- Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 - Section 4

Citation: (2010) 1 LW(Cri) 158

Hon'ble Judges: S. Nagamuthu, J

Bench: Single Bench

Advocate: I. Subramanian, SC for M. Devaraj, for the Appellant; A. Saravanan, Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.

Challenging the order passed by the learned Additional District and Sessions Judge, Fast Track Court No. 2, Tindivanam, Villupuram District, declining to discharge the Petitioner, who is the 2nd Accused in S.C. No. 117 of 2008 on the file of the said Court, he has come forward with this petition.

2. The facts in brief are as follows: The 1st Accused Mr. Sekar is the proprietor of a concern known as M/s. Sri Sakthi Explosives, having business place at Padirapuliur Village, Villupuram District. He has obtained necessary license for possessing explosives as per the provisions of the Explosives Substances Act, 1908. The Petitioner/A2 is the Manager of the said concern. A3, one Mr. Annamalai was working as a Blaster in the said

concern. A1 owned a jeep bearing Regn. No. TCQ 3033. One Babu (since died) was the driver of the said jeep and one Kumar @ Senthil Kumar (since died) and one Balaraman (since died) were the loadmen working under A1. On 07.04.2007 at the instance of A1 and the Petitioner/A2, the said Kumar and Balaraman loaded explosives in the said jeep and travelled in the same. Babu (since died) drove the jeep. The jeep was proceeding towards Sendoor Village on the National Highways. At about 11.30 a.m. smoke emanated from the jeep and so Babu stopped the jeep. As soon as the jeep came to a halt, explosives kept in the jeep went off resulting in total damage to the jeep and extensive damage to the nearby buildings. Few more vehicles, which were passing through, also were damaged. The driver of the jeep - Babu and loadman Balaraman died instantaneously. Kumar @ Senthil Kumar - another loadman was rushed to the hospital. But, he also died. The people who happen to be present at or near the place of occurrence were also victims of the blast. Including the above 3 persons, totally 16 persons died in the incident and as many as 17 persons sustained minor injuries and 7 persons sustained grievous injuries. A total number of 59 tiled houses and 38 terraced houses were damaged thereby causing loss to the tune of Rs. 18,11,000/-. A goat worth about Rs. 2,000/- also died. A school building was also damaged. The total loss caused to the properties works out to Rs. 28,75,000/- As stated above, two cars bearing Regn. Nos. TN 65 F 2232 and TN 65 F 9605 also sustained damages.

3. The Village Administrative Officer of Sendoor Village, who came to the spot on hearing the incident, preferred a complaint to the police on which a case in Cr. No. 0174 of 2007 was registered at 12.30 p.m. on 07.04.2007 under Sections 286 & 304 of IPC read with Section 3(b) of the Explosives Substances Act, 1908. On completing the investigation, a final report was submitted by the police against Sekar (A1, who is the proprietor of the said concern), the Petitioner herein (A2, who is the Manager of the said concern) and Annamalai (A3, who is the Blaster of the said concern) for offences under Sections 324 (17 counts), 326 (7 counts), 427 (185 counts) 429, 268, 286 & 304(ii) (13 counts) of IPC and u/s 4 (60 counts) of the Tamil Nadu Properties (Prevention of Damage and Loss) Act, 1992 and u/s 9(B)(1)(3)(c)(ii) of the Explosives Act, 1884 and u/s 3(b) of the Explosives Substances Act, 1908.

4. A1 Sekar filed Crl. M.P. No. 20 of 2008 in S.C. No. 117 of 2008 on the file of the learned Additional District and Sessions Judge, Fast Track Court No. 2, Tindivanam and the same was dismissed by order dated 21.11.2008. Challenging the same, he preferred a revision in Crl. R.C. No. 1661 of 2008 before this Court and the same was also dismissed on 19.08.2009 thereby confirming the order of the trial Court. It is further informed that the SLP filed before the Hon"ble Supreme Court against the said order was also dismissed.

5. While so, the Petitioner/A2 subsequently filed a similar petition for discharge u/s 227 of Code of Criminal Procedure in Crl. M.P. No. 80 of 2009. The learned Additional Sessions Judge, Fast Track Court No. 2, Tindivanam dismissed the same by order dated 09.10.2009. It is against the said order, the Petitioner is now before this Court with this

revision.

6. The bone out of contention of the learned senior counsel appearing for the Petitioner is that even as per the materials collected during the investigation, the only allegation is that the Petitioner/A2 prepared bills for selling the explosives for being transported in the jeep. This, according to the learned senior counsel, would not attract any of the offences for which the final report has been filed against him. He would further submit that to attract an offence u/s 304(ii) of IPC, knowledge as enshrined in part III of Section 299 of IPC is required. But, in the case on hand, such knowledge is wanting insofar as the Petitioner/A2 is concerned, he contended.

7. He would further submit that to attract Section 3(b) of the Explosives Substances Act, once again, it is essential that there has to be allegation that explosive substances were unlawfully and maliciously caused by the Petitioner which, according to the learned senior counsel, is absent in this case.

8. In conclusion, the learned senior counsel would submit that even if all the materials available on record are taken on their face value as true, still no offence would be attracted against the Petitioner and therefore, he is entitled for discharge.

9. Per contra, the learned Government Advocate (criminal side) would stoutly oppose the revision. According to him, most of the points which are argued now by the learned senior counsel appearing for the Petitioner were earlier argued in the revision filed by the First Accused and they were all negated. When that be so, applying the same yardstick, the present revision also deserves to be dismissed, it is contended.

10. He would further contend that two witnesses, by name Rajendran and Murugadoss, in their statements have categorically stated that the Petitioner/A2 was present when the explosives were unlawfully loaded in the jeep despite objections raised by the witnesses. It is seen from the statements of these witnesses that when the witnesses cautioned A1 that it was unlawful to carry explosives in the jeep as it may cause danger to human life and properties, A1 told them that he was doing the same repeatedly in the past and he would take up the responsibility, if anything untoward happened. He would further submit that when this objection was raised by the witnesses and when A1 made such a statement, the Petitioner/A2, who was the Manager, was also very much present. He did not raise any objection and he was also a party to facilitate the loadmen to load the explosives unlawfully in the jeep. Thus, according to him, the Petitioner/A2 has got an active role to play in the commission of the crime and so he has to face the trial. He would further submit that the act of the Petitioner/A2 would amount to a clear abetment to commit the crime by A1 and others.

11. I have considered the rival submissions.

12. At the outset, I have to take note of the circumstances, under which an accused can be discharged. It is needless to say that if only the allegations contained in the final

report, even if on the face value are taken to be correct in its entirety, disclose no offence, then only it would be appropriate to discharge the accused. In the case on hand, insofar as the First Accused is concerned, such a plea for discharge was negated by the trial Court and the same was confirmed by this Court as well as the Hon'ble Supreme Court. But, the only distinction which the learned senior counsel would try to make out is that it was A1, who directed the loadmen to load the explosives in the jeep despite objections by the witnesses; whereas the Petitioner/A2 did not have any such role to play. Of course, there is some substance in the said argument. The role played by A1 is slightly different from the role played by the Petitioner/A2. Insofar as the role played by the Petitioner/A2 is concerned, it is not as though he prepared the bill, as it is claimed by the learned senior counsel in the office without having knowledge that the explosive substances sold under the said bill was going to be carried in the jeep unlawfully. A1 had told the witnesses that it was the practice for quite a long time to carry the explosives in the jeep. Thus, the Petitioner/A2 had full knowledge that he was selling the explosive under the bill for the purpose of being carried in the jeep unlawfully. It is also not as though he was not present when the explosives were unlawfully loaded in the jeep. According to the statements of two witnesses viz., Rajendran and Murugadoss, the Petitioner/A2, being the Manager, was very much present he also heard the objections raised by these witnesses and also heard the statement made by A1 that it was the practice to carry explosive substances in the jeep for quite a long time. All these materials would go to show that the Petitioner/A2 had full knowledge that the explosive substances sold by him under the bill were to be carried in the jeep unlawfully. Further, they were loaded in his presence unlawfully. He is not new to the explosive substances as he has been working in the concern as Manager and dealing with explosive substances for a considerable length of time. Therefore, prima facie it could be presumed that he had knowledge that carrying the explosives in the jeep may result in explosion, causing loss of life. These allegations, in my considered opinion are sufficient grounds to frame appropriate charges against the Petitioner/A2 and therefore, he is not entitled for discharge.

13. The contention of the learned senior counsel for the Petitioner is that, so much of knowledge as required u/s 299 of IPC cannot be attributed to the Petitioner and at the most it could be said that he was negligent. In my considered opinion, whether knowledge which the Petitioner had, would be sufficient to convict him u/s 304(ii) IPC or u/s 304(ii) read with 109 of IPC, is a matter to be considered at a later point of time during the trial and not at this stage. It is highly premature for this Court to give any opinion regarding the sufficiency or absence of knowledge. Prima facie, from the materials on record, it may also be said that the Petitioner/A2, by preparing bill, selling the explosive substances and by aiding the others, has committed abetment so as to face a charge. Thus, there are sufficient grounds available on record to presume that he has committed offences so as to frame appropriate charges.

14. Insofar as the contention that Section 9(i)(b) of the Explosives Substances Act would not be attracted, I am of the view that it is also a matter to be considered by the trial court

at the time of trial. Whether the Petitioner acted maliciously and unlawfully can not be looked into now.

15. The learned senior counsel appearing for the Petitioner would further submit that the learned Additional Sessions Judge has, in several places of the order, mentioned that the Petitioner/A2 can be attributed only with negligence for which there cannot be a charge u/s 304 IPC. In my considered opinion, the language employed in the order of the trial Court may be inappropriate. But, these observations made in the impugned order are not final conclusion arrived at by the Court on the basis of any evidence let in. Whether the Petitioner/A2 acted with culpable knowledge, as required u/s 299 of IPC and whether he acted unlawfully and maliciously or negligently or he is innocent. are all matters to be gone into only at the time of trial. All these defences are left open for him to be raised at the time of trial. What all that I would say is that it is not a fit case for discharging the Petitioner/A2 from the case.

16. In view of the above, I find no merit in the revision and the revision fails. Accordingly, the revision is dismissed.

17. After the order was delivered, Mr. M. Devaraj, learned Counsel appearing for the Petitioner submitted that there may be an observation made by this Court that any of the observations made in this order shall not influence the mind of the trial Court. I find justification in the same.

18. Therefore, the trial Court is directed to approach the issues independently uninfluenced by any of the observations made either in this order or in the order impugned in this revision.