

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2015

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.16781 of 2015
and M.P.Nos.1 and 2 of 2015

E.R.K.Paramasivam

.. Petitioner

Vs

State rep by the
Inspector of Police
Prohibition and Enforcement Wing
Kangayam
Crime No.708 of 2012
Erode District.

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the criminal case in C.C.No.29 of 2014 on the file of the District Munsif Cum Judicial Magistrate, Perundurai, quash the same by allowing this criminal original petition.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.C.Emalias,
Addl.Public Prosecutor

ORDER

This petition has been filed to call for the records relating to the criminal case in C.C.No.29 of 2014 on the file of the District Munsif Cum Judicial Magistrate, Perundurai and quash the same.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. On intelligence, Officers of the Prosecution Enforcement Wing started maintaining surveillance around the farm-house belonging to the petitioner herein and were monitoring the movement of persons who were coming and going into the farm-house. On 15.08.2012, the police party raided the farm-house and seized 3675 litres of rectified spirit kept in 105 cans. The police arrested A4 to A7 who were in the premises and thereafter, the other accused in this case, except the petitioner and A1, were arrested. This petitioner was released on anticipatory bail. After completing the investigation, the respondent police filed a Final Report on 08.10.2013 which was taken on file as C.C.No.29 of 2014 by the learned Judicial Magistrate, Perundurai for the offence under

Section 4(1)(aaa) of the Tamil Nadu Prohibition Act read with Sections 5, 6 and 7 of Tamil Nadu Rectified Spirit Rules, 2000 against 12 accused including this petitioner who has been shown as A-11 in the Final Report.

4. The learned counsel for the petitioner submitted that, except the fact that the petitioner is the owner of the farm-house, there is no iota of material collected by the police that he was involved in the offence. The respondent police have filed a counter, wherein it is stated as follows in para 10:

"10. It is submitted that the overt act attributed against the petitioner/A-11 is that, the petitioner/A-11 is the owner of vacant land to an extent of 5 cents i.e., the scene of occurrence place, where the materials were seized and the accused were usually kept the property in that place and through A-8, A-10 to A-12 the said place was taken for rental purpose before one month of the occurrence date, for doing illegal activities i.e., kept the spirit cans and sent the same to various places."

[extracted verbatim]

5. This Court perused the Final Report, 161 Cr.P.C. statement of the witnesses and all the materials including the confession of the arrested accused, to find out if there is any material implicating the petitioner in the offence. Admittedly, the farm-house belongs to the petitioner and it was given on lease to Das @ Devadas [A1] as early as 04.05.2012 for the purpose of processing waste cotton, as the area is located near Tiruppur which is the hot land for cotton knit- wear. Even according to the prosecution, the petitioner was not living in that address and that he was also not noticed by the Surveillance Team either before the raid or during the raid. The petitioner had leased out his property to A1 as stated above and was living in Perundurai. In this case, the prosecution has cited 16 witnesses, of whom 10 witnesses are police officials who were part of the Surveillance Team and who took part in the raid. In none of their statements, the presence of this petitioner has been referred to. The other witnesses are the Village Administrative Officers, who were called for witnessing the seizure of the contraband and who were signatories to the seizure mahazar. The Chemical Examiner has been cited as L.W.14 and his evidence will not in any way implicate any accused by name. In order to satisfy the judicial conscience of this Court, this Court even scrutinised the police confession of the arrested accused though they are inadmissible under Section 25 of the Evidence Act. In the police confession also, the arrested accused Saleem [A3] has stated that Das [A1], Kuttan [A5] and himself had taken the property of this petitioner on lease through one Kannamma [A9] to whom they paid Rs.25,000/- advance and also agreed to pay Rs.6,000/- per month as rent. Thus, from the above it is clear that the petitioner was not even present when the farm was given on lease to the accused and there is no material to show that the petitioner even knew the accused in this case.

6. To a specific query as to whether there is any previous case against this petitioner, learned Additional Public Prosecutor submitted that the petitioner has no bad antecedents at all. Thus, on a conspectus of the facts obtaining in this case it is clear that, there is no material whatsoever for the prosecution to proceed against this petitioner for the alleged offences.

In the result, the petition is allowed and the proceedings in C.C.No.29 of 2014 pending on the file of the District Munsif Cum Judicial Magistrate, Perundurai as against the petitioner alone is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

gms

To

1. The District Munsif cum Judicial Magistrate, Perundurai.
 2. -Do-Thro' The Chief Judicial Magistrate, Erode.
 - 3.The Inspector of Police
Prohibition and Enforcement Wing
Kangayam
Erode District.
 - 4.The Public Prosecutor
High Court,Madras.
- +1 cc to Mr.N.Manokaran, Advocate, sr.40299.

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