

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Cr1.O.P.No.495 of 2014

and

M.P.No.1 of 2014

Raja @ Gunasekaran

..Petitioner/1st Accused

Vs.

State represented by
The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
Crime No.684 of 2013

.. Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for records relating to proceedings in Crime No.684 of 2013 on the file of respondent and quash the entire proceedings against the petitioner.

For Petitioner : Mr.N.R.Elango, senior counsel
for Mr.N.Kumanan

For Respondent : Mr.M.Mohammed Riyaz,
Government Advocate [Cr1.side]

O R D E R

Petitioner seeks quash of proceedings in Crime No.684 of 2013 on the file of respondent.

2. Heard learned senior counsel for petitioner and learned Government Advocate [Cr1.side].

3. The case in Crime No.684 of 2013 on the file of respondent was registered for offences u/s.5 r/w 7(3)(i) of TNLR Act. It is the case of the complainant that on a raid of the premises wherein petitioner/A1 and three others were present, it was found that such persons were engaged an online lottery activity and a sum of Rs.31,88,750/- was seized from them. The complainant is the Sub-Inspector of Police in charge of the raid. According to the complaint, the raid was conducted at

about 3.00 p.m. and the seizure mahazar was prepared between 3.30 and 6.00 p.m. and as no independent witness was available. The mahazar was attested by a fellow Sub-Inspector by name Arunraj and one Deenadalayan (constable). The remand report reads as if it was Arunraj, Sub-Inspector of Police, who headed the raiding party and he was accompanied by a Sub-Inspector of Police, Balamurugan, the de facto complainant, Deenadayalan (constable) and other constables. The same informs that as no individual witnesses were available, the seizure mahazar was attested by Sub-Inspector of Police, Balamurugan/de facto complainant and Deenadayalan, Constable. Petitioners have applied for certified copies of the First Information Report, complaint, Form-91 for deposit of properties before Court and the seizure mahazar. While other documents were made available, certified copy of Form-91 was not for the reason that the same had not been filed into Court. Therefore, there was no proof of seizure. The position above informed points to the fabrication of a case. In the decision of the Apex Court in Megha Singh v. State of Haryana [1996 (11) SCC 709], this Court finds the following observation:

"4. We have also noted another disturbing feature in this case. PW 3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 CrPC. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation."

The above observations aptly apply to the case on hand.

The Criminal Original Petition is allowed. The proceedings in Crime No.684 of 2013 on the file of respondent is quashed. The benefit of this order shall also flow to the other accused in the case. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-VIII)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
2. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.495 of 2014

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