

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.S.RAMESH

Crl O.P.No.4884 of 2015

Shaul Hameed

... Petitioner/Accused

Vs

The state represented by
Inspector of Police,
B-1, North Beach Police Station,
Chennai - 1.
(Crime No.71/2005)

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the First Information Report pending investigation in Crime No.71 of 2005 on the file of the Inspector of Police, B-1, North Beach Police Station, Chennai, as an abuse of process of law.

For Petitioner : Mr.C.V.Kumar

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

O R D E R

The prayer in this petition for Quash the First Information Report pending investigation in Crime No.71 of 2005 on the file of the respondent.

2. The case of the prosecution is that the petitioner was found in possession of 5 bottles of liquor containing one litre each, totally 5 litres. On the basis of the petitioner's confession, 176 bottles were also recovered from other accused.

3. Since the final report/charge sheet was not filed in the present complaint, the petitioner has filed the present petition to quash the First Information Report.

4. The learned counsel for the petitioner submitted that he was in possession of only 5 litres of arrack and that the provision of Section 4(1)(aaa) of Tamil Nadu Prohibition Act was not attracted. Section 4(1)(aaa) of the Act provides that whoever is in possession of 100 litres and above of liquor is

liable to be charged under the provisions of the Act. Admittedly, in the present case, the quantity of liquor the petitioner was found possession was only 5 litres and as such, Section 4(1)(aaa) of the Tamil Nadu Prohibition Act is not attracted. Moreover, it is also seen that 176 bottles of liquor were not seized from the petitioner, but on the basis of the alleged statement made by him implicating other accused, who were found in possession of these bottles. It is also seen from the complaint that when the respondent had seized 5 litres of bottles, no independent witnesses were taken into consideration, while the mahazar was prepared.

5. The learned counsel for the petitioner also relied upon the judgment reported in 1981 3 SCC 34 (State of Punjab vs. Sarwin Singh), which states that in view of the enormous and inordinate delay in the investigation, the entire proceedings culminating in the conviction of the respondent becomes non-est.

6. In the present case, though the petitioner has sought for quashing of investigation registered in the year 2005.

7. The learned Additional Public Prosecutor submitted that the case has been taken on file in C.C.No.9815 of 2005 on 18.11.2005 itself.

8. In any circumstances, the maximum punishment provided for an offence under Section 4(1)(aaa) of the Tamil Nadu Prohibition Act is 3 years. The present case is pending on the file of the VII Metropolitan Magistrate Court, George Town, Chennai, from the year 2005 onwards. In my view, the delay in not concluding the proceedings itself is fatal.

9. In the result, the proceedings in C.C.No.9815 of 2005 on the file of the VII Metropolitan Magistrate, George Town, Chennai, is quashed. Accordingly, the Criminal Original Petition stands allowed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Inspector of Police,
B-1, North Beach Police Station,
Chennai - 1.

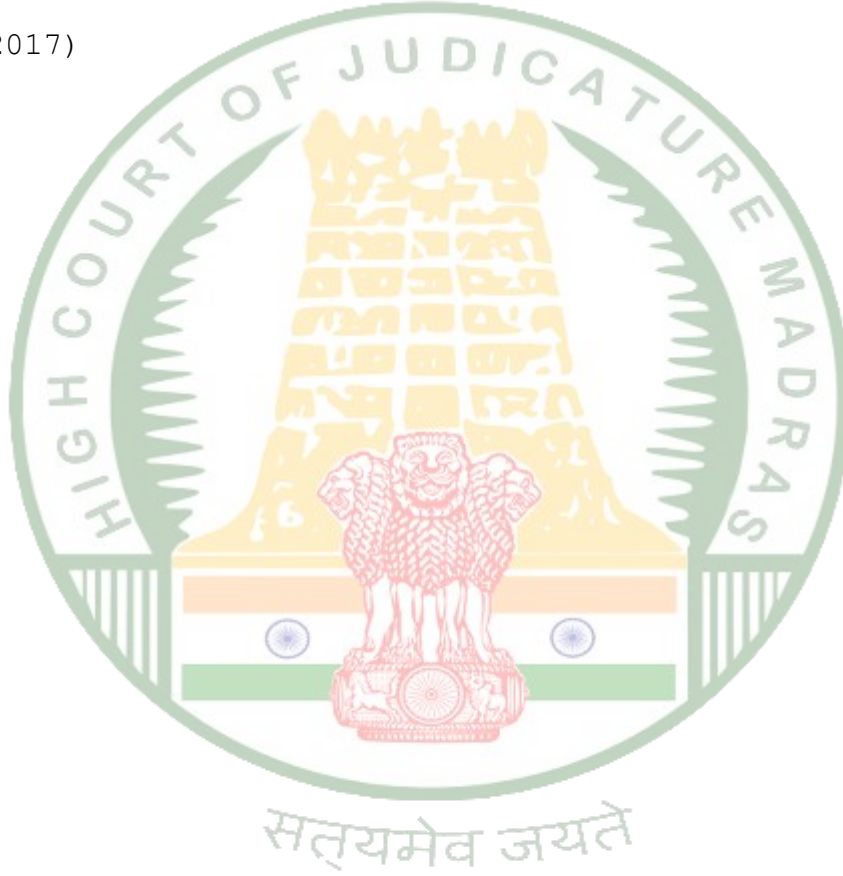
2. The VII Metropolitan Magistrate,
George Town, Chennai.

3. The Public Prosecutor,
High Court, Madras.

+2cc's to Mr.C.V.Kumar, Advocate, S.R.No.54242

CrI.O.P.No.4884 of 2015

NMI (CO)
CA(03/08/2017)



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