

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2018
Pronounced on : 12.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.23422 & 20402 of 2011
and
M.P.Nos.1, 1 & 2 of 2011

Crl.O.P.No.23422 of 2011

1.Mrs.Ruckmani,
W/o.Eswaramoorthy.

2.Goweri Mahesh,
S/o.Eswaramoorthy.

3.Annadurai,
S/o.Marappa Gounder.

... Petitioners/Accused
Nos.1, 2 and 4

/Vs./

State by Inspector of Police,
Prohibition Enforcement Wing,
Avinashi,
Tiruppur District.
[Crime No.243 of 2003]

..Respondent/Complainant

Crl.O.P.No.20402 of 2011

V.K.Ashokan,
S/o.Kittan.

... Petitioner/Accused No.8

/Vs./

State by Inspector of Police,
Prohibition Enforcement Wing,
Avinashi,
Tiruppur District.
[Crime No.243 of 2003]

..Respondent/Complainant

COMMON PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the Criminal Proceedings in C.C.No.208 of 2011 on the file of the Judicial Magistrate Court No.I, Tiruppur.

For Petitioners : Mr.A.Kumaraguru
(in both Crl.O.P.Nos.)

For Respondent : Ms.V.Saratha Devi,
(in both Crl.O.P.Nos. Govt. Advocate [Crl. Side])

C O M M O N O R D E R

The petitioners in Crl.O.P.No.23422 of 2011 are A1, A2 and A4 in Crl.O.P.No.20402 of 2011 is filed by A8 in C.C.No.208 of 2011 pending on the file of the Judicial Magistrate Court No.I, Tiruppur for the offences under Section 7 of TNP Act 6 & 7 of Rectified Spirits Rules r/w 4(1) (aaa) TNP Act and 4(I) (a) (c) TNP Act r/w 6 & 7 of Rectified Spirit Rules against nine accused.

2.The case of the prosecution is that the first accused is the mother of the second accused and sister of the fourth accused and accused Nos.5 and 6 are the Managers employed under the first accused, who are looking after the textiles business, marriage hall and other businesses. The third accused is the driver of the first accused.

4.Prior to 05.02.2003, the accused Nos.2 to 9 under the leadership of the first accused/first petitioner entered into a conspiracy for illegal transportation and sale of the rectified spirits from Bangalore and further, the rectified spirits were transported to Kerala on the direction of some of the accused and were distributed to various places in Kerala, thereby all the accused have committed an offence of conspiracy to illicit trade punishable under Section 7 of the TNP Act.

5.In pursuance of the said conspiracy one of the accused was found in possession of illegally transported rectified spirit in violation of rectified spirit Rules 5 to 6. The respondent had seized the rectified spirits at the godown of the Mill of A1 and a lorry, a jeep all belonging to the first and second accused were seized. Thus, the first and second accused with the knowledge and connivance of other accused have committed the offences punishable under the Prohibition Act and Rules. The accused were found in possession of the rectified spirits, hence, after investigation charge sheet has been filed.

6.The contention of the learned counsel for the petitioners is that the case in Cr.No.243 of 2003 was registered on 05.02.2003 and charge sheet was filed on 16.03.2011 for the offences under Section 7 of TNP Act 6 & 7 of Rectified Spirits Rules r/w 4(1) (aaa) TNP Act and 4(I) (a) (c) TNP Act r/w 6 & 7 of Rectified Spirit Rules.

7.The prosecution case is that on information the respondent Police on 05.02.2003 at 06.00 a.m. raided Sri Kanniyamman Textiles Godown at Deyarayampalayam at Rakkiyampalayam Village and found the third accused in possession of illegally transported rectified spirits without valid license to the quantity of 3325 litres and 1400 litres in a lorry bearing (Registration No.TN 25 k 3742) K A 01 4203 and about 350 litres of rectified spirit in a jeep bearing (Registration No.TN 38 C 7274). The first accused and the second accused are the owners of the Mill, third accused is the driver of the first accused, fourth accused is the brother of the first accused and accused Nos.5 to 7 are the employees of the first accused. The first, second, fourth accused are the petitioners in Crl.O.P.No.23422 of 2011 and eighth accused, who is the petitioner in Crl.O.P.No.20402 of 2011 and ninth accused are the suppliers in Kerala.

8.The petitioners submit that the third accused, on the same day, at 1.30 p.m., who was in possession of the spirit at RR Mahal SF No.142/1 A 143 /1 A of Nambirayampalayam Village in TN 37 B 2428 Eitcher lorry about 1050 litres of rectified spirit without any valid permit and with the knowledge and connivance of the first petitioner and second petitioner was taken to custody by PEW Avinashi Unit.

9.The petitioners submit that the second petitioner was found in possession of 175 litres of rectified spirit in the Maruthi Zen Car bearing Registration No.KA 01 3900 on 05.02.2003 at about 12.30 p.m.

10.The petitioners' contention is that the respondent police arrested the third accused on the spot and he alleged to have given a confession statement. Based on the confession, an FIR was registered in Crime No.243 of 2003 on 05.02.2003.

11.The petitioners submit that the Trial Court ought not to have taken cognizance as this case has been barred by limitation since the maximum punishment for the offences mentioned in charge sheet is only three years. As specified in the 468 (2) (C) of the Code of Criminal Procedure. "No Court shall take cognizance an offence after the expiry of period of limitation". In the present case FIR was registered on 05.02.2003 and the charge sheet filed on 16.03.2011. There has been an inordinate delay of eight years and hence, the Court is barred to take

cognizance.

12.This Court had sent a communication dated 25.04.2016 to the Judicial Magistrate No.I, Tiruppur to ascertain the date of filing of the final report and to find out whether any petition giving reasons for condonation of delay was filed along with the charge sheet. The learned Principal District Judge, Tiruppur by communication dated 27.04.2016 along with the letter of the Judicial Magistrate No.I, Tiruppur had submitted that the charge sheet was originally filed on 08.10.2004, which was returned and thereafter, after three years on 12.03.2007, the charge sheet was re-presented and against the charge sheet was returned and again it was re-presented only on 16.03.2011 and it was taken on file on 16.03.2011. In effect the charge sheet in the above case was filed only on 16.03.2011.

13.In view of the bar under Section 468 (2) of the Code of Criminal Procedure, which is a non-absconded clause. The Lower Court ought not to have taken the charge sheet on file after the period of limitation.

14.In view of the above, the case against the petitioners/accused are quashed. In view of the facts and circumstances of the case and the legal bar, the case against the other accused who have not filed the quash petition are also quashed.

15.Accordingly, these Criminal Original Petitions stand allowed. Consequently, the connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Tiruppur.

2.The Inspector of Police,
Prohibition Enforcement Wing,
Avinashi,
Tiruppur District.
[Crime No.243 of 2003]

3.The Public Prosecutor,
High Court, Madras.

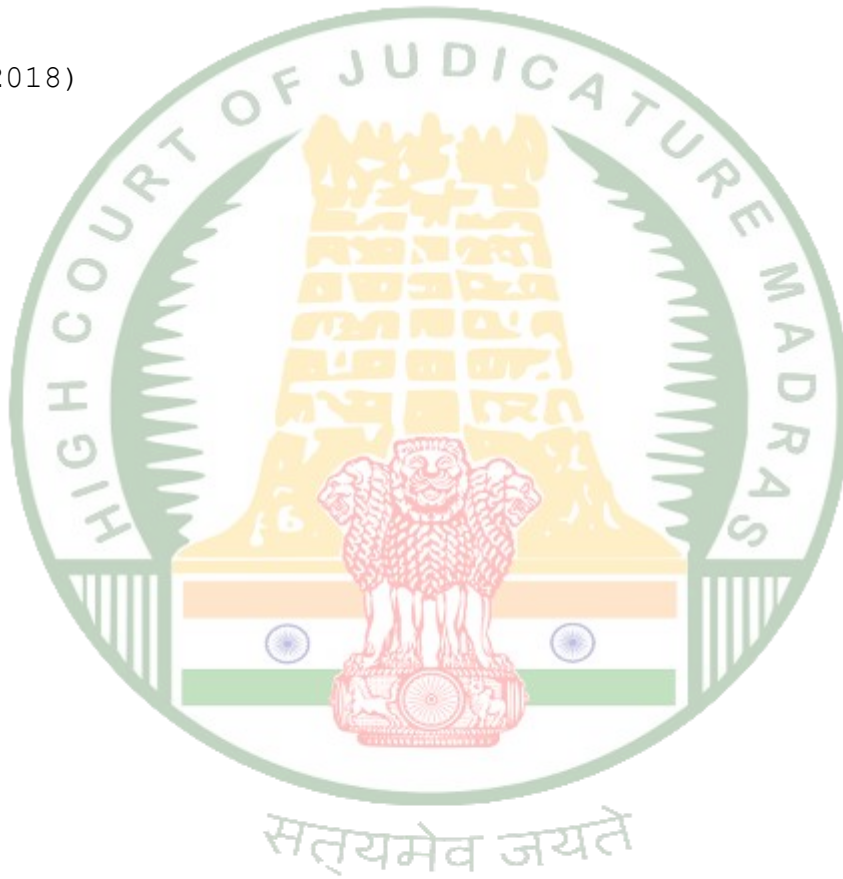
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copy to
The Section officer
Criminal Section, High Court, Madras 104.

+2 Ccs to Mr.A. Kumaraguru, advocate sr 71147.

CrI.O.P.Nos.23422 & 20402 of 2011

GJII(CO)
SP(31/10/2018)



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