



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.02.2018

CORAM:
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

WEB COPY

CRL.O.P. (MD) No.2053 of 2018
and
CRL.M.P (MD) Nos.891 & 892 of 2018

D.Shaji ... Petitioner/Sole Accused

-vs-

1.The State represented by
The Inspector of Police,
Prohibition Enforcement Wing,
Thuckalay,
Kanyakumari District.
(Crime No.158 of 2017) ... 1st Respondent/
Complainant

2.Mr.Sivathanu ... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in connection with the impugned charge sheet in S.C.No.237 of 2017, on the file of Sub Court, Kuzhithurai and quash the same.

For Petitioner : Mr.D.Srinivasaragavan
For R1 : Mr.Prabu Ramachandran
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed by the petitioner, to quash the proceeding in S.C.No.237 of 2017, on the file of the Assistant Sessions Judge, (Sub Court, Kuzhithurai).

2.The case of the prosecution in brief as follows:

The Police party was on Patrol, based on the secret information on 17.02.2017, when they were at Kannumamudu Odalivilai Junction near M.S.Broilers at about 11.30 a.m., the petitioner, who was in possession of two litre green colour bottle in his hand and has tried to hide the bottle and escape from the place. The Police party caught him and seized the bottle from him, they have found one litre brandy in it and a poisonous odour emanated from that and hence the petitioner has been arrested and subsequently, a case has been registered in Crime No.158 of 2017, under Section 4(1-A) of Tamilnadu Prohibition Act.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned counsel appearing for the petitioner has



submitted that the petitioner is a license holder for collecting empty bottles/TASMAC shop No.4821, which is run by the Government. He further stated that due to the business enmity at the instigation of private bar operator at Kerala State, the first respondent Police has registered in this case, against the petitioner herein. He further submitted that there is no evidence that the petitioner was in possession of the poisonous brandy for the purpose of selling to others and hence the proceeding in S.C.No.237 of 2017, on the file of the Assistant Sessions Judge, (Sub Court, Kuzhithurai) has to be quashed.

4.The learned Government Advocate (Crl.Side) has submitted that the petitioner was found in possession of one litre brandy containing some poisonous materials and hence the said brandy has been seized and the sample also has been taken and the same has been sent to the laboratory and the report received from the said laboratory. The report reveals that the said sample contains atropine of 6.4 mg in 100 ml and hence a charge sheet has been filed under Section 4(1A) of Tamilnadu Prohibition Act. He further submitted that as per the Section 4 (2) of the Tamilnadu Prohibition Act, the presumption is against the petitioner herein and he has to discharge the said burden and therefore the case cannot be quashed at this stage.

5.A presumption is there against the petitioner herein under Section 4(2) of Tamilnadu Prohibition Act. It is for the petitioner to discharge the said burden and therefore at this stage, the case cannot be quashed.

6.In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are also closed. After passing orders, the learned counsel for the petitioner has submitted that a direction may be given to the Trial Court to dispose of the matter at early.

7.Considering his requests, the Trial Court is directed to dispose of the above matter within a period of four months from the date of receipt of a copy of this order.

Sd/
Assistant Registrar(W)

/True copy/

Sub Assistant Registrar

To

1.The Assistant Sessions Judge,
Sub Court, Kuzhithurai.

2.The Inspector of Police,
Prohibition Enforcement Wing,
Thuckalay, Kanyakumari District.



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.D.Srinivasaragavan, Advocate, SR.No. 47710

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KK/JC/14.03.2018/SAR-2/3P-5C