



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P.(MD)No.5181 of 2019

and

Cr1.M.P.(MD)Nos.3260 & 3320 of 2019

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S.Kodeeswaran

... Petitioner

Vs.

The State Rep. by its
Sub-Inspector of Police,
Thallakulam Police Station,
Madurai District.
(Crime No.2266/2018)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings in S.T.C.No.473 of 2019, on the file of the Judicial Magistrate Court No.II, Madurai, Madurai District, and quash the same.

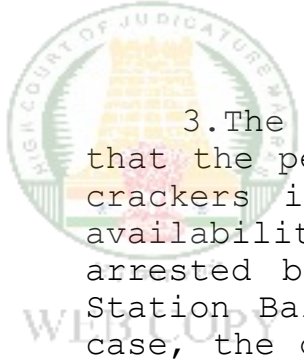
For Petitioner : Mr.R.Murugan

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Criminal side)

O R D E R

This Petition has been filed seeking to quash the proceedings in S.T.C.No.473 of 2019 pending on the file of the learned Judicial Magistrate No.II, Madurai, Madurai District.

2.The case of the prosecution is that on 06.11.2018 at 04.20 p.m., when the de-facto complainant viz., Solairaj, Sub-Inspector of Police, Thallakulam Police Station, Madurai, was on patrol duty along with Senthilkumar and Selvarajan, Head Constables, found that the petitioner/sole accused was in possession of crackers and firing the same in front of Tamil Jeya Theatre, Madurai and thereby, violated the guidelines issued by the Hon'ble Apex Court. Hence, the de-facto complainant filed a case in Crime No.2266 of 2018 against the petitioner for the offence punishable under Section 286 IPC. After completion of investigation, on 06.11.2018, the respondent filed a charge sheet against the petitioner, before the Judicial Magistrate Court No.II, Madurai and the same was taken on file in S.T.C.No.473 of 2019.



3.The learned counsel appearing for the petitioner submitted that the petitioner is an Engineering Graduate and somebody bursted crackers in the scene of occurrence and taking advantage of the availability of the petitioner in the scene of occurrence, he was arrested by the respondent police and thereafter, he was granted Station Bail. The learned counsel further submitted that in this case, the de-facto complainant and the investigating officer is one and the same. In similar circumstances, the Hon'ble Apex Court has held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and investigator must not be the same person.

4.In support of his submission, the learned counsel appearing for the petitioner relied on the decision of the Hon'ble Apex Court in **Mohan Lal Vs. State of Punjab** reported in **2018 (4) MLJ (Cr1) 244 (SC)**, wherein at Paragraph No.25, it has been held as follows:-

''25.In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.''

5.The learned Government Advocate (Criminal side) appearing for the State has no objection to quash the proceedings pending against petitioner in S.T.C.No.473 of 2019 on the file of the Judicial Magistrate Court No.II, Madurai.

6.Considering the facts and circumstances of the case apart from the above decision of the Hon'ble Apex Court and also considering the fact that the petitioner has allegedly committed only a petty offence, which is not a heinous one and there is no documentary proof available to implicate the petitioner in the said offence, this Court is inclined to quash the proceedings in S.T.C.No.473 of 2019 pending on the file of the learned Judicial Magistrate No.II, Madurai, Madurai District. Accordingly, the same



is quashed and this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

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/ True Copy /

Sub Assistant Registrar (CS)

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To

- 1.The Judicial Magistrate No.II,
Madurai.
- 2.The Sub-Inspector of Police,
Thallakulam Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.R.MURUGAN, Advocate, SR.No.59771

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