



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD) No. 12147 of 2019

and

CRL MP (MD) No.7629 of 2019

Sanjeev P.S. Kumar

.. Petitioner/Sole Accused

-Vs-

1.The Inspector of Police,
Kollencode Police Station,
Kanyakumari District.
(Crime No.93 of 2019)

.. 1st Respondent/Complainant

2. B. Mahesh
Sub-Inspector of Police,
Kollencode Police Station,
Kanyakumari District.

..2nd Respondent/Defacto Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the FIR in Crime No.93 of 2019 dated 29.06.2019 on the file of the first respondent for the offences under Section 24 of Tamil Nadu Prohibition Act, 1937 and quash the same as illegal.

For Petitioner : Mr.J.Pandi Dorai

For Respondents : Mr.K.Suyambulinga Bharathi for R1
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.93 of 2019 dated 29.06.2019 on the file of the first respondent for the offences under Section 24 of Tamil Nadu Prohibition Act, 1937 as against the petitioner.

2.It is seen from records that F.I.R. was registered in Crime No.93 of 2019 against the petitioner for an offence under Section 24 of Tamil Nadu Prohibition Act, 1937, on the ground that the petitioner has not obtained FL3 license. It is also seen that the complainant in the F.I.R. is the Sub Inspector of Police, Kollencode Police Station.



3. As per the manual of the Tamil Nadu prohibition Act, 1937, below the rank of Inspector of Police not to register and investigate a case.

4. The case is squarely covered by the judgment of the **Honourable Supreme Court of India, in Mohan Lal .Vs. The State of Punjab, in Crl.A.No.1880 of 2011 dt.16.08.2018**. It will be useful to extract the relevant portions of the judgment which is as follows:

"5. We have considered the submissions on behalf of the parties. The primary question for our consideration in the present appeal is, whether in a criminal prosecution, it will be in consonance with the principles of justice, fair play and a fair investigation, if the informant and the investigating officer were to be the same person. In such a case, is it necessary for the accused to demonstrate prejudice, especially under laws such as NDPS Act, carrying a reverse burden of proof.

11. A fair trial to an accused, a constitutional guarantee under Article 21 of the Constitution, would be a hollow promise if the investigation in a NDPS case were not to be fair or raises serious questions about its fairness apparent on the face of the investigation. In the nature of the reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstances that may raise doubts about its veracity. The obligation of proof beyond reasonable doubt will take within its ambit a fair investigation, in absence of which there can be no fair trial. If the investigation itself is unfair, to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers in the police which may well lead to false implication also. Investigation in such a case would then become an empty formality and a farce. Such an interpretation therefore naturally has to be avoided.

12. That investigation in a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on part of the accused was noticed in Babubhai vs. State of Gujarat, (2010) 12 SCC 254 as follows:

"32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating



officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth".

33. In State of Bihar v. P.P. Sharma this Court has held as under:

"57. ... Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism. ... Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the investigating officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court.

* * *

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. ...

61. An investigating officer who is not sensitive to the constitutional mandates, may be prone to trample upon the personal liberty of a person when he is actuated by mala fides."

14. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was



not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.

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.

26. Resultantly, the appeal succeeds and is allowed. The prosecution is held to be vitiated because of the infraction of the constitutional guarantee of a fair investigation. The appellant is directed to be set at liberty forthwith unless wanted in any other case".

5. Here is a case where the complainant is the Investigation Officer. Therefore, the entire investigation becomes vitiated as held by the Honourable Supreme Court in the judgment referred supra.

6. In the facts and circumstances of the case, the proceedings in F.I.R. In Crime No.93 of 2019, dated 29.06.2019 on the file of the first respondent police for the offences under Section 24 of



Tamil Nadu Prohibition Act, 1937 is quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl. Side)

WEB COPY

/TRUE COPY/

Sub Assistant Registrar

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To

1. The Inspector of Police,
Kollencode Police Station,
Kanyakumari District.

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

+1 CC to M/s.J.PANDI DORAI, Advocate (SR-86875[F] dated
16/09/2019)

CRL.O.P. (MD) No. 12147 of 2019

13.09.2019

JM/17.10.2019/5P/4C