



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2019

CORAM:

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

WEB COPY

Crl.O.P.(MD)No.7087 of 2018

and

Crl.M.P.(MD)Nos.3382 & 3383 of 2018

R.Badri Narayanan

...Petitioner/Accused No.1

-Vs-

State rep by
The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.
(Crime No.321 of 2017)

... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.123 of 2017 on the file of the learned Judicial Magistrate No.1, Dindigul, in pursuance of the Crime No.321/2017 on the file of the respondent and quash the same.

For Petitioner : Mr.D.Veerasekaran

For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.123 of 2017 on the file of the learned Judicial Magistrate No.1, Dindigul.

2.The case of the prosecution is that on 17.07.2017, based on the secret information, the respondent police seized 67 bags of Swagat gold and 8 bags of cool lip tobacco from the house of the second accused viz., Senthilkumar, who is the worker of the petitioner/first accused. The respondent police arrested the second accused and based on his confession statement, they falsely implicated the petitioner/first accused in this case. They registered a case in Crime No.321 of 2017, as against the accused persons for the offences under Sections 188, 420 of IPC and 24 (1) Cigarette and Other Tobacco Products Acts, 2003, and the same was taken cognizance in C.C.No.123 of 2017 by the learned Judicial Magistrate No.1, Dindigul. The said criminal proceedings is under challenge in this criminal original petition.



3.The learned counsel for the petitioner would submit that the petitioner is the proprietor carrying on business under the name and style of Mahindra & Co of wholesale and retail sales of various consumer goods since 1985. He is selling consumer products including beedis, cigarettes, cigars and tobacco along with other general goods. The petitioner is a registered dealer (GSTIN 33 AEGPB9713FIZV) legally carrying on business with all required licences and permission. He further submitted that the offences under Sections 188, 420 of IPC and 24 (1) Cigarette and Other Tobacco Products Acts, 2003, would not attract as against the petitioner. He further submitted that there is absolutely no witnesses have spoken about the occurrence and to connect the petitioner, there are no materials to proceed with the trial. When there is no material to proceed with the trial, the petitioner unnecessarily would not have put them an ordeal trial. Therefore, he prayed for quashment of the criminal proceedings.

4.Per contra, the learned Government Advocate (Crl.Side) would submit that there are specific allegations as against the petitioner to proceed with the trial. Further, he would submit that the petitioner is a habitual offender by committing this kind of crimes. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondents/State and perused the materials available on record.

6.On a perusal of the charge as against the petitioner is concerned, the respondent levelled the charge under Sections 188, 420 of IPC and 24 (1) Cigarette and Other Tobacco Products Acts, 2003, as against the petitioner. It is seen from the charge that on 17.07.2017, based on the secret information, the respondent police seized 67 bags of Swagat gold and 8 bags of cool lip tobacco from the house of the second accused viz., Senthilkumar. The petitioner is not the owner of the house. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charge against the petitioner. It is also seen from the charge itself that the charges are very simple in nature and trivial. Section 188 reads as follows:

"188. Disobedience to order duly promulgated by public servant – Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with



simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

7. In so far as the offence under Section 428 of IPC is concerned, according to the prosecution, without disclosing the fact that the petitioner sold out the tobacco to the public, charges were framed as against him and there is no material to attract offence under Section 420 of IPC. The respondent said that the tobacco were seized from the house of the second accused, who is the worker of the petitioner's Company. But the shops are situated very far from the house of the second respondent and there is no evidence to show that the petitioner sold out the tobacco to the public. Therefore, the offence under Section 420 IPC would not attract as against the petitioner. In so far as the other offences under Section 24 (1) of the Cigarette and other Tobacco Products Act, 2003, concerned that is banned by the Government of TamilNadu.

8. view of the above observation, the offences under Sections 188, 420 of IPC would not attract as against the petitioner. In so far as the other offence under Section 24 (1) of the Cigarette and other Tobacco Products Act, 2003, is concerned there are material to proceed as against the petitioner.

9. Accordingly, the proceedings in C.C.No.123 of 2017 on the file of the learned Judicial Magistrate No.1, Dindigul, is quashed in so far as the offences under Sections 188 and 420 of IPC alone. In so far as the other offences under Section 24 (1) of the Cigarette and other Tobacco Products Act, 2003, is concerned, the Trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.

10. In view of the above, this criminal original petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

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



To

1.The Judicial Magistrate No.1,
Dindigul.

2.The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.

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

+1 CC to M/s.D. VEERASEKARAN, Advocate (SR-97681[F] dated
12/11/2019)

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