



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP(MD)No.6871 of 2020

and

CRL MP(MD)No.3423 of 2020

WEB COPY

1.Ram Kowshik

2.Vijayakumar

... Petitioners / Accused Nos.2&4

Vs.

1.State through

The Inspector of Police,
Avaniyapuram Police Station,
Madurai District
(Crime No.865 of 2020)

... 1st Respondent / Complainant

2.Mr.K.S.Muthu

Assistant Medical Officer (Siddha),
Government Hospital,
Thirumangalam,
Madurai.

... 2nd Respondent / De-facto
Complainant

3.Mr.Mariappan

Drug Inspector,
Indian Medicine / District Siddha Office
Madurai.

... 3rd Respondent / 3rd Party

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the FIR in Crime No.865 of 2020 on the file of the 1st respondent and to quash the same.

For Petitioners : Mr.Niranjan S.Kumar

For Respondents : Mr.S.Chandrasekar

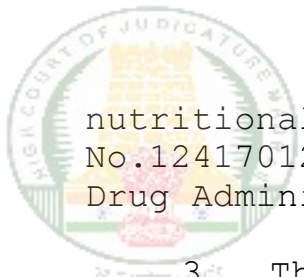
(R1 to R3)

Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to quash the FIR in Crime No.865 of 2020, pending on the file of the 1st respondent police.

2. The case of the petitioner is that the petitioner is running a shop in the name and style of "M/s.C.M.Ponnusamy Nadar and Brothers", in which, he manufacturing and selling the Organic foods, herbal powders, salts, spices, soups, sauces, salads, processed products and the foodstuffs intended for particular



nutritional uses. The petitioner was issued with FSSAI Licence No.12417012000367 by the Government of Tamil Nadu, Food Safety and Drug Administration Department.

3. The petitioner is running a Mill in the name and style of "M/s. The Raja Extraction" and the Ministry of Micro, Small and Medium Enterprises had given license to the first petitioner's Mill for grinding works on 06.06.2010 and the first petitioner is running the Mill.

4. In the said circumstances, in the year of 2020, one of the petitioner's customers viz., M/s.Solaimalai Indian Herbal Drugs, purchased the herbal items viz., Nerinjil Plant and Avara leaves and demanded the petitioner to grind the same and to produce it in the form of powder. Hence, the petitioner grinded the herbal items and packed it separately.

5. On 30.04.2020, at about 12.00 p.m., the 2nd respondent along with the 1st respondent police went to the 1st Petitioner's Mill and assaulted the 2nd petitioner and took him to the police station. Further, on the same day, another one inspection was conducted in the 1st petitioner's shop, which situates near to the Vilakuthoon Police Station. The first petitioner was at his shop during the time of inspection.

6. Thereafter, due to the personal vengeance, two FIRs registered against the 1st petitioner on the same day. More interestingly, the respondents alleged that the first inspection was conducted at the 1st petitioner's shop on 30.04.2020 at 2.30 p.m., and at that time, the 2nd petitioner was in his shop and he was taken to the Police Station. In the present FIR registered by the first respondent is nothing but an abuse of process of law. The 2nd respondent, without testing the samples recovered from the petitioner Company lodged the complaint is nothing but against the provisions contemplated in Drugs and Cosmetics Act, 1940.

7. The learned counsel appearing for the petitioners would submit that as per the Drugs and Cosmetics Act, 1940 and Rules 1945, the Drug Inspector is the competent person to initiate complaint, that too, not before the police, only before the learned Magistrate. According to the petitioners, the Police is not empowered to register any FIR in respect of the Drugs and Cosmetics Act, 1940 and they cannot investigate the complaint and lay charge sheet and further the offence under Section 274 of IPC is a non-cognizable offence.

8. The learned counsel appearing for the petitioners challenges the FIR in two folds. One is the 2nd respondent is not a competent person to lodge a complaint under the Drugs and



Cosmetics Act, 1940. Further, the police officers are not having any power to investigate the case in respect to the offence contemplated in Drugs and Cosmetics Act, 1940.

9. Per contra, the learned Additional Public Prosecutor appearing for respondents 1 to 3, on instructions, made a submission that during the time of registering the case along with the offence punishable under Section 32 of the Drugs and Cosmetics Act, the offence under Section 274 IPC., has been registered by the 1st respondent. Hence, it cannot be said that the Police Officers is not having any authority to investigate the cases under the Drugs and Cosmetics Act, 1940.

10. Upon considering the arguments advanced by either side, in order to resolve the issue raised in this petition, it is necessary to see Section 32 of the Drugs and Cosmetics Act, 1940, which reads as follows:-

"32. Cognizance of offences-1 [(1) No prosecution under this Chapter shall be instituted except by-

- (a) an Inspector; or
- (b) any Gazetted Officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government or by a general or special order made in this behalf by that Government; or
- (c) the person aggrieved; or
- (d) a recognised consumer association whether such person is a member of that association or not.

11. Accordingly, under Section 32 of the Drugs and Cosmetics Act, 1940, the Police officers are excluded for the purpose of instituting the prosecution. At this juncture, it is useful to refer Section 4 of Cr.P.C., which reads as under:-

"Section 4 of Cr.P.C.. Trial of offences under the Indian Penal Code and other laws.

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."



12. Therefore, as discussed hereinabove, the Drugs and Cosmetics Act, 1940 is a complete code and thereby, under Section 32 of the Drugs and Cosmetics Act, 1940, no prosecution can be launched on the basis of a police report submitted under Section 173(2) of Cr.P.C. If no cognizance of the offence can be taken under the Act, 1940, on the basis of a police report, institution of the FIR under Section 154 of Cr.P.C and the investigation pursuant thereto under Sections 156 and 157 of Cr.P.C., would be impermissible.

13. In the present case, FIR has been lodged by the Assistant Drug Controller. He may have been appointed as an Inspector in consonance with the provisions of the said Act, 1940, as required under Section 3(e) of the Act. There is nothing on record to establish his appointment in consonance with the Drugs Act. However, the issue with regard to the competency of the Assistant Drug Controller to act as an Inspector is not an issue. In this regard Section 32 of the Act, 1940, is very clear that only the Drug Inspector that means the 3rd respondent is the competent officer to lodge a complaint in respect to the offences contemplated under the Drugs and Cosmetics Act, 1940.

14. Hence, in view of the above, I am of the firm opinion that the Police officers are not having the power to investigate the offences punishable under the Act, 1940. Further, the 2nd respondent, who is the defacto complainant in Crime No.865 of 2020, is not a competent person to lodge a complaint in respect to the offences punishable under the provisions of the Drugs and Cosmetics Act, 1940. Hence, this Court is of the considered view that the registration of the FIR in Crime No.865 of 2020 against the petitioners, is nothing but an abuse of process of law and therefore, the same is liable to be quashed.

15. In the result, this Criminal Original Petition is allowed and the FIR in Crime No.865 of 2020, pending on the file of the 1st respondent is quashed. Consequently, the connected miscellaneous petition is closed.

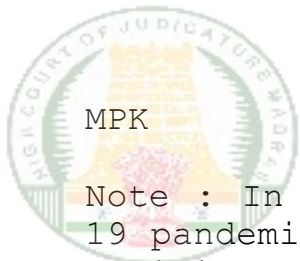
Sd/-

Assistant Registrar (CRL.SIDE)

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/ /2020

Sub Assistant Registrar (CS)



MPK

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Inspector of Police,
Avaniyapuram Police Station,
Madurai District.
2. Assistant Medical Officer (Siddha),
Government Hospital,
Thirumangalam,
Madurai.
3. Drug Inspector,
Indian Medicine / District Siddha Office
Madurai.

Copy to

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

**CRL OP(MD)No.6871 of 2020
15.07.2020**

KM (27.07.2020) 5P 5C