



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P. (MD)No.8055 of 2020

and

Crl.M.P(MD) No.3830 of 2020

WEB COPY

1.D.Saravanakumar

2.Manikandan

... Petitioners/Accused No.1 & 3

Vs.

1.State through

The Inspector of Police,
Avaniyapuram Police Station,
Madurai District.

(Crime No.865 of 2020)

... 1st Respondent/Complainant

2.K.S.Muthu

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

...2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the FIR in Crime No.865 of 2020 on the file of the first respondent and to quash the same so far as the petitioners are concerned.

For Petitioner : Mr.Nirajan S.Kumar

For R-1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate.

O R D E R

This Criminal Original Petition has been filed by the petitioners seeking the relief to quash FIR registered in Crime No.865 of 2020 pending on the file of the first respondent as illegal.

2.The case of the prosecution is that on 30.04.2020, the second respondent who is Assistant Medical Officer (Siddha), conducted inspection at Sri Balaji Agencies Rayil Mark Seegakkai Company, is the first petitioner's mill and found that they are manufacturing "Kabasura Kudineer" powder and "Nilavembu Kudineer Suranam" without getting any proper license. Further they did not cooperate for inspection for which based on the complaint given by the Assistant Medical Officer (Siddha), the first respondent police registered a case in Crime No.865 of 2020 for



the offence punishable under Section 22(3) r/w Section 33 I(1)(a) (ii) of Drugs and Cosmetics Act, 1940.

3. The learned counsel appearing for the petitioners would submit that the registration of the case itself by the first respondent police is an abuse of process of law, as the first respondent police is not having any power to investigate the offences relates to the Drugs and Cosmetics Act, 1940. Further he would further submit that the second respondent is not a competent authority to lodge a complaint in respect to the offence committed under the provisions of the Drugs and Cosmetics Act, 1940. Therefore, for the simple reasons stated above, FIR registered in Crime No.865 of 2020 for the offence punishable under Section 22 (3) r/w Section 33 I(1)(a)(ii) of Drugs and Cosmetics Act, 1940 has to be quashed.

4.Per contra, the learned Government Advocate appearing for first respondent, on instructions, would submit that in respect of the case registered under Section 22(3) r/w Section 33 I(1)(a)(ii) of Drugs and Cosmetics Act, 1940, it cannot be said that the police officers is not having any authority to investigate the case which registered under the Drugs and Cosmetics Act, 1940.

5.Upon considering the arguments advanced by either side, in the present case, for registering the case, the complaint has been preferred by the Assistant Medical Officer (Siddha), Government Hospital, Thirumangalam, Madurai. 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. However, there is nothing on record to establish his appointment in consonance with the Drugs Act. Thus, with regard to the competency of the Assistant Medical Officer to act as an Inspector is an issue. In this regard Section 32 of the Act, 1940, is very clear that only the Drug Inspector alone is the competent officer to lodge a complaint in respect to the offences committed under the Drugs and Cosmetics Act, 1940.

6.In respect to the competency of the Police Officer to investigate the offence registered under the Drugs and Cosmetics Act, 1940, it is relevant to see Chapter IV of Drugs Act is governed by Section 32 of the Drugs Act, which reads as under:-

"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.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this chapter."

7. It would also be relevant to reproduce Section 4 of Cr.P.C, which provides as under:-

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

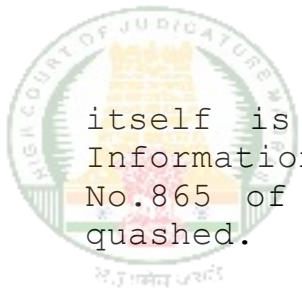
(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(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."

8. By virtue of provisions of Section 4 of Cr.P.C, Provisions of Section 32 of Drugs Act would prevail. It is not the case of the State that a Gazetted Officer of the police has been authorized, as provided under Section 32 of the Drugs Act, to initiate prosecution under Chapter IV of the said Act against an accused.

9. Therefore, in the present case, the alleged offence committed by the petitioner under Chapter IV of the Drugs Act and thus, despite police having power to investigate cognizable and non-bailable offence, in view of bar put under Section 32 of the Drugs Act, to launch prosecution, it is prohibited from investigating an offence under Chapter IV of the Drugs Act. Accordingly, I am of the considered opinion that the Police officers are not competent person to investigate the offence which registered under the Drugs and Cosmetics Act, 1940.

10. Here it is the case, the first respondent police registered the First Information Report in Crime No.865 of 2020 alleging that the petitioner herein committed an offence under Section 22(3) r/w Section 33 I(1)(a)(ii) of Drugs and Cosmetics Act, 1940. In the said circumstances, as already observed, registration of the case



itself is an abuse of process of law. Therefore, the First Information Report registered against the petitioner in Crime No.865 of 2020 by the first respondent police is liable to be quashed.

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

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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

The Inspector of Police,
Avaniyapuram Police Station,
Madurai District.

Copy to

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

Crl.O.P.[MD]No.8055 of 2020
03.08.2020

KM (15.09.2020) 4P 3C