



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.O.P. (MD)No.13159 of 2020

and

CRL(MD)No.6023 of 2020

WEB COPY

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... Petitioner

vs.

The State rep. by
Sub Inspector of Police,
Cumbum North Police Station,
Theni District
(Crime No.981 of 2020)

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in connection with Crime No.981 of 2020 dated 09.08.2020 on the file of the Sub Inspector of Police, Theni Cumbum North Police Station, Theni District and quash the same as against the petitioner.

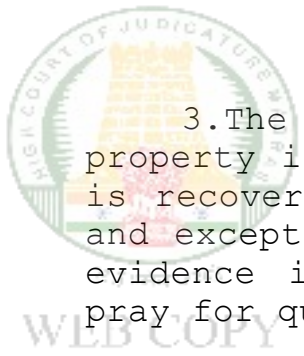
For Petitioner : Mr.M.Lingadurai

For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records in connection with Crime No.981 of 2020 dated 09.08.2020 on the file of the Sub Inspector of Police, Theni Cumbum North Police Station, Theni District and quash the same as against the petitioner.

2.The allegation against the petitioner is that on 09.09.2020 about 06.15 hours, the respondent police received a secret information from the informer that one Sivakumar(A1) transported kanja and based on the same, police party had gone to Cumbum Manikatti, Aalamara Road and found A1 who was walking on the road with yellow cloth bag and he was identified by the informant. The respondent police intercepted A1 and recovered 2 kg kanja from him after duly following the provisions of the NDPS Act and thereafter arrested A1 and recorded his confession statement, wherein, A1 has stated that he and the present petitioner went to Andhra and purchased ganja from unidentifiable person. Accordingly, a case in Crime No.981/2020 was registered under Sections 8(c) r/w 20(b)(ii)(B) NDPS Act on 09.08.2020, wherein, the petitioner has been shown as the absconding accused.



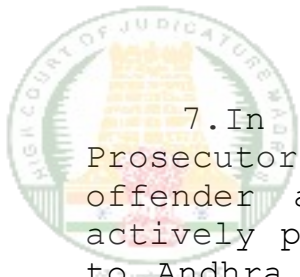
3.The learned counsel for the petitioners would state that no property is recovered from the petitioner and the entire property is recovered from A1 alone which is also not commercial quantity and except the confession statement of A1, no other incriminating evidence is available against this petitioner. Thus, he would pray for quashing the FIR.

4.The learned Additional Public Prosecutor would state that the petitioner is a habitual offender and involved in two previous cases of similar nature in Crime No.398/2017 and 203/2014 and she actively participated throughout the entire events and she went along with A1 to Andhra, purchased ganja, transported to Theni in order to sell and her plea that no contraband was recovered from her, should be tested only during trial and the investigation is in the initial stage and unless the petitioner/A2 is taken into custody, the investigation may not be completed and therefore, she is purposely hiding herself and filed the present petition. He would further state that earlier she filed anticipatory bail application in Crl.O.P(MD)No.8710/2019 and the same was dismissed as withdrawn on 10.09.2020 and again, she filed another bail application in Crl.O.P(MD)No.12120/2020 and it was dismissed on 02.11.2020 on merits. The recovered contraband from A1 was duly produced before the Court concerned and samples were sent for chemical analysis and it reports ganja and further, 161(3) statement of the chemical examiner was also obtained and these documents would prima facie shows that the accused should face trial. Thus, he would pray that the interference of this Court is not necessary.

5.Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

6.The Hon'ble Supreme Court by judgment dated 02.12.2019 in **Crl.A.No.1817 of 2019 in the case of M.Jayanthi vs. K.R.Meenakshi and another** has held as follows:-

'9.It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.'



7.In the present case, the learned Additional Public Prosecutor vehemently argued that the petitioner is a habitual offender and as per the statement of A1, the petitioner had actively participated in the entire events and went along with A1 to Andhra, purchased ganja to sell it and she is the absconding accused. The anticipatory bail petition filed by her has been dismissed twice as she was a habitual offender. Further, the respondent/police only after interrogation of the petitioner/A2 would be able to complete the investigation and therefore, considering that serious allegations are levelled against the petitioner, this Court is not inclined to interfere with the impugned FIR.

8.Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// 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

1)The Sub Inspector of Police,
Theni Cumbum North Police Station,
Theni District.

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

ORDER MADE IN
Crl.O.P. (MD)No.13159 of 2020
DATED : 07.12.2020

PK(CO)

KM (18.12.2020) 3P 3C