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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.8462 OF 2018

AND

CRL.M.P.NO.4386 OF 2018

Thanis Lass

... Petitioner/Accused A2

.Vs.

State represented by the
Inspector of Police,
PEW Ulundurpet Police Station,
Villupuram District.
(Crime No.386 of 2017)

... Respondent/Complainant

PRAYER:-

Petition filed under Section 482 of Cr.P.C., to quash the FIR in Cr.No.386 of 2017 dated 06.11.2017 on the file of the respondent police ie. Inspector of Police, P.E.W, Ulundurpet Police Station, Villupuram District for the alleged offence under Section 4(1)(i), 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act.

For Petitioner : Mr.S.Saravanakumar

For Respondent : Mr.C.E.Pratap
Government Advocate
(Criminal Side)

O R D E R

The petitioner has filed this petition seeking to quash the FIR in Cr.No.386 of 2017 dated 06.11.2017 on the file of the respondent police ie. Inspector of Police, P.E.W, Ulundurpet Police Station, Villupuram District for the alleged offence under Section 4(1)(i), 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act.

2. It is the case of the prosecution that on 06.11.2017 based on the secret information, the respondent police and team



had conducted raid at Eraiyur Village at 2.30 p.m and at that time, the petitioner along with co-accused namely Udayankappi, was selling illicit arrack and received money from two members. On seeing the police, the petitioner was escaped from the scene of occurrence and the other co-accused was arrested by the respondent Police and her confession, the FIR was registered under Section 4(1)(i), 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act, in Cr.No.386/2017.

3. Learned counsel appearing for the petitioner submitted that merely on the basis of the confession statement of the co-accused, the petitioner cannot be implicated in the offence as Section 25 of the Evidence Act acts as a bar to rely on the statement recorded during police custody. There are no other materials to implicate the petitioner and, therefore, the case against the petitioner deserves to be allowed.

4. On the above contentions, this Court heard the learned Government Advocate (Crl. Side), who submits that the bar engrafted in Section 25 of the Evidence Act pertains only to the statement recorded from the accused and there is no bar for the police to rely on the statement of the co-accused for implicating the accused in a crime.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. In State of Haryana - Vs - Bhajan Lal (1992 Supp (1) SCC 335), the Hon'ble Supreme Court has expounded the circumstances and the situations in which the inherent power u/s 482 should be invoked for quashment and for better appreciation, the relevant portion is extracted hereunder :-

"In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute



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any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence and this case does not call for the exercise of



extraordinary or inherent powers of the High Court to quash the F.I.R. Itself."

7. In yet another case in R.P.Kapur - Vs - State of Punjab (AIR 1960 SC 866), the parameters within which the exercise of inherent powers vested by Section 561-A of the repealed Code of Criminal Procedure, 1898 (corresponding to Section 482 Cr.P.C.) can be invoked had been laid down in the following terms:-

"(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g., want of sanction;

(iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

8. From the above, it is amply evident that this Court is clothed with the requisite power to interfere with the proceeding at any stage, provided, the necessary satisfactions, as enumerated above, are fulfilled. Therefore, the test that is required to be made is whether the materials placed on record by the prosecution fulfill the test for the continuance of the case or falls short for its quashment is the sole question that requires consideration.

9. From a bare perusal of the facts as narrated above, it clearly reveals that the tests enumerated by the Hon'ble Supreme Court in Bhajan Lal's case and R.P.Kapur's case (supra) stand not satisfied and in view of the same, there arises no occasion to quash the FIR registered against the petitioner.

10. Insofar as the contention of the petitioner relating to the bar u/s 25 of the Evidence Act is concerned, it is to be pointed out that the bar is only insofar as placing reliance on the statement of the accused, which has been recorded u/s 25 of the Evidence Act. In the present case, the statement of the co-



accused alone is relied upon to apprehend and implicate the petitioner and, therefore, the contention of the petitioner in this regard is wholly misconceived.

11. For the reasons aforesaid, there are no merits in this criminal original petition and accordingly the same is dismissed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Inspector of Police,
PEW Ulundurpet Police Station,
Villupuram District.
2. The Public Prosecutor,
Madras High Court.

CRL.O.P.NO.8462 OF 2018

SR(CO)
PBS/03/09/2021