

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH
Crl.OP.No.16806 of 2020
and
Crl.MP.No.6493 of 2020

C.K.Velmurugan

...Petitioner

.Vs.

State by Drug Inspector,
Ambatur -- II Circle,
Office of the Assistant Director,
Drug Control Office,
Zone-4, D.M.S. Complex,
Teynampet,
Chennai-600 006.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to quash the conviction and sentence in C.C.No.19 of 2018 dt.04.01.2020, on the file of the learned Chief Judicial Magistrate, Thiruvallur.

For Petitioner : Mr.C.Rajan

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This criminal original petition has been filed challenging the judgment of the Chief Judicial Magistrate, Thiruvallur, convicting and sentencing the petitioner for the following offence:

(i) 18(c) r/w Rules 65(2) and 27(d) of the Drugs and Cosmetic Act to two years imprisonment and One lakh fine in default 6 months simple imprisonment.

(ii) 18(c) r/w Rules 65 (3)(1) and 27(d) of the Drugs and Cosmetic Act to two years imprisonment and One lakh fine in default 6 months simple imprisonment.

(iii)(i). 18(c) Rules 65(4)(3)(i) and 27(d) of the Drugs and Cosmetic Act to two years imprisonment and One lakh

fine in default 6 months simple imprisonment.

2.The main ground that was urged by the learned counsel for the petitioner is that the Chief Judicial Magistrate, does not have the jurisdiction to try the offence since Section 32 of the Drugs and Cosmetics Act, 1940, specifically prescribes that the offence punishable under Chapter IV can be tried only by a Court of Session. Since the Court below lacks jurisdiction, the entire proceedings is vitiated and hence a petition under Section 482 of Cr.P.C., can be maintained before this Court.

3.The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in Kaushik Chatterjee v. State of Haryana & Ors in Transfer Petition made in (Crl).No.456 of 2019, dt. 30.09.2020, to substantiate his submissions.

4.The learned Additional Public Prosecutor brought to the notice of this Court that the petitioner has also filed an appeal before the Sessions Court against the judgment of the Judicial

Magistrate and the appeal has been entertained and sentence has also been suspended. The learned Additional Public Prosecutor further submitted that the petitioner cannot parallelly maintain a petition under Section 482 of Cr.P.C., before this Court.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.In the considered view of this Court, the petitioner having filed an appeal before the concerned Sessions Court and the same having been entertained and the sentence also having been suspended, it is always left open to the petitioner to raise the jurisdictional issue also before the concerned Sessions Court in the appeal. It is not necessary for the petitioner to parallelly challenge the jurisdiction of the Chief Judicial Magistrate, by filing a petition under Section 482 of Cr.P.C. This Court deems it fit not to exercise its jurisdiction under Section 482 of Cr.P.C., and leaves the issue open to be considered by the Sessions Court while deciding the appeal filed by the petitioner.

7.This Criminal Original Petition is disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

KP

To

1.The Chief Judicial Magistrate, Thiruvallur.

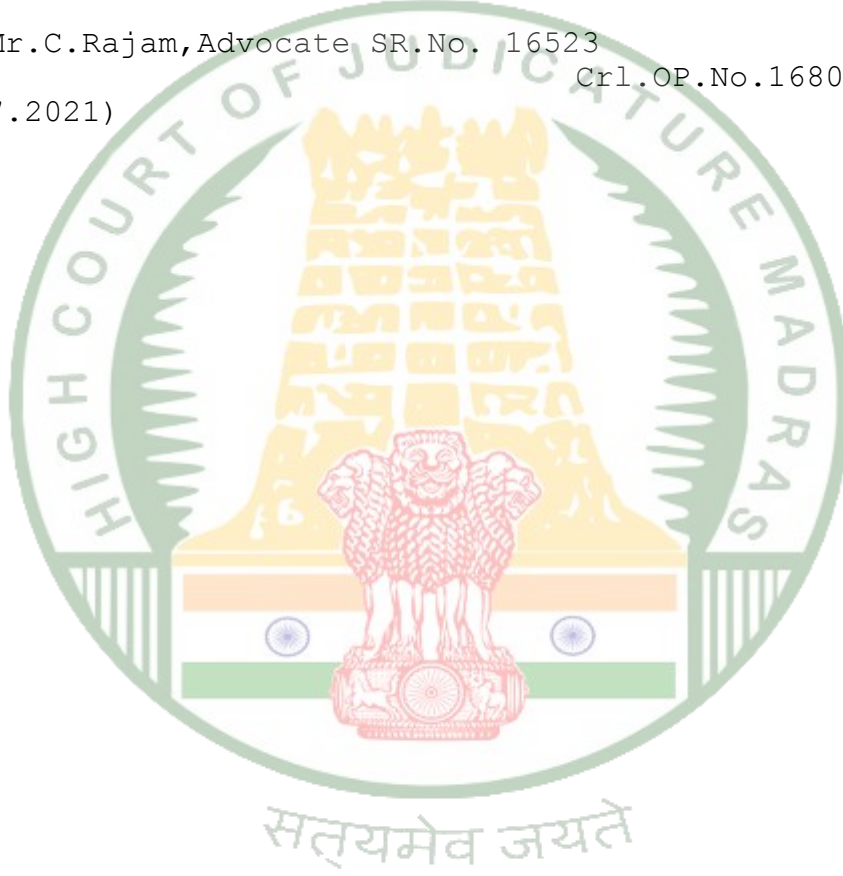
2.The Public Prosecutor,
High Court, Madras.

3.The Inspector of Police,
K-1, Sembium Police Station,
Chennai-600 011.

+2ccs to Mr.C.Rajam,Advocate SR.No. 16523

CrI.OP.No.16806 of 2020

A.SK(01.07.2021)



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