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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.07.2021
PRONOUNCED ON : 17.09.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.Nos.10419, 10420 & 10571 of 2021 and
Cr1.M.P.Nos.6275, 6276 & 6341 of 2021

I.Ezhilarasan ... Petitioner in all cases

Versus

1. State represented by the Inspector of Police,
Erode Town Police Station,
Erode District.
(Crime No.320 of 2021)
... Respondent in Cr1.O.P.No.10419 of 2021
2. State represented by the Inspector of Police,
Taluk Police Station, Erode,
Erode District.
(Crime No.235 of 2021).
... Respondent in Cr1.O.P.No.10420 of 2021
3. State represented by the Inspector of Police,
Erode South Police Station, Erode,
Erode District.
(Crime No.223 of 2021).
... Respondent in Cr1.O.P.No.10571 of 2021

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the Crime Nos.320, 235 & 223 of 2021 on the file of the respondent respectively and quash the same.

In all cases :
For Petitioner : Mr.C.Peranban
For Respondents : Mr.A.Damodaran,
Government Advocate (Cr1. Side)



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from Akil Cars shed for sale. In Akil Cars shed, one Sridhar handed over ganja for sale to Ajees. The said Ajees was in possession of 15 packets of ganja, each packet containing 8 gram and the same was weighed in the nearby vegetable shop and found totally 120 grams. Thereafter, the Police recorded the confession of Ajees and he disclosed that he had some more ganja in nearby place. Pursuant to the confession, the Police personnels went to Akil Cars shed situated at 2nd Street, Periyar Nagar, Rajakadu after getting permission from the Deputy Superintendent of Police, Erode at about 03.00 p.m. On seeing the Police, the persons there attempted to flee away. The Police caught him and he disclosed his name as Sridhar and also disclosed that he and Mathan, Kottai Ramu, Gowri, Vakkil Ezhilarasan/petitioner had gone to Andhra Pradesh and bought ganja in bulk, brought back to Erode and shared to Mathan, Gowri, Kottai Ramu, Kesavan, Saravanan, Ajees, Paisal, Rajendran, Pathiban, Brindha, Kiili @ Sridhar, Logu, Ezhilarasan/petitioner for sale. The said Sridhar handed over totally 2 kgs of ganja in Akil Cars Shed. In the presence of Village Administrative Officer and other two witnesses, the confession of Ajees and Sridhar recorded, ganja was recovered through Recovery Mahazar from the accused. Hence, a case in Crime N.320 of 2021 was registered for offence under Sections 8(c), 20(b)(ii)(c) and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 against 14 persons.

(iii)The gist of the case in Crime No.223 of 2021 is that on 01.06.2021, at about 02.30 p.m., the defacto complainant/the Sub Inspector of Police attached to the 3rd respondent Police along with the other Police personnels were near to Gandhiji Road, Erode Fire Station. At that time, one person on seeing the Police, attempted to flee away from the scene. On enquiry, he disclosed his name as Parthiban, son of Karupan, No.979E Block, Puthumai Colony, Old Manikam Theatre Backside, Erode. On enquiry, he informed that he is having ganja in plastic bag. The Police seized 80 grams of ganja in the presence of Police personnels through Seizure Mahazar. He further informed that some more ganja available in his house. The Police proceeded to the house of Parthiban, seized 1.2 kgs of ganja through Seizure Mahazar. The said Parthiban confessed that Mathan, Gowry, Ezhilarasan/petitioner, Kottai Ramu and Sridhar went to Visakapattinam, bought Ganja and brought back to Golden City, Erode Solar Nagar and handed over the same to Brindha, Kesavan,



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through whom the ganja was shared to Ajees, Paisal, Logu, Rajendran, Saravanan, Kili @ Sridhar and the petitioner for sale. Hence, a case in Crime No.223 of 2021 was registered for offence under Sections 8(c), 20(b)(ii)(c) and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 against the petitioner and 13 others.

3.The learned counsel for the petitioner submitted that the petitioner is a practising Advocate (Enrollment No.1978/2012) in the Court of Erode District. Since 05.03.2014, he is a member of the Bar Association Erode and appeared in civil and criminal cases and also appeared before the Consumer Forum and Labour Court. He further submitted that the petitioner is an Income Tax Assesse and he was appointed as Special Public Prosecutor vide G.O.Ms.No.1430, dated 03.12.2020 to prosecute the Crime No.400 of 2019 in a case registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The petitioner defends accused who are facing prosecution under the Narcotic Drugs and Psychotropic Substances Act, 1985, which offended the respondents. Hence, the respondents to deter and keep away the petitioner from defending the accused who are facing prosecution under the Narcotic Drugs and Psychotropic Substances Act, 1985, foisted a false case against the petitioner.

4.The learned counsel for the petitioner further submitted that apart from the confession of the co-accused, nothing is available against the petitioner. In all these cases, it could be seen that the petitioner was not available in the scene of occurrence and no recovery was made from him, despite search. The petitioner as an Advocate, was doing his professional work defending the accused who are facing trial under the Narcotic Drugs and Psychotropic Substances Act, 1985. The learned counsel submitted that in Crime No.223 of 2021, the petitioner was implicated on the confession of Parthiban and in Crime No.235 of 2021, he was implicated on the confession of Faizal and in Crime No.320 of 2021, he was implicated on the confession of Ajees and Sridhar. The First Information Report in all these cases amounts to violation of Article 20(2) and 20(3) of the Constitution of India and hence, the petitioner is falsely implicated in all these cases. Further, all the three cases were registered in short intervals. In all these cases, the defacto complainant is the Sub Inspector of Police and the



witnesses to the arrest, recovery and confession are Police personnels. No independent or private persons were examined and cited as witness.

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5.The learned counsel for the petitioner further submitted that the informants are the Police personnel who registered the First Information Reports and conducted investigation. The Hon'ble Apex Court in several cases held that such investigation to be quashed, if prejudice is found. In these cases, it is clear that the investigation is highly prejudiced to the petitioner. The respondents by misusing their official power, had registered these false cases against the petitioner. Further, the contents in the FIRs are with ambiguities and the Police in a preconceived notion, to spite vengeance with ulterior motive, implicated the petitioner. Hence, he prayed for quashing the cases against the petitioners.

6.The learned Government Advocate (Cr1. Side) appearing on behalf of the respondents submitted that concerted efforts have to be taken in order to eradicate the peddling of Ganja, which is very dangerous to the society, more particularly, which affects young persons, since their future is being destroyed and further, after getting addicted to it, those addicts get into commission of offences, which is now an increasing trend, hence, in order to eradicate the above menace, the Police are taking constant and concerted efforts. He further submitted that on 23.05.2021, on secret information, the Sub Inspector of Police attached to the 2nd respondent/Erode Taluk Police Station, had gone to the house of A1 and A2 along with the Police personnels after getting permission from his superior officer. On seeing the Police party, A1 and A2 attempted to flee away and they were caught. On enquiry, they disclosed that they belong to Pallipalayam, Namakkal District and they are husband and wife and for the past two months, they were residing in door No.130, Golden City, Vasantham Nagar, Erode. One Mathan and Gowry had instructed them to reside in the said address. The said Mathan and Gowri used to handover ganja packet in bulk. The bulk packets of ganja used to be segregated and packed in small quantity of 10 grams each and handover to Saravanan, Ameer @ Ajees on instructions from Mathan and Gowry. Following the statutory conditions, the accused were arrested, their confession recorded, ganja seized. Totally 11 packets of ganja seized, in which 10 packets weighed around 225 kg and one packet



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weighted 7 ½ kg, totally 232 ½ kg of ganja were recovered and seized. The samples were taken and sent to Forensic Study. Thereafter, the accused along with the contraband were produced before the Superior officer and a case in Crime No.235 of 2021 was registered. Since the accused disclosed that bulk packets of ganja were segregated and packed in small quantities and given the same to peddler for sale, the Police personnels in and around Erode were vigilance. On 01.06.2021, the 1st respondent/Erode Town Police Station along with the Police personnels were on patrol duty in Periyar Nagar, Kumaraswamy Hospital, Erode. At about 12.30 p.m., a person on seeing the Police party, attempted to flee away from the scene. When he was caught and enquired, he disclosed his name as Ajees. On search, the 1st respondent Police found from him 15 packets of ganja, each packet containing 8 gram and same were seized. On his confession, the other accused in this case were arrested and a case in Crime No.320 of 2021 was registered. Following the same, on the same day i.e., 01.06.2021, at about 02.30 p.m., when the 3rd respondent/Erode South Police Station was on road check near to Gandhiji Road, Erode Fire Station, one Parthiban attempted to flee away from the place and the Police caught him. On search from him, 1.2 kgs of ganja was recovered.

7.From the above, it could be seen that the bulk consignment of ganja were purchased by the accused including the petitioner from Andhra Pradesh and handed over to the accused in Crime No.235 of 2021. Later as per requirement, the bulk packets of ganja were segregated and packed in small packets for easy sale and consumption. The small packets of ganja was handed over to peddler for sale to general public including youth and school going children and thereby, affecting the entire future generation. Later, the drug addictive will became an offenders. Thus, in these cases, huge quantities of ganja were seized.

8.The contention of the petitioner that he has been defending some of the persons, who are facing prosecution under the Narcotic Drugs and Psychotropic Substances Act, 1985, due to which he was falsely implicated in these cases, is false. After recording the statements and collecting materials only, the petitioner was arrayed as accused. The petitioner being an Advocate had actively taken part in procurement of ganja from Andhra Pradesh and using his status, transported the same to



Erode and in collusion with the other accused, sold the same to general public including college students and school going children. The petitioner claims to be an Advocate cannot absolve him from the nefarious and illegal transportation of ganja. Further, in one of these cases, the petitioner involved in concealment and transportation of huge commercial quantity. Hence, he strongly opposed for quashing of the FIRs.

9.This Court considered the rival submissions and perused the materials available on record.

10.It is seen that the Police officials of Erode/respondents on getting information, in a concerted manner conducted raid in the house of one Mathan and Gowri on 23.05.2021 and seized 232 ½ kgs of ganja and after investigation, registered a case in Crime No.235 of 2021. In this case, the ganja recovered was 232 ½ kgs and the same was segregated and packed in small packets by Brindha and Kesavan. In Crime Nos.320 & 223 of 2021, it is seen that the small packets of ganja for the purpose of retailing were seized from the accused. Thus, the chain of event, recovery will clearly expose the active role played by each of the accused including the petitioner.

11.Thus, from the above three cases, the ganja was brought in wholesale from Andhra Pradesh and thereafter, repacked in small packets for sale to the general public and to the others in Erode District and other places is confirmed.

12.During investigation, the respondents/Police arrested the accused, conducted search, seized the ganja and sent the same for forensic study. All the statutory procedures have been followed and the investigation in all these cases are proceeding in the right direction.

13.The petitioner status as Advocate will not absolve him from the above cases and hence, the points raised by him are to be decided only during trial.

14.This Court cannot venture into conducting a mini trial into the matters and it, therefore, does not fall within the ambit of its jurisdiction under Section 482 of Cr.P.C. Any finding on facts will also have a bearing on the investigation conducting by the respondents.



15. In the facts and circumstances of the case, this Court is not inclined to interfere with the investigations are being conducted by the respondents at this stage.

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16. In the result, these Criminal Original Petitions are dismissed and the respondents are directed to proceed further with the investigation in accordance with law and complete the investigation and file a final report. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS)

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Sub Assistant Registrar

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To

1. The Inspector of Police,
Erode Town Police Station,
Erode District.
2. The Inspector of Police,
Taluk Police Station, Erode,
Erode District.
3. The Inspector of Police,
Erode South Police Station, Erode,
Erode District.
4. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.Nos.10419, 10420 & 10571 of 2021

PA (CO)

K.RK. (11.10.2021)