



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.12630 of 2021 and
Crl.M.P.No.7004 of 2021

S.Mohammed Hissan

... Petitioner

Versus

1.The State,

Rep. by The Sub-Inspector of Police,
Ethappur Police Station,
Salem City.

2.R.Sathishkumar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in Crime No.295 of 2021 on the file of the Sub-Inspector of Police, Ethappur Police Station, Salem and quash the same.

For Petitioner : Mr.N.Vijaya Basker

For R1 : Mr.A.Damodaran,
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.295 of 2021, dated 07.06.2021 on the file of the 1st respondent Police.

2.The case of the prosecution is that on 07.06.2021, at about 02.00 p.m., the Sub Inspector of Police attached to the 1st respondent Police along with the Police personnels were keeping surveillance in restricting the movement of the public due to COVID-19 pandemic. At that time, A1 and the petitioner (pillion) came in a bike bearing registration number TN 77 X 2473. On seeing the Police, they were attempted to escape from the scene. The vehicle was stopped by the Police and found that A1 is the rider of the bike and the petitioner/A2 is the pillion. When they enquired, both of them gave contradictory version and hence, the vehicle was checked. In the fuel tank cover, in plastic cover, illicit arrack was found. Due to COVID-19 pandemic, all the tasmac shops were closed, but the petitioner along with A1 illegally transported arrack in the



bike. Hence, they were arrested and a case in Crime No.295 of 2021 was registered on 07.06.2021 for offence under Section 4(1) (a) of the Tamil Nadu Prohibition Act.

3.The learned counsel for the petitioner submitted that the petitioner is a first year student studying in Sri Thiagarajar Polytechnic College, Valapaddy, Salem and he has got no bad antecedents. Admittedly, in this case, the petitioner is only a pillion rider and both the petitioner and the rider/A1 of the bike belong to the same village. The petitioner had only accompanied the rider and he had no knowledge about what was kept in the cover of the fuel tank. Admittedly, in this case no recovery was made from the petitioner. The learned counsel further submitted that how the illicit arrack seized and destructed were not mentioned and no mahazar was prepared as per the provisions of the Tamil Nadu Prohibition Act. In this case, the occurrence is said to have happened in a public place. While being so, no public witness was examined for seizure and destruction of the arrack, which causes serious doubt. Hence, he prayed for quashing of the FIR. The learned counsel for the petitioner produced the college certificate and also the relevant decisions of this Court in the case of "Selvi Versus State Rep. by the Inspector of Police, Rasipuram Police Station, Namakkal District in Crl.A.No.699 of 2006, dated 18.03.2011" and in the case of "Prakash and others Versus The State rep. by The Inspector of Police, V-1, Villivakkam Police Station, Chennai in Crl.O.P.Nos.29833 & 29834 of 2013, dated 27.01.2020."

4.The learned Government Advocate (Crl. Side) appearing for the 1st respondent Police submitted that the petitioner was a pillion rider is not in dispute. The petitioner/A2 and A1 belong to the same village. On interception of the vehicle, the 1st respondent Police found that the petitioner/A2 and A1 were transporting illicit arrack in a plastic cover. The 1st respondent Police seized the same and destructed. Now the petitioner feigns ignorance about the contents of the plastic cover cannot be accepted. The learned Government Advocate (Crl. Side) fairly submitted that the petitioner is a college student and he has got no bad antecedents and further, no public witness were examined with regard to seizure, recovery and destruction of illicit arrack.

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

6.In this case, the occurrence is said to have taken place in the public road and the petitioner is only a pillion rider. The seizure and recovery of illicit arrack were made from the rider of the bank and not from the petitioner, who was sitting behind. The destruction of illicit arrack is a mandatory



condition, which is ought to be done in the presence of the public witnesses. Admittedly, in this case no public witness was examined with regard to seizure, recovery and destruction of the illicit arrack, which is a serious flaw to the investigation.

7. In view of the lapses in the investigation and considering the petitioner is a college student, this Court is inclined to quash the FIR in Crime No.295 of 2021 against the petitioner and also the rider of the bike/A1, who is also similarly placed as that of the petitioner/A2.

8. Hence, the FIR in Crime No.295 of 2021 on the file of the 1st respondent Police is hereby quashed against the petitioner/A2 and A1. This Criminal Original Petition is, accordingly, allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Sub-Inspector of Police,
Ethappur Police Station,
Salem City.

2. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.12630 of 2021

PCH(CO)
B.VC(23.08.2021)