



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26.10.2021

CORAM:

WEB COPY

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.O.P.(MD)Nos.6136 and 6148 of 2021
and
CrI.MP(MD)Nos.3525 and 3530 of 2021

(1).CrI.OP(MD)No.6136 of 2021:-

1.Cherkkari
2.M.Vairamani

: Petitioners/A1 and A2

Vs.

1.The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.
(Crime No.240 of 2019)

: 1st Respondent/Complainant

2.K.Swamidas
Special Sub Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.

: 2nd Respondent/De-facto
Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to quash the charge sheet in CC No.9 of 2021 on the file of the Judicial Magistrate No.2, Padmanabhapuram.

(2).CrI.OP(MD)No.6148 of 2021:-

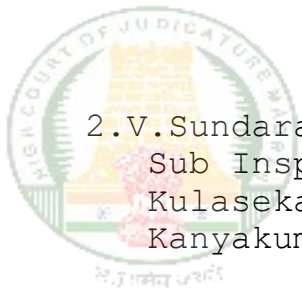
1.M.Vairamani
2.Thennarasu
3.Mani Muthu
4.Jeya Chandran
5.Shiju
6.Murugan
7.Nirenjan
8.Kavi Nilaven
9.Sunthara Pandi
10.Arun

: Petitioners/A1 to A5 and A7 to A11

Vs.

1.The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.

: 1st Respondent/Complainant



2.V.Sundaralingam

Sub Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.

: 2nd Respondent/De-facto
Complainant

WEB COPY

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to quash the Change Sheet in C.C.No.3 of 2021 on the file of the Judicial Magistrate No.II, Padmanabhapuram..

For Petitioners : Mr.C.Jeganathan
(In both cases)

For Respondents : Mr.R.Meenakshi Sundaran
(In both cases) Additional Public Prosecutor

C O M M O N O R D E R

Crl.OP(MD)No.6136 of 2021 has been filed seeking for quashment of the case in CC No.9 of 2021 on the file of the Judicial Magistrate No.II, Padmanabhapuram, whereas Crl.OP(MD)No.6148 of 2021 is filed seeking for quashment of the case in CC No.3 of 2021 pending on the file of the same Court.

2.The case of the prosecution in Crl.OP(MD)No.6136 of 2021 is that on 27.10.2019 at Nanjil Manamahil Mandram/Recreation Club, the 1st accused at the instance of the 2nd accused illegally sold liquors to the public in violation of the permitted time and they were in found possession of 636 bottles of liquors illegally. So, it was seized and on the basis of the *suo motu* registration of the FIR, investigation was undertaken and after completing the formalities of investigation, final report was filed and it was taken on file in CC No.9 of 2021 by the Judicial Magistrate No.2, Padmanabhapuram.

3.The case of the prosecution in Crl.OP(MD)No.6148 of 2021 is that on 07.12.2019 at about 7.00 am, in violation of the permit condition, A2 to A10, at the instance of A1 were found in possession of 6294 bottles of liquor along with cigarettes and tried to sell the same and they were also in found possession of cash to the tune of Rs.4,41,680/-. On the basis of the registration of the *suo motu* FIR, investigation was undertaken and after completing the investigation, final report was filed before the Judicial Magistrate No.II, Padmanabhapuram and it was taken on file as CC No.3 of 2021.

4.Challenging, both the criminal proceedings, these criminal original petitions have been filed by the accused persons.

5.Since common question of law and facts arise in both the matters, they have clubbed together, heard jointly and this common order is passed.

<https://hcservices.ecourts.gov.in/hcservices/>



6. Heard both sides.

7. First let us take **Crl.OP(MD)No.6136 of 2021**. A simple defence, that has been taken by the accused persons is that they have been licensed with FL2 licence issued by the competent authority and on the request of the Secretary of Recreation Centre, licence was issued by following procedures prescribed under the Tamil Nadu Liquor (Licence and Permit) Rules, 1981. As per the licence, their permitted limit to hold the liquor is 2500 units at a time. Originally, it was granted till 31.03.2013 and subsequently, it has been renewed from year to year and as per the records submitted by the petitioner, it was lastly renewed upto 31.03.2020. But however, the limit of 2500 units have been retained and there is no modification.

8. The case of the prosecution that they were found possession of 636 bottles of illegal liquor, which is beyond the permitted limit. In the First Information Report, it has been stated that on 27.10.2019 at about 01.00 am, on a routine petrol duty, they found the accused persons in possession of the above said quantity of liquor. Since it is within the permitted limit in the licence, the offence under section 4(1)(aaa), 4(1)(i) and 24 of the Tamil Nadu Prohibition Act, 1937 are not at all attracted. It appears that without verifying proper records, FIR has been registered and final report has also been filed before the concerned court. So even before filing the final report, the Investigating Officer ought to have verified the licence. So, it appears that without properly verifying the licence to see whether it comes within the permitted limit or not, final report has been filed. So, the continuous proceedings is an abuse of process of law and accordingly, it is liable to be quashed and it is hereby quashed.

9. In so far as **Crl.OP(MD)No.6148 of 2021** is concerned, the licence exceeds the permit limit of units. The total unit, that has been seized is stated to be 6294 bottles. So it exceeds the limit. The learned counsel appearing for the petitioners would submit that if there is any violation of licence, consequence is the cancellation of it and no criminal proceedings will lie.

10. I am unable to agree with the stand, that has been taken by the learned counsel appearing for the petitioners in this matter. The petitioners ought to have stored the permitted limit. Even though cancellation of the licence is one thing, finding a person in possession of the liquor, exceeding the permit limit will attract the penal provisions under the Tamil Nadu Prohibition Act, i.e., section 24. The illegal activity on the part of the petitioners in storing the liquor beyond the said limit cannot escape punishment stating that consequence will be cancellation only and not penal action. The defence, that has to be taken during the course of



trial. So, I am of the considered view that it is not a fittest case to quash the proceedings, while prima facie materials have been collected with regard to the commission of the offence.

11. Apart from this stand, the factual stand, that has been taken by the petitioners shows that the police party in violation of the established procedures trespassed into the premises and to take vengeance regarding the complaint given by the 1st petitioner before the Commissioner of Prohibition and Excise Wing against the Deputy Superintendent of Police, Thakkalai, this false case has been registered against these petitioners and others and subsequently, unnamed persons have been arrested and remanded to custody and the police has also taken away a cash of Rs.4,00,000/- stating that it was illegal money. All these facts are beyond the scope of this petition. It is a matter for trial. So I find no merit in this petition. Accordingly, CrI.O.P(MD)No.6148 of 2021 deserves dismissal and accordingly, dismissed.

12. In the result, **CrI.OP(MD)No.6136 of 2021 is allowed** and the impugned proceedings in CC No.9 of 2021 pending on the file of the Judicial Magistrate No.2, Padmanabhapuram is hereby quashed as against these petitioners/A1 and A2. In respect of **CrI.OP(MD)No.6148 of 2021, the same is dismissed.** Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

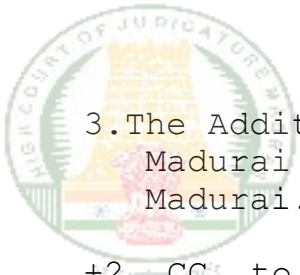
Sub Assistant Registrar(CS)

er

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 Judicial Magistrate No.2,
Padmanabhapuram.
2. The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.



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

+2 CC to M/s.C.JEGANATHAN, Advocate (SR-32960[F],32961 dated
28/10/2021)

Cr1.O.P.(MD)Nos.6136 and 6148 of 2021
and
Cr1.MP(MD)Nos.3525 and 3530 of 2021
26.10.2021

TP(CO)
KB(01.12.2021) 5P 6C