



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 14.09.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOAN

Crl.O.P. (MD)No.15987 of 2020

and

Crl.MP(MD)Nos.7927 & 7929 of 2020

WEB COPY

S.Ganeshamoorthi

... Petitioner/Accused No.4

Vs.

1.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Dindigul District,
Dindigul.

2.The Inspector of Police,
Prohibition Enforcement Wing,
Dindigul District,
Dindigul.

... Respondents/Complainants

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to complaint in C.C.No.96 of 2018 on the file of the Judicial Magistrate No.II, Dindigul and quash the same as illegal against this petitioner.

For Petitioner : Mr.V.Muthu Samundeeswaran

For Respondents : Mr.R.M.Anbunithi,
Additional Public Prosecutor

ORDER

This petition is filed to quash the records pertaining to complaint in C.C.No.96 of 2018 on the file of the Judicial Magistrate No.II, Dindigul.

2. Case of the prosecution in brief:-

(i) The first accused is running a Company called 'Alagumalaiyan Finance' at S.S.Complex, Dindigul District. He purchased the Army Liquor from the fourth respondent. The second accused was already known to the fourth accused. Similarly the third accused was also known to the first and second accused. The fourth accused namely, Ganesamoorthy, petitioner herein, was working as constable in the Border Security Force at Delhi. The fifth accused, one Udhayakumar is also working as constable in the Border Security Force at Delhi. He is the friend of the fourth accused. The fourth accused supplied and transported the liquor, belongs to the Army through the fifth accused to the first accused



by Train.

(ii) On 06.10.2016, the accused Nos.2 & 3, illegally transported 663 bottles of liquor. So, the respondent police registered a case in Crime No.833 of 2016 for the offence punishable under Section 4 (1) (aaa) and 7 (a) of Tamil Nadu Prohibition Act, 1937 and Charge Sheet was filed before the learned Judicial Magistrate No.II, Dindigul, and the same was taken on file in C.C.No.96 of 2018. Seeking quashment of the same, this petition has been preferred.

3. There is a specific allegation to the effect that there was a conspiracy between the petitioner and the co-accused herein and only through the petitioner, the above said 663 bottles of liquor, which belong to the Army, has been illegally transported to the co-accused.

4.The learned counsel for the petitioner would submit that during the relevant time, the petitioner was working in the Army Camp, namely, Chawala Camp. So, even as per the allegation made in the First Information Report, Train Tickets were booked from the Chirnalala Camp in the names of Kumar and Ganesan and the petitioner's Camp is situated 100 kilometre away from the Nizamudeen Railway Station. So, absolutely, there was no possibility for the petitioner to transport the liquor bottles illegal. But, this actual facts cannot be taken into account, at this stage. Since it is a matter for trial.

5. Similarly, the next contention is that the accused persons were found in possession of only around 85 litre. But, the provision of Section 4 (1) (aaa) of Tamil Nadu Prohibition Act, 1937, will be attracted only if the liquor bottles are more than 100 litres. Only to make out the case, under Section 4 (1) (aaa), a false case has been foisted against the petitioner. So, without any proper materials, this contention cannot be accepted. Since it is a matter for trial.

6. Simply because, the petitioner was working in the Border Security Force. He cannot take advantage of his position and argue the matter as it is totally foisted only based upon the confession statement of the co-accused. Materials have been collected in the course of investigation. The materials have been collected during the course of investigation to prove the case under Section 7 (a) of the Tamil Nadu Prohibition Act, 1937.

7. Since *prima facie* materials have been collected, during the course of investigation, I find absolutely no merit in this petition and the petitioner is to undergo the trial process, as



8. In view of the above discussion, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

9. But, however, it is seen that he is working in Border Security Force and so, it may not be possible to physical appearance before the Trial Court each and every time. So, his personal appearance may be dispensed with before the Trial Court on the following conditions:-

He must appear before the Trial Court, within 15 days from the date of receipt of a copy of this order and he shall file an undertaking affidavit that they will appear before the concerned Court as and when required by affixing attested photo. He must engage a lawyer to represent them. So, if such undertaking is given, the Trial Court may dispense the personal appearance of the petitioner.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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.II,
Dindigul.
- 2.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Dindigul District, Dindigul.
- 3.The Inspector of Police,
Prohibition Enforcement Wing,
Dindigul District, Dindigul.



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

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and
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PS (CO)
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