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Crl.O.P.No.4312 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2022

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.4312 of 2022

Sriharan @ Murugan

... Petitioner

-Vs-

1. State Rep.by  
The Sub Inspector of Police,  
Bagayam Police Station,  
Vellore  
Crime No.419 of 2019

2. Rajendran  
Respondents

...

**Prayer:** Criminal Original petition filed under Section 482 of the Code of Criminal Procedure to call for the records in charge sheet in STC.No.1638 of 2021 on the file of the Judicial Magistrate Court No.1, Vellore and quash the same.

For Petitioner : Mr.M.Radhakrishnan  
for Mr.P.Pugalenth

For Respondents : Mr.A.Gokulakrishnan  
Additional Public Prosecutor for R1

**ORDER**

This Criminal Original Petition has been filed to call for the records



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in charge sheet in STC.No.1638 of 2021 on the file of the Judicial Magistrate Court No.1, Vellore for the offence under Section 42 of Prison Act and quash the same.

2. The allegation in the Final Report is that the petitioner is a prisoner found in possession of a SIM Card and Cell phone inside the prison thereby he was prosecuted for the offence under Section 42 of Prisons Act, 1894.

3. The learned counsel for the petitioner submitted that for the possession of the SIM Card the petitioner had already been awarded punishment under Rule 302 of Tamil Nadu Prison Rules, 1983 by the prison authorities and therefore, there cannot be any further prosecution for the same offence. It is further contended that Section 42 of Prisons Act, 1894 will not be applicable to the prisoners and it will be applicable only to the outsiders who are found in possession of such materials. Hence the very prosecution itself is abuse of process of law and amounts to double jeopardy and violation of Article 20(2) of the Constitution of India.



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4. The learned Additional Public Prosecutor submitted that there is no dispute in the punishment imposed by the prison authorities.

5. Heard both sides.

6. It is relevant to refer the Prison offence. Section 45 of the Prisons Act, 1894 deals with the Prison offence. Section 45 (12) of the Prisons Act, 1894 deals with receiving, possessing or transferring any prohibited article. Section 46 provided for punishment for such offence. Section 46 of the Prisons Act, 1894 reads as follows:-

46. Punishment of such offences.—The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by—

(1) a formal warning. Explanation.—A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment-book and on the prisoner's history-ticket;

(2) change of labour to some more irksome or severe form <sup>19</sup> [for such period as may be prescribed by rules made by the <sup>20</sup> [State Government]];

(3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to



rigorous imprisonment;

(4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the <sup>19</sup> [State Government];

(5) the substitution of gunny or other coarse fabric for clothing of other material, not being woollen, for a period which shall not exceed three months;

(6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the <sup>20</sup> [State Government];

(7) imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the <sup>20</sup> [State Government];

(8) separate confinement for any period not

exceeding <sup>21</sup> [three] months; Explanation.—Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners;

(9) penal diet,—that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by the State Government: Provided that such restriction of diet shall in case be applied to a prisoner for more than ninety-six consecutive hours, and shall not be repeated except for a fresh offence nor until



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after an interval of one week;

[\(10\)](#) cellular confinement for any period not exceeding fourteen days: Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement;

Explanation.—Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners;

[\[\(11\)\]](#) penal diet as defined in clause (9) combined with 6[cellular] confinement

[\[\(12\)\]](#) whipping, provided that the number of stripes shall not exceed thirty: Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

7. Admittedly the petitioner was imposed with punishment of three months forfeiture of prison privilege inclusive of disallowing of interviews of his relative including his wife and blood relatives for the possession of Cell Phone. Therefore, once the Prison Authority had already imposed punishment, for the same offence, there cannot be any separate prosecution under Section 42 of Prisons Act. Section 42 of The Prisons Act, 1894 reads as follows:-



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42. Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.—

Whoever, contrary to any rule under section [59] introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article, and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison, and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner, and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

8. Section 42 of the Prisons Act, 1894 makes it clear that punishment can be imposed only when such things have been introduced or removed or attempted by any means whatever to introduce or remove into or from any prison or supplies or attempts to supply to any prisoner outside the limits of a prison any prohibited article. For possession inside will not be attracted. Similarly, for the same offence, the petitioner is



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already punished under Section 46 of the Prisons Act, 1894, such view of the matter, prosecution is not maintainable and final report stands quashed.

9. Accordingly the criminal original petition is allowed and STC.No.1638 of 2021 on the file of the Judicial Magistrate No.1, Vellore stands quashed.

28.06.2022

Index : Yes/No  
Internet : Yes/No  
Speaking/Non speaking order  
dpq

To

1. The Judicial Magistrate Court No.1,  
Vellore.
2. The Sub Inspector of Police,  
Bagayam Police Station,  
Vellore
3. The Public Prosecutor,  
High Court, Madras.



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**N. SATHISH KUMAR,J.**

dpq

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