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Crl.O.P.No.29907 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2023

PRONOUNCED ON : 08.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.29907 of 2022

1.R.Surya

2.R.Sathish @ Anil

...

Petitioners

Vs.

State Represented by
The Inspector of Police,
H8 – Thiruvottiyur Police Station,
Chennai.

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the proceeding in Crime No.605 of 2022 dated 29.07.2022, on the file of the Inspector of Police, H-8, Thiruvottiyur Police Station, the 1st respondent herein and quash the same.

For Petitioners : Mr. Y.Solomon

For Respondent : Mr.S.Santhosh
Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed to call for the records relating to the proceedings in Crime No.605 of 2022, dated 29.07.2022, on the file of the Inspector of Police, H-8, Thiruvottiyur Police Station, first respondent herein and quash the same.

2.The main ground of submission by the learned counsel for the petitioners is that as per the FIR allegations, on 29.07.2022, the petitioners were found to be in possession of psychotropic substances at about 12.15 p.m. under the over bridge of Thiruvottiyur Cattle Sandhai. However, the learned counsel for the petitioners submitted that this case is totally a false case for the reason that on the same date, on 29.07.2022, after 10.30 a.m., the petitioners appeared before the learned Judicial Magistrate, Katpadi, for a case registered in PRC No.31/2020 and the same was recorded in the adjudication order of the learned Judicial Magistrate, Katpadi. It is highly impossible for them to be present at the spot, where, it is alleged that they were found to be in possession of the psychotropic substances. Therefore, he submitted that the case in Crime No.605 of 2022, registered under Sections 8(c), 22 (c) & 29 (1) of Narcotic Drugs & Psychotropic Substances Act, 1985, by the respondent



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police is a false case. Hence this petition.

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3.In response, the learned Government Advocate (Crl.Side) opposed this petition on the ground that the petitioners had involved in serious NDPS offence and they are history sheeters. The petitioners were infact found in possession of the psychotropic substances and they were arrested at 12.30.p.m. on 29.07.2022 under the over bridge of Thiruvottiyur Cattle Sandhai. The plea of *alibi* is a question of fact and has to be proved only during the trial. It is also the case of the respondent police that the petitioners were nabbed with the psychotropic substance, which were recovered from them by following the procedures established by law and then the case was registered.

4.When the matter came up for hearing on 14.12.2022, this Court directed the respondent to conduct proper investigation in this case, taking into consideration the plea of *alibi* set up by petitioners. It was also directed that the investigation should be monitored by the Deputy Commissioner of Police, Washermenpet. The Deputy Commissioner of Police, Washermenpet was also directed to ensure during the course of investigation, the claim of



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petitioners that they appeared before the learned Judicial Magistrate, Katpadi, for hearing in PRC No.31 of 2020 and then approve the filing of the final report. Investigation in this case was ordered to completed within a period of four weeks from 14.12.2022.

5. Thereafter, the matter was taken up on 10.02.2023. It was reported that the final report was not filed in this case so far. Therefore, this Court directed the Deputy Commissioner of Police, Washermenpet to be present before this Court on 20.02.2023 with a report on the plea of *alibi* set up by the petitioners.

6. On 20.02.2023, the Deputy Commissioner of Police, Washermenpet was not present, instead a certificate issued by Dr. Ellangovan, General Physician, was filed stating that Mr. Pawan Kumar was admitted at Aakash Hospital on 16.02.2023 and diagnosed as “Obstructive Left VUJ calculus with HUN/Cystitis/Type 2 DM” and discharged on 17.02.2023. He was advised to take complete rest for five days.

7. The learned Government Advocate (Crl.Side) filed a report of the



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Deputy Commissioner of Police, Washermenpet. It is seen from the report that the bail petition filed by petitioners before the E.C.NDPS Court in Cl.M.P.No.3822 of 2022 was dismissed on 26.08.2022. The bail petitions filed before this Court were also dismissed. As per the order of this Court, 4 CCTV footages were collected from the Judicial Magistrate Court, Katpadi, for the hearing on 29.07.2022 in connection with PRC.No.31 of 2020. It is seen from the footage that two persons have attended court on that date. The requisition letter along with 4 recorded CDs and the photos of Surya and Sathish @ Anil Sathish were submitted to the Director, Forensic Science Department, Mylapore, Chennai - 4, with a request to compare as to whether the pictures of the petitioners are same in the CD or not and give a report. Forensic Science Department has given a report stating that the identity of the petitioners/accused cannot be clearly ascertained and they are not able to give any opinion as to the presence of the petitioners in the video footage. It is further submitted that the plea of *alibi* cannot be taken in a quash petition and therefore, prayed for dismissal of this petition. Copy of the report of the Forensic Science Department is also produced for the perusal of this Court. It is opined in the report as follows:

The Forensic Image and Video Enhancement



Software, Amped FIVE (64 bit) was used to enhance the facial images of the referred male individuals appearing in the video footage named '2-ch26m_20220729070623t7541' in the CD, item 2. Even after enhancement, the facial features of the male individuals appearing in the video footages could not be established. Hence opinion could not be offered on personal identity of the male individuals appearing in the video footage named '2-ch26m_20220729070623t7541' of the CD, item 2 in comparison with the male individuals seen in the photographs, items 5 and 6.

8.Considered the rival submissions and perused the records.

9.The case of respondent is that petitioners were found in possession of psychotropic substances at about 12.30.p.m. on 29.07.2022 under the over bridge of Thiruvottiyur Cattle Sandhai. Petitioners were apprehended by the Sub Inspector of Police Murugan and the police party. It is alleged that after following necessary procedures, the psychotropic substances were seized. Petitioners were arrested and remanded. On the other hand, it is the case of petitioners that they are accused in PRC No.31 of 2020, pending on the file of the Judicial Magistrate Court, Katpadi. There were seven accused in the case.



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On 29.07.2022, they attended the hearing in PRC No.31 of 2022, at Judicial Magistrate Court, Katpadi and therefore, the claim of the respondent that petitioners were found in possession of psychotropic substances at about 12.30.p.m. on 29.07.2022 under the over bridge at Thiruvottiyur Cattle Sandhai is not true. In support of his submissions, the daily status case report of the Judicial Magistrate Court, Katpadi, is produced to show that petitioners were present before the Judicial Magistrate, Katpadi. Thus, there is a positive evidence produced on the side of the petitioners that they were present before the Judicial Magistrate, Katpadi on 29.07.2022 after 10.30 a.m. The distance between Katpadi and Thiruvottiyur is 160 km. Therefore, a genuine doubt arises whether the petitioners/accused who attended the hearing before the Judicial Magistrate, Katpadi on 29.07.2022 could have been found with psychotropic substances at about 12.30.p.m. on 29.07.2022 under the over bridge at Thiruvottiyur on the same date. Certainly, it is not possible.

10.The respondent police was given an opportunity to produce the materials in support of the case that petitioners were found in possession of psychotropic substances at about 12.30.p.m. on 29.07.2022 under the over bridge at Thiruvottiyur and they did not appear before the Judicial Magistrate



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Court, Katpadi. However, the Forensic Science Department's opinion postulates that the identity of the persons found in the video recording cannot be established. It establishes the fact that two persons were found in the video recording. The other accused in PRC No.31 of 2020 were not present on that date. Section 317 Cr.P.C. petition was filed for seventh accused. Sixth accused was produced and his remand was extended. There was no representation for others. The daily status report in PRC.No.31 of 2020 clearly establishes the fact that petitioners are the one who were present before the Judicial Magistrate, Katpadi on 29.07.2022. Since the distance between Katpadi and Thiruvottiyur is 162 km and it is about 4 hours travel time to reach Thiruvottiyur from Katpadi in Car or bike, it is not at all possible for petitioners to be present under the bridge at Thiruvottiyur, on 29.07.2022 at 12.30 p.m. with psychotropic substances. It is obvious that the case in Crime No. 605 of 2022, registered for the offences under Sections 8 (c), 22 (c) & 29 (1) of Narcotic Drugs & Psychotropic Substances Act, 1985, by the Thiruvottiyur Police Station is palpably a false case.

11.The Hon'ble Apex Court in the case of ***Mohd. Akram Siddiqui v. State of Bihar & Another, reported in (2019) 13 SCC 350***, has quashed the



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criminal proceedings, by relying upon the defence side documents, veracity of which is unimpeachable in nature. It was observed as follows,

“5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in Yin Cheng Hsiung v. Essem Chemical Industries...to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered.”

This Court in the case of **Vijay v. State (Crl.OP. 759 of 2019)**, was faced with a similar issue as to whether a plea of alibi can be taken in a quash petition, by relying upon public documents? The Court relying upon the above precedent answered in affirmative and quashed the proceedings. The relevant extract is as follows:

“It is correct that the defence of alibi or any other defence based on a bundle of facts should be proved only before the trial Court. But it is not wrong for the High Court to look into certain public documents, the veracity of which is not disputed.”



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Thus, it is clear from the above propositions, that in the substantial interest of justice, the High Court can consider relevant documents relied on by the accused, the veracity of which is irrefutable in nature and is undisputed by the complainant. In the case on hand, the accused has relied on the adjudication order made by the Judicial Officer on the alleged day of commission of the offence. This is an indubitable record of an act of Court amounting to public document under Section 74 of Indian Evidence Act. Further, CCTV footage on 29.07.2022 recorded at Judicial Magistrate Court, Katpadi, was also produced to show the presence of two persons, most probably, the petitioners. Thus, this Court is of the considered view that continuation of criminal proceedings against the accused, would amount to harassment and abuse of process of law.

12.It is clearly established that the case in Crime No.605 of 2022 is a false case registered against the petitioners and it is liable to be quashed and accordingly quashed. This Court also directs the Director General of Police, Chennai, to initiate criminal and departmental action against the concerned Sub Inspector of police for registering a false complaint against the petitioners and keeping them in judicial custody till now.



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13. In this view of the matter, this Criminal Original petition is allowed and the proceedings in Crime No.605 of 2022, dated 29.07.2022, on the file of the Inspector of Police, H-8, Thiruvottiyur Police Station, is quashed. This Court directs that the petitioners shall be released immediately, if they are not required in any other case.

08.03.2023

sli

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

To:

- 1.The Director General of Police,
Chennai.
- 2.The Inspector of Police,
H8 – Thiruvottiyur Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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Pre-delivery Order in
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