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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.1147 of 2022

and

Crl.M.P.(MD)No.832 of 2022

Baskar

... Petitioner/Sole Accused

vs.

1.State through the
Inspector of Police,
Prohibition Enforcement Wing, Alangulam,
Tirunelveli District.
(Crime No.1398 of 2021)

... Respondent/Complainant

2.R.Suresh Kumar
Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Alangulam,
Tirunelveli.

... 2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the proceeding of the FIR in Crime No.1398 of 2021 dated 25.12.2021 on the file of the first respondent.

For Petitioner : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondents : Mr.M.Sakthi Kumar
Government Advocate (Crl.side)

O R D E R

Heard the learned senior counsel appearing for the petitioner and the learned Government Advocate (crl.side) appearing for the respondents.

2. The case of the prosecution is that the petitioner is running a lodging house in the name and style of 'Baskar Tower'. The petitioner has been granted F.L.3 license. However, contrary to the terms of the licence, in the bar attached to the lodging house, on 25.12.2021 at about 12.20 a.m., two customers were found consuming liquor after opening the sealed bottle containing 180 ml of liquor. In other words, instead of serving the customers in



pegs, the liquor was sold in a sealed bottle. This according to the prosecution is in violation of the terms and conditions of the licence.

3. The learned senior counsel appearing for the petitioner submitted that for violation of the licence conditions, while action can be taken under relevant rules, the prosecution cannot be maintained under the T.N.Prohibition Act, 1937.

4. I am not able to concur with the contention of the learned senior counsel appearing for the petitioner. As rightly pointed out by the learned Government Advocate (crl.side), FIR was registered for the offence under Section 24 of the Tamil Nadu Prohibition Act, 1937. The said provision reads as follows:-

24.Penalty for breach of the condition of licence and permits:-

In the event of any breach by the holder of such licence or permit or by his servants or by any one acting with his express or implied permission on his behalf, of any of the terms or conditions of such licence or permit, such holder shall, in addition to the cancellation or suspension of the licence or permit granted to him, for a term which may extend to three years and with fine may extend to three thousand rupees.

When the provision contemplates that in addition to the cancellation or suspension of the licence or permit to the license holder, the prosecution can also be allowed. I cannot hold that prosecution is not maintainable.

5. It is on this ground I decline to follow the earlier order dated 01.12.2021 passed by me in Crl.O.P.(MD)No.16346 of 2021. In the said case, I had quashed an FIR by holding that while action can be taken under relevant rules, no offence was made out. In the said case, FIR was registered only for the offence under Section 4 (1)(i) of the Tamil Nadu Prohibition Act, 1937. My attention was not drawn to Section 24 of the Tamil Nadu Prohibition Act.

6. Therefore, the first contention urged by the learned senior counsel does not find favour with me. However, the terms and conditions of F.L.3 license enable the license holder to issue liquor in sealed bottles, to those who are residing in the hotel. In other words, the license holder can serve liquor even in a sealed bottle to the lodgers. In the case on hand, FIR is silent as to whether the persons who were found consuming liquor were lodgers or not. If the prosecution case is that the sale of liquor in a sealed bottle is not in accordance with the rules, then and then alone, Section 24 of



Tamil Nadu Prohibition Act would be attracted. That is not the case of the prosecution. Therefore, the impugned FIR stands quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rmi

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 Inspector of Police,
Prohibition Enforcement Wing, Alangulam,
Tirunelveli District.
- 2.The Deputy Superintendent of Police,
Prohibition Enforcement Wing, Alangulam,
Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-2155[F] dated 24/01/2022)

Crl.O.P.(MD)No.1147 of 2022

24.01.2022

NSN(CO)

GC(10.02.2022) 3P 5C