



Crl.O.P.(MD) No.12110 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.(MD) No.12110 of 2022

and

Crl.M.P.(MD).Nos.7652 and 7655 of 2022

Palanikumar

...Petitioner

Vs.

The State,
Represented by,
The Inspector of Police,
NIB CID,
Ramanathapuram District.
(In Crime No.58 of 2019).

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the Charge Sheet in C.C.No.46 of 2021 on the file of Additional District and Sessions Judge/Special Judge for NDPS Cases, Pudukottai and quash the same in so far as the petitioner's concern.

For Petitioner : Mr.K.Sathish Kumar

For Respondent : Mr.M.Sakthi Kumar,
Government Advocate,
(Criminal Side).



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ORDER

This Criminal Original Petition has been filed to quash the Charge Sheet in C.C.No.46 of 2021 on the file of Additional District and Sessions Judge/Special Judge for NDPS Cases, Pudukottai.

2.The learned Counsel appearing for the petitioner submitted the petitioner is the brother of accused no.1 and based on the confession statement of the first accused, the petitioner and accused no.7, who is the mother of accused no.1 was arrested and the petitioner was arrayed as accused no.10. The charge sheet was taken on file as C.C.No.38 of 2020 by the Additional District and Sessions Judge/Special Judge for NDP, Pudukottai. Subsequently, the case was split against the petitioner and was taken on file as C.C.No.46 of 2021 and the same is pending before Additional District and Sessions Judge/Special Judge for NDP, Pudukottai. After conducting trial in C.C.No.38 of 2020, the learned Special Court acquitted all the accused in the aforesaid case. Since the trial Court acquitted all the accused in C.C.No.38 of 2020, the petitioner



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also entitled to get the same benefit of acquittal. Hence the petitioner filed this Criminal Original Petition to quash C.C.No.46 of 2021 pending before the file of Additional District and Sessions Judge/Special Judge for NDPS Cases, Pudukottai.

3.The learned Government Advocate (Criminal Side) appearing for the respondents submitted that the State is preparing to file an appeal against the acquittal order passed by the Trial Court Jude in C.C.No.38 of 2020.

4. The Hon'ble Supreme Court in **Indian Oil Corporation vs. NEPC India Limited and others [(2006)6 SCC 736]** laid down the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings, which are relevant for the present purpose are:-

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.



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For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.



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(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

5. I have considered the matter in the light of the submissions made by both the parties and perused the records.

6. Recording the same, the petitioner cannot considered the benefit of acquittal towards the accused, as State is preferring the steps to acquit the acquittal. Considering the remaining merits of the case, as per the statement of the witness and the charge on the information furnished by the first accused, the Police went to the house of the petitioner and seized



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20 kilo Ganja on 25.12.2019. Under these circumstances, whether the seizures true or not and proved by the prosecution and it has to be considered on evolving the evidence. At this stage, based on acquittal order passed by the Hon'ble Court judgments in C.C.No.38 of 2020 being the State ongoing to prefer an appeal that benefit cannot given to the acquittal for quashing the case. Hence, the proceedings in C.C.No.38 of 2020 cannot be quashed.

7. On perusal of the charge sheet and the statement of witnesses shows that *prima facie* an offence and allegation made therein will have to be taken on the face value. If it could not be said that their prosecution would amount to an abuse of process of the Court, invoking inherent power, prior to the commencement of trial and leading of evidence, to quash prosecution is not desirable. Power should be exercised only in exceptional cases. Hence, I find no merits in the Criminal Original Petition.



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8. At this stage, it cannot be quashed. Therefore, I find no merit in this criminal original petition and the same is dismissed. Consequently, the connected miscellaneous petitions are closed.

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

To

1. The Inspector of Police,
NIB CID,
Ramanathapuram District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

Nsr

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