



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.12446 of 2020

and

Crl.M.P(MD)No.5649 of 2020

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Shanmugaraj

... Petitioner/Accused

Vs.

1.State represented by,

The Inspector of Police,

Thoothukudi South Police Station,

Thoothukudi.

(In Crime No.492 of 2017). ... 1st Respondent/Complainant

2.S.Nambirajan

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the case registered in First Information Report in Crime No.492 of 2017 on the file of the first respondent and quash the same as illegal.

For Petitioner

: Mr.G.Anto Prince

For R - 1

: Mr.R.M.Anbunithi

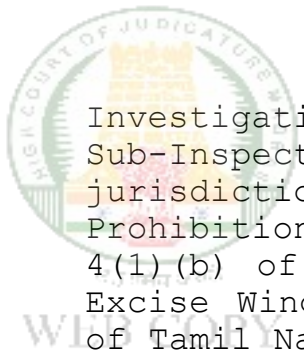
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.492 of 2017 for the offences under Sections 4(1)(aaa), 4(1)(i) and 14A of the Tamil Nadu Prohibition Act, 1937 on the file of the first respondent.

2.The defacto complainant lodged a complaint alleging that on 10.06.2017 at about 10 p.m., when the second respondent/defacto complainant along with other police officials were on duty patrol, they identified a motorcycle and later found that the said vehicle belonged to one Shanmugaraj, namely, the petitioner herein, and found 23 bottles in a box containing 750 ml of white and black whisky. On enquiry, the petitioner said that he had bought the above said liquor bottles for sale from one unknown person. On further investigation, the respondent also seized few bottles of liquor from the petitioner's residence.

3.The learned counsel appearing for the petitioner raised the grounds that the case of the prosecution is only on the basis of the suo motu complaint made by the second respondent, who is also the



Investigating Officer, who registered the F.I.R in the cadre of Sub-Inspector of Police. The second respondent exercised his jurisdiction though he is not competent to do under the Tamil Nadu Prohibition Act, 1937. In accordance with the provisions of Section 4(1)(b) of the Right to Information Act, 2005, the Prohibition and Excise Wing of Home, Prohibition and Excise Department, Government of Tamil Nadu and as a pro-active disclosure the State Government of Tamil Nadu brought out a manual for information and guidance of the stakeholders and the general public. The point 2.7 of the said manual stated that the Additional Director General of Police (Enforcement) is the head of this unit and he is assisted by the Inspector General of Police (Enforcement), a Superintendent of Police, Central Investigation Unit at Chennai and a Superintendent of Police (Enforcement) each at Chennai, Salem and Madurai. As per the Act, 94 Prohibition Enforcement Wing units functioning in the State headed by the Inspectors of Police are declared as police stations for enforcing the Tamil Nadu Prohibition Act, 1937. Further, in the case on hand, the second respondent registered the F.I.R in Crime No.492 of 2017, who is not the enforcing officer under the Act.

4. In this regard, it is relevant to rely upon the Judgment of the Honourable Supreme Court of India reported in 2018 (4) MLJ (Crl) 244 - **[Mohan Lal Vs. The State of Punjab]**. It will be useful to extract the relevant portions of the judgment which reads as follows:

"5. We have considered the submissions on behalf of the parties. The primary question for our consideration in the present appeal is, whether in a criminal prosecution, it will be in consonance with the principles of justice, fair play and a fair investigation, if the informant and the investigating officer were to be the same person. In such a case, is it necessary for the accused to demonstrate prejudice, especially under laws such as NDPS Act, carrying a reverse burden of proof.

.....

11. A fair trial to an accused, a constitutional guarantee under Article 21 of the Constitution, would be a hollow promise if the investigation in a NDPS case were not to be fair or raises serious questions about its fairness apparent on the face of the investigation. In the nature of the reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstances that may raise doubts about its veracity. The obligation of proof beyond reasonable doubt will take within its ambit a fair investigation, in absence of which there can be no fair trial. If the investigation itself is



unfair, to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers in the police which may well lead to false implication also. Investigation in such a case would then become an empty formality and a farce. Such an interpretation therefore naturally has to be avoided.

12. That investigation in a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on part of the accused was noticed in *Babubhai vs. State of Gujarat*, (2010) 12 SCC 254 as follows:

"32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth".

33. In *State of Bihar v. P.P. Sharma* this Court has held as under:

"57. ... Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism. ... Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the investigating officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court.

* * *

59. Malice in law could be inferred from doing of wrongful act intentionally without any



just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. ...

61. An investigating officer who is not sensitive to the constitutional mandates, may be prone to trample upon the personal liberty of a person when he is actuated by mala fides."

14. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.

.....

25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.



26.Resultantly, the appeal succeeds and is allowed. The prosecution is held to be vitiated because of the infraction of the constitutional guarantee of a fair investigation. The appellant is directed to be set at liberty forthwith unless wanted in any other case".

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5.Here is a case, where the complainant is the Investigation Officer. Therefore, the entire investigation becomes vitiated as held by the Honourable Supreme Court in the judgment referred supra.

6.In the facts and circumstances of the case, the proceedings in F.I.R in Crime No.492 of 2017, dated 10.06.2017 on the file of the first respondent is quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

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,
Thoothukudi South Police Station,
Thoothukudi.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.ANTO PRINCE, Advocate (SR-10861[F] dated
09/03/2022)

Crl.O.P(MD)No.12446 of 2020
08.03.2022

SAR(CO)
KB(21.03.2022) 5P 4C