



Crl.O.P.(MD) No.13640 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.13640 of 2022

and

Crl.M.P(MD) Nos. 8707 and 8708 of 2022

P.Satheesh

... Petitioner/ Accused No.2

Vs

The State Represented through
The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli District.
(in Crime No.93 of 2022)

.... Respondent /Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the S.T.C.No.2255 of 2022, on the file of the Judicial Magistrate No-IV, Tirunelveli and quash the same as against the petitioner.

For Petitioner : Mr.I.Sriranganathan

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to quash the Charge Sheet in S.T.C.No.2255 of 2022, on the file of the Judicial Magistrate No.IV, Tirunelveli.

2. The case of the prosecution is that on 14.04.2022, at about 17.30 hours, at the time of patrol duty, the first respondent police along with other police officers conducted vehicle inspection nearby Town North Mount Road, backside of Pothys. They intercepted the vehicle of the petitioner along with other accused persons and on search, they found 20 pockets of 701 Ganesh Tobacco weighing as 20 grams, from their waist. Based on the complaint, an FIR came to be registered by the first respondent against two named accused persons in Crime No.93 of 2022, for the alleged offences under Sections 6 (b) and 24(1) of Cigarette and other Tobacco Products Act 2003. With these allegations, the respondent filed a charge sheet and the learned Judicial Magistrate No.IV, Tirunelveli has taken cognizance.



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3. The learned Additional Public Prosecutor appearing for the respondent submitted that in this case, the alleged Tobacco worth about Rs.1,750/-, totally 25 Pockets weighing 20 grams each, were seized from the petitioner and one Mahararajan. After investigation, the charge sheet was filed, which was taken on file as S.T.C.No.2255 of 2022, on the file of the Judicial Magistrate No.IV, Tirunelveli. Now, the case is posted for appearance of accused Nos.1 and 2. The trial has to be conducted and pleaded to dismiss the petition.

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.



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 counsel.

6. A perusal of records reveals that the petitioner is an accused in S.T.C.No.2255 of 2022, on the file of the Judicial Magistrate No.IV, Tirunelveli. The accusation against this petitioner is that on 14.04.2022 at about 17.30 hours before the Town North Mount Road, backside to Pothys, the respondent police intercepted this petitioner and Maharajan and on



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search, they are found in possession of Tobacco 25 Pockets weighing 20 grams each, worth about Rs.1,750/-. Hence, the case has been registered under Sections 6(b) and 24(1) of Cigarette and Other Tobacco Products Act, 2003. They were arrested and the properties were seized from them.

7. On perusal of the charge sheet and the statement of witnesses shows that *prima facie* of 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.

8. At this stage, I find no merit in this criminal original petition to quash the alleged charge sheet and the same is liable to be dismissed.



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9. Accordingly, this Criminal Original Petition stands dismissed

Consequently, the connected Miscellaneous Petitions are closed.

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Internet: Yes./No

Index: Yes/no

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To

1. The Judicial Magistrate No.IV,
Tirunelveli District.
2. The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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