



CRL.O.P(MD)No.15119 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.08.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P(MD)No.15119 of 2022

and

CrI.M.P(MD) No.9895 of 2022

Kannan Iyyappan

... Petitioner

.VS

**1. The Inspector of Police
Prohibition Enforcement Wing(PEW)
Ramanathapuram**

**2.S.Gomathi
Inspector of POlice
Prohibition Enforcement Wing(PEW)
Ramanathapuram**

...Respondents.

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the FIR in Crime No.713 of 2022 on the file of the first respondent police and quash the same in so far as this petitioner/A7 is concerned.

For Petitioner : Mr.R.Varatharajan

**For Respondent : Mr.M.Sakthikumar
No.1 Government Advocate(CrI.Side)**



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ORDER

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This Criminal Original Petition has been filed to quash the First Information Report in Crime No.713 of 2022 on the file of the first respondent police.

2. The petitioner is the seventh accused in the case registered by the respondent police in Crime No.713 of 2022 for the offences under Sections 4(1)(aaa), 24,7(a) of TNP Act on 05.08.2022. According to the police the allegation is that on 04.08.2022 at about 21.00 hrs on secret information the when the police party conducted vehicle check up near Pamban Pottayammankulam nearby Hindu burial ground,they intercepted two autos bearing Reg. No. TN 65 K 0249 and TN 65 F 9592 and a two wheeler Yamaha RX 100 without registration number. On seeing the police, the person who came in the two wheeler escaped from the scene of occurrence. On enquiry they identified the persons in the auto as Anand Babu S/o.Muthusamy, Vasu, S/o.Arumugam, Poovendran S/o.Macharaja, Suresh, S/o.Karmegam and the name of the person who escaped from the two wheeler is Premkumar, S/o.Neelgamegam. They conducted search in the auto bearing Reg.No. TN 65 F 9592 and found black pearl – 9 box,jet – 2



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box 10 bottles ml- 94 bottles and in an auto bearing Reg. No. TN 65K0249 they found golden eagle -3 bottles, MG Diamond Rum 3 box and in the two wheeler without registration number they found 37 black pearl brandy bottles in a gunny bag. All the liquor bottles were seized in the presence of the Village Administrative Officer and his assistant. Thereafter the accused persons were arrested and brought to police station. In the presence of the Village Administrative Officer, the accused Anand Babu gave confession and he disclosed the fact that the seized liquor bottles were taken from the Government tasmac shop Nos.7013 and 7014. Based on his confession these accused persons were implicated in the offence.

3. The learned counsel for the petitioner would submit that on that date the petitioner was not on duty and the movement register clearly discloses the fact that he was not in duty on that date. Apart from that in the daily news paper, Thinathanthi it is stated that the liquor bottles came from Uchupuli Government Tasmac shop and they purchased it for selling at Ramanathapuram. At that time they arrested four persons and wantonly implicated the petitioner and other persons in this case. Therefore no offence is made out, hence pleaded to quash the same.



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4.The learned Government Advocate (Crl.side) appearing for the respondent police would submit that on the date of occurrence the respondent police intercepted the above said two autos and a two wheeler without registration number and seized 1174 liquor bottles, which belongs to the government tasmac shop. Based on the confession statement of Anand Babu it came to light to those liquor bottles were purchased from the tasmac numbers 7013 and 7014. From this shops the sales man and supervisor gave the bottles and therefore the Supervisor and salesman were added as accused. This petitioner is the Supervisor and he belongs to shop No.7014. The case has been registered on 05.08.2022,bottles were seized and it is very necessary to find out the truth. He would further submit that the investigation is at the initial stage and it is not proper to quash the proceedings,hence pleaded to dismiss the same.

5. I have considered the submission of the learned counsel appearing for the petitioner and the learned Government Advocate (criminal side) appearing for the respondent police.



6. 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.

(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.



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7.Further, the Hon'ble Supreme Court in the case of **R.P.Kapur v. State of Punjab (AIR 1960 SC 866)** and subsequent cases, has held that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceedings against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.



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8.The Investigating Agency should have the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. It is not appropriate to quash the complaint since this Court finds no merit in this case.

9.If the allegations made in the First Information Report *prima facie* discloses a cognizable offences, interference with the investigation is not proper, because that amounts to interfere with the statutory power of the police to investigate a cognizable offences in accordance with the provisions of Cr.P.C. Without thorough investigation, it is not possible or proper to hold whether the allegations made by the complainant are true or not. Hence, the investigation should have been allowed to continue, so that on filing of the final report under Section 173 Cr.P.C, the affected party could pursue its remedy against the final report in accordance with law.

10.Therefore, the police will proceed to complete the investigation fairly on the same expeditious and submit the required final report to the learned Jurisdictional Judicial Magistrate who shall act in accordance with law.



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11. In this case, the petitioner is the seventh accused. The contention of the learned counsel for the petitioner is that on the alleged seizure by the police on 02.08.2022, the petitioner who was working as a Supervisor in Shop No.7014 was not on duty. Apart from this based on the confession of Anand Babu the petitioner was implicated as an accused. Therefore there is no material to implicate the petitioner as an accused in the crime. Further he relied upon the paper report, wherein it is reproted that alleged liquor came from Uchupuli to Ramanathapuram and if it is true it it may not be taken from shop Nos. 7013 and 7014.

12. On perusal of the First Information Report, it is stated that on 04.08.2022 at about 21.00 hrs on secret information the when the police party conducted vehicle check up near Pamban Pottayammankulam nearby Hindu burial ground,they intercepted two autos bearing Reg. No. TN 65 K 0249 and TN 65 F 9592 and a two wheeler Yamaha RX 100 without registration number. On seeing the police, the person who came in the two wheeler escaped from the scene of occurrence. On enquiry they identified the persons in the auto as Anand Babu S/o.Muthusamy, Vasu,

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S/o.Arumugam, Poovendran S/o.Macharaja, Suresh, S/o.Karmegam and the name of the person who escaped from the two wheeler is Premkumar, S/o.Neelgamegam. They conducted search in the auto bearing Reg.No. TN 65 F 9592 and found black pearl – 9 box, jet – 2 box 10 bottles ml- 94 bottles and in an auto bearing Reg. No. TN 65K0249 they found golden eagle -3 bottles, MG Diamond Rum 3box and in the two wheeler without registration number they found 37 black pearl brandy bottles in a gunny bag. All the liquor bottles were seized in the presence of the Village Administrative Officer and his assistant. Thereafter the accused persons were arrested and brought to police station. Now he was implicated as an accused based on the confession of Anand Babu. Further it has to be investigated whether the confession statement of Anand Babu is true or not and whether they have taken the seized liquor bottles. Further according to the arrested accused persons the liquor bottles were given by the petitioner/accused. Further it does satisfy the parameter laid down by the Hon'ble Supreme Court in the case of *Neeharika Infrastructure Pvt Ltd vs. State of Maharastra and Others* reported in 2021 SCC Online SC 315 and another case in *State of Haryana vs.Ch.Bhajan Lal (AIR) 1992 SC 604* .



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13. Further investigation has to be conducted to find out the truth and it is improper to quash the proceedings at the initial stage, hence the petition is liable to be dismissed.

14. In the light of the above factual and legal positions, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petition is closed.

25.08.2022

Internet: Yes./No
Index: Yes/no
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To

1. The Inspector of Police
Prohibition Enforcement Wing(PEW)
Ramanathapuram
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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