



W.P.(MD)No.26098 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.11.2022

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THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.26098 of 2022
and
W.M.P.(MD)No.20233 of 2022

M.Mahadevan

.. Petitioner

Versus

- 1.The Commissioner,
The Tamil Nadu Food Safety and Drug
Administration Department,
Chennai.
- 2.The District Collector,
Madurai District.
- 3.The Designated Officer,
The Tamil Nadu Food Safety and Drug
Administration Department,
Food Safety Wing,
Madurai District.
- 4.The Commissioner of Police,
Madurai City,
Madurai.
- 5.The Inspector of Police,
Mathichiyam Police Station (L & O),
Madurai.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the first



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respondent pertaining to R.No.10299/2022/S9/FSD, dated 01.11.2022 and to quash the same.

For Petitioner : Mr.V.Kishore Kumar
For Respondents 1 to 3 : Mr.A.Kannan
Additional Government Pleader
For Respondents 4 and 5: Mr.B.Thanga Aravindh
Government Advocate
(Criminal side)

ORDER

The petitioner has approached this Court seeking a Writ of Certiorari, to quash the proceedings of the first respondent in R.No.10299/2022/S9/FSD, dated 01.11.2022.

2. Heard Mr.V.Kishore Kumar, learned counsel for the petitioner; Mr.A.Kannan, learned Additional Government Pleader, who takes notice for the respondents 1 to 3; and Mr.B.Thanga Aravindh, learned Government Advocate (Criminal side), who takes notice for the respondents 4 and 5. By consent, the Writ Petition is taken up for final disposal at the admission stage itself.

3. The case of the petitioner is that he has been running a grocery shop at R.R.Mandapam, Mathichiyam, Madurai, in the name and style of Ranjith Store, for more than six years and he has not sold any harmful products to the



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people in the said locality. While so, the fifth respondent/Inspector of Police inspected his grocery shop and submitted a report to the third respondent on 18.10.2022, stating that he was selling banned tobacco products to the public, without confiscating any such drug substances from the said grocery shop. Thereafter, on 20.10.2022, the third respondent issued an emergency prohibition notice stating that the banned tobacco substances have been sold in his grocery shop. On the very same day, the respondents 3 and 4 sealed his grocery shop without any authority of law. Thereafter, the petitioner made a representation to the respondents dated 26.10.2022, seeking to remove the lock and seal, but the respondents have not considered the same. Hence, the petitioner approached this Court by way of filing the present Writ Petition for the relief stated supra.

4. The learned counsel appearing for the petitioner submitted that the first respondent issued an order of closure of the petitioner's shop merely based on the report of the respondents 3 and 5, without confiscating any banned tobacco substances in his shop during inspection. The learned counsel further submitted that as per Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, tobacco shall not be used as ingredients in any food products. As the tobacco does not come within the purview of the food products, the authorities will not be



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justified in initiating coercive action against the petitioner. The tobacco products are to be manufactured and sold strictly in accordance with the provisions of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and the Rules framed thereunder. The respondents have no right to take any action against tobacco or tobacco products and the tobacco is covered under the aforesaid Act.

5. The learned counsel for the petitioner also submitted that one more chance be given to the petitioner and he undertakes to file an affidavit of undertaking that the incident will not happen in future and prayed for allowing the Writ Petition.

6. The learned Government Advocate (Criminal side) appearing for the respondents 4 and 5, on instructions, submitted that the petitioner is the habitual offender. He has involved in 18 such previous cases on the file of the fifth respondent Police Station and pleaded guilty in all the said cases and paid the fine amount and prayed for dismissal of the Writ Petition.

7. Considering the aforesaid facts and circumstances of the case and the submissions made by the learned counsel on either side, this Court is of the



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view that Ganesh tobacco product is a banned item and the petitioner has sold the same for human consumption and he has involved in 18 such previous cases and he pleaded guilty in the said cases and also paid the fine amount. That apart, near the petitioner's grocery shop, a School and a Medical College Hostel are situated and therefore, no leniency should be shown to the petitioner.

8. In view of the above, this Court is not inclined to interfere with the order passed by the first respondent, dated 01.11.2022. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. It is open to the petitioner to approach the authorities concerned to take and remove the perishable goods from the shop in question, by way of filing a necessary petition. If any such petition is filed in this regard, the authorities concerned shall consider the same and proceed further as per law.

Index : Yes/No
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18.11.2022

To

1. The Commissioner,
The Tamil Nadu Food Safety and Drug
Administration Department,

<https://www.mhc.tn.gov.in/>



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Chennai.

2. The District Collector,
Madurai District.
3. The Designated Officer,
The Tamil Nadu Food Safety and Drug
Administration Department,
Food Safety Wing,
Madurai District.
4. The Commissioner of Police,
Madurai City,
Madurai.
5. The Inspector of Police,
Mathichiyam Police Station (L & O),
Madurai.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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Order made in
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