



Crl.O.P.No.2127 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.2127 of 2022

and

Crl.M.P.No.925 of 2022

Gunasekaran

... Petitioner

-Vs-

State represented by
The Inspector of Police,
NIB-CID, Chennai.
(Crime No.21 of 2018)

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records and quash the charge sheet laid in C.C.No.136 of 2019 on the file of I Additional Special Judge, under the E.C and NDPS Act, Chennai 600 104 against the petitioner.

For Petitioner : Mr.P.Pandiyaraj
For Respondent : Mr.A.Gopinath
Government Advocate (Crl.side)

ORDER



Crl.O.P.No.2127 of 2022

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This Criminal Original Petition has been filed challenging the proceedings in C.C.No.136 of 2019 on the file of I Additional Special Judge, under the E.C and NDPS Act, Chennai 600 104 against the petitioner.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) for the respondent and perused the materials available on record.

3. The case of the prosecution is that the respondent Police, on secret information, went to the place of occurrence and found that the petitioner along with other accused had illegally transported 111.62 kgs of Ganja in a car bearing Registration No.TN 04 AJ 4098. Two persons escaped from the scene of occurrence after seeing the respondent Police. Hence, the complaint.

4. On receipt of the complaint, the first respondent registered FIR



CrI.O.P.No.2127 of 2022

in Crime No.21 of 2018 for the offences punishable under Sections 8(c), 20(b)(ii)(C) and 25 of NDPS Act. After completion of investigation, the first respondent filed a final report and the same has been taken cognizance by the Trial Court in C.C.No.136 of 2019 for the offences punishable under Sections 8(c), 20(b)(ii)(C), 25, 27A and 29(1) of NDPS Act.

5. The learned counsel for the petitioner would submit that except the confession statement of the petitioner, there are no other materials to bring home the charges. The petitioner has been falsely implicated along with other accused. That apart, the statement recorded under Section 67 of the NDPS Act would be a contravention of the provisions of the Act, it can be used as substantial evidence against the person who made the statement. It should be obtained prior to arrest and without any threat, fear and voluntary. In the case on hand, the petitioner was arrested in pursuant to registration of FIR in Crime No.298 of 2018, while he was in the custody of the police, the alleged confession statement was obtained. Therefore, the entire prosecution is vitiated and is liable to be quashed.



Crl.O.P.No.2127 of 2022

That apart, the respondent failed to follow any procedure at the time of obtaining confession statement. Except the confession statement, there is no other iota of evidence to convict the petitioner.

6. A perusal of records revealed that there are totally 7 accused, in which the petitioner is arrayed as A1. The petitioner was already arrested in Crime No.298 of 2018 for the offences under Sections 8(c), 20(b)(ii)(C) and 29(1) of the NDPS Act, on the file of the Usilampatti Police Station. Thereafter, his arrest was shown in the present case in Crime No.21 of 2018, on 23.01.2019. Therefore, the grounds raised by the petitioner are mixed question of facts and it can only be considered before the Trial Court during the trial. That apart, the procedural irregularities, as raised by the petitioner, also can be considered only before the Trial Court during trial. The accused persons were in conscious possession of Ganja weighing 111.62 kgs. Therefore, the petitioner has committed very serious offence and this Court finds no merits to quash the entire proceedings.

7. Therefore, this Court is not inclined to quash the proceedings in



CrI.O.P.No.2127 of 2022

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C.C.No.136 of 2019 on the file of I Additional Special Judge, under the E.C and NDPS Act, Chennai 600 104. The Trial Court is directed to complete the trial in C.C.No.136 of 2019, within a period of six months from the date of receipt of a copy of this order.

8. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous petition is closed.

28.11.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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Crl.O.P.No.2127 of 2022

G.K.ILANTHIRAIYAN. J.

mn

To

1. The I Additional Special Judge, under the E.C and NDPS Act,
Chennai 600 104.
2. The Inspector of Police,
NIB-CID, Chennai.
3. The Public Prosecutor,
High Court, Madras.

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