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Crl.O.P No. 17782 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.17782 of 2021
and Crl.M.P. No. 9753 of 2021

1. Sankar
2. Palanisamy

... Petitioners

Vs.

1. State represented by
The Deputy Superintendent of Police,
CSCID, Salem.

2. R.Devi

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings as against the petitioners in Crime Nos.113 &114 of 2021 pending on the file of the first respondent.

For Petitioners : Mr.Mohamed Riyaz

For Respondent-1 : Mr. A.Gopinath
Government Advocate (crl.side)



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ORDER

This petition has been filed to call for the records in Crime No.114 of 2021 pending on the file of the first respondent and quash the same as against the petitioners.

2. The petitioners are the accused 3 and 4. The case of the prosecution is that on 06.08.2021, the defacto complainant who is the Inspector of Police, Sankari Police Station, Salem received an information about the sale of adulterated diesel at Sankari to Edapaddi Road from a diesel tanker lorry; when she went to the said spot at about 10.00 hrs the accused was found to have adulterated diesel in vehicles bearing Reg. Nos.TN-34-L-0378, KA-01-AE-7577 & TN-29-BD-1393; after conducting due search and seizure, the defacto complainant has given a complaint to the first respondent and on the basis of which a case has been registered in Cr. No.114 of 2021 for the offence under Section 3 of Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 1998 and 7(1)(a)(ii) of Essential Commodities Act, 1955.



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3. The learned counsel for the petitioner submitted that as per Clause 7 of Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order (hereinafter referred to as 'the order'), issued in view of the powers conferred by Section 3 of the Essential Commodities Act, 1955, the authorised person who has the power of search and seizure should be a police officer not below the rank of Deputy Superintendent of Police duly authorised by general or special order of the Central Government or State Government as the case may be; however, in the case on hand, the search and seizure was done by a person who held the post of Inspector which is illegal; as per Clause 8(4) of the order, the authorised officer shall forward a sample of the product taken within ten days to the laboratories mentioned in Schedule III of the order or any other authorised laboratory notified by the Government and the laboratory shall furnish the report to the authorised officer within a period of twenty days of the receipt of the sample and a copy of the test result shall be communicated to the concerned person involving in the offence within a period of five days from the date of receipt of the same; since the mandatory statutory requirements have been violated, the entire proceedings get vitiated and hence the FIR should be quashed.



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4. The learned Government Advocate (Crl.side) submitted that the samples were collected by the Deputy Superintendent of Police after the compliant was given and he had sent the sample to the Director, Indian Institute of Technology, Chennai for chemical analysis through Court on 08.10.2021 and the analysis report was received on 23.09.2022; as per Section 5 of the Essential Commodities Act, 1955 the Inspector of Police can be delegated with the powers in relation to the matters falling under the Essential Commodities Act and hence there is no illegality in the proceedings and hence the proceedings cannot be quashed.

5. In support of his above contention he relied on the judgment of the Hon'ble Supreme Court in ***R.A.H.Siguran Vs. Shankare Gowda @ Shankara and another*** reported in ***(2017) 16 SCC*** and ***H.N.Rishbud Vs. State (UT of Delhi)*** reported in ***AIR 1955 SC 196***.

6. As it appears from the order, it is seen that the power of search and seizure has been explicitly given only to a police officer not below the rank of Deputy Superintendent of Police duly authorised by the Central Government or State Government as the case may be. In the case on hand,



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the search and seizure has been conducted by the Inspector of Police / defacto complainant herself and the seized articles have been handed over to the police at the time of giving the complaint. Even according to the counter affidavit filed by the first respondent, the Investigation Officer has only collected sample from the alleged adulterated diesel. The law contemplates that after such seizure was made by a authorised person, the seized stocks should be produced before the Collector or District Magistrate who has the jurisdiction under the provisions of the Essential Commodities Act, for safe custody. In fact Clause 7 of the order mandates an exhaustive procedure under which the search and seizure should be done in these type of cases.

7. The learned counsel for the petitioners attracted the attention of this Court to the judgment of this Court held in ***Hindustan Petroleum Corporation Limited Vs. Geetha Kasturirangan*** reported in ***2010 SCC OnLine Mad 2551*** wherein it is held that if the search and seizure was done by the authority not authorised in the Government Order, all consequential action would become unlawful.

8. It is seen that the sample has been sent to the laboratory only on



08.10.2021. As stated already Clause 8(4) of the order mandates that a sample of the product seized should be sent to the laboratory within a period of ten days. The seizure was made on 06.08.2021 but the sample was sent for chemical analyst only on 08.10.2021, which is beyond ten days. As per Clause 8(6) of the said order the authorised officer shall communicate the test results to the accused within a period of five days. Even though it is submitted that the test results have been obtained on 23.09.2022, a copy of the same was not furnished to the accused till now. In fact the rule also mandates that the laboratory has to give its analyst report within a period of twenty days of getting the sample for analysis. But in the instant case, despite the sample has been sent on 08.10.2021, the analysis report has been sent only on 23.09.2022 which is nearly after a delay of one year.

9. The very object of prescribing time limit to send the sample for analysis and get the test results within the prescribed time is to ensure that sample does not get contaminated due to any chemical reaction. Unless the mandatory time limits are complied, the test results can be unreliable. The object of prescribing time limit for furnishing the copy of the analyst report to the accused is to enable him to exercise his right of appeal by requests, a



re-test by sending the sample to a referral laboratory. The delay occurred in each stage of investigation has deprived the accused from availing his fair opportunity to defend the case.

10. Since the mandatory procedure has been violated and the prescribed time limit has not been complied, the entire proceedings would get vitiated and no purpose will be served if the investigation is allowed to be continued. Hence, I feel it is a fit case where the powers of this Court under Section 482 Cr.P.C. should be exercised to quash the FIR.

11. Accordingly, this Criminal Original Petition is allowed and the FIR in Cr. No.114/2021 on the file of the first respondent is quashed. Connected miscellaneous petition is closed.

06.01.2023

Index : Yes/No
Speaking Order : Yes / No
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R.N.MANJULA, J.,

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WEB COPY To:

1. The Deputy Superintendent of Police,
CSCID, Salem.
2. The Public Prosecutor,
High Court, Madras.

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