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CrI.O.P. No.18761 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P. No.18761 of 2021

&

CrI. M.P.Nos. 10323 & 10324 of 2021

Velu Chettiyar

... Petitioner

Vs.

State Rep. by
Inspector of Police,
PEW – Thiruchengode Police Station,
Namakkal District.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to C.C.No.54 of 2020 on the file of the learned Judicial Magistrate, Paramathyvellur and quash the same by allowing this Criminal Original Petition.



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For Petitioner : Mr. M.Mohamed Riyaz

For Respondent : Mr. S.Balaji
Government Advocate (Crl. Side).

ORDER

The petition is filed to quash the final report for the alleged offences under Section 4 (1) (aaa) of the Tamil Nadu Prohibition Act, read with Rule 7 of the Tamil Nadu Rectified Spirit Rules read with Section 7 (a) of the Tamil Nadu Prohibition Act.

2. It is alleged in the final report that without any license / permit A1 and A2 were illegally transporting 8750 liters of rectified spirit in 250 plastic canes and that the petitioner who is arrayed as A5 has conspired with the other accused to commit the said offence.

3. The learned counsel for the petitioner would submit that the impugned prosecution is liable to be quashed on the sole ground that



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the respondent Police had not complied with the mandatory provisions of the Tamil Nadu Prohibition Act, 1937. The learned counsel would submit that as per the third proviso to Section 32 (c) of the Act, the Police Officer who seized illicit arrack can draw samples only in the presence of a Prohibition Officer or any Police Officer not below the rank of Inspector of Police and destroy the remaining contraband. The Act further mandates that the Police Officer or the Prohibition Officer in whose presence destruction is done should give a certificate in respect of quantity seized, total quantity taken as samples and quantity destroyed and the certificate should be forwarded to the Magistrate having jurisdiction. Since the respondents have not complied with the mandatory provisions, the impugned prosecution is liable to be quashed, as no useful purpose would be served in keeping it pending.

4. The learned Government Advocate (Crl. Side), submitted that the points raised by the petitioner has to be adjudicated only before the Trial Court and cannot be adjudicated in a quash petition and prayed for dismissal of the quash petition.



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WEB COPY 5. This Court finds that the illicit arrack was seized by Mr.S.Ramesh, Inspector of Police (Prohibition Enforcement Wing), Thiruchengode, in the presence of Mr.Perumal, Special Sub-Inspector of Police (Prohibition Enforcement Wing), Thiruchengode and Mr.Janarthanan, Prohibition Enforcement Wing, Thiruchengode. The said seizure is in violation of the third proviso to Section 32 (c) of the Act. Though the prosecution has produced the destruction certificate dated 28.03.2022, however, the mandatory provisions have been violated and destruction has not been done in the presence of the either Prohibition Officer or Police Officer not below the rank of an Inspector.

6. This issue is covered by the Judgement of this Court reported in **2011 (2) MWN (Cr.) 623 – Selvi Vs. State, Rep. by the Inspector of Police, Namakkal**. This Court in the said Judgement had observed as follows:

“10. A close reading of the above third proviso



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to [Section 32](#) (c) of the Tamil Nadu Prohibition Act would make it abundantly clear that the Officer who has seized the illicit arrack can draw samples only in the presence of a Prohibition Officer or any Police Officer not below the rank of an Inspector of Police and then he can destroy the remaining contraband. In respect of the destruction, the said Prohibition Officer or Police Officer, in whose presence the destruction is done, should give a certificate in respect of the total quantity seized, the total quantity taken as samples and total quantity destroyed and such certificate should be forwarded to the Magistrate having jurisdiction. But, in this case, drawing of samples as well as the destruction were not made in the presence of either a Prohibition Officer or any Police Officer not below the rank of an Inspector of Police. It may be true that P.W.8 himself is an Inspector of Police but that by itself will not satisfy the requirements of the above provision. Here, we have to look into the object behind the said proviso. In a case where the Officer, who seizes illicit arrack, decides to destroy the same after drawing samples, in order to ensure that samples were really taken from the illicit arrack seized and that the rest of the illicit arrack was destroyed, the presence of yet another responsible Officer namely, a Prohibition Officer or any Police Officer not



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below the rank of Inspector is insisted upon. This procedure, in my considered opinion, is mandatory as the object behind the same is to ensure that there is no manipulation at the hands of the Officer who seizes the illicit arrack. In this regard, I may refer to a judgement of a Division Bench of this Court in [Jegannathan v. State of Tamil Nadu](#) reported in Manu/TN/8992/2006 wherein while dealing with a Habeas Corpus Petition challenging the order of detention passed under [Tamil Nadu Act 14 of 1982](#) , the Division Bench, while noticing Section 32 of the Tamil Nadu Prohibition Act and after referring to various orders passed on the earlier occasions, has held in paragraphs 3 and 4 as follows:-

"3. At the foremost, the learned counsel for the petitioner by drawing our attention to the reference made in paragraph 3 of the grounds of detention viz., the remaining I.D arrack and fermented wash were destroyed at the spot a "certificate was prepared to that effect, submitted that no such certificate was prepared as per Section 32 of the Tamil Nadu Prohibition Act, 1937 and the only document available is destruction mahazar. According to him, in the absence of the certificate as stated in paragraph 3 of the detention order, it is presumed that the detaining authority has not applied his



mind while passing the detention order. He has also heavily relied on the decision of this Court dated 25.09.2003 in HCP No.2580 of 2002, which was followed by this Court in HCP No.140 of 2006 by an order dated 13.06.2006. In that case, before the Division Bench, a similar contention was raised. A perusal of the details mentioned in the said decision shows that in that case also the destruction mahazar alone was prepared and a copy was supplied to the detenu. However, as in the present case, the detaining authority therein referred to the said document as a certificate prepared under Section 32 of The Tamil Nadu Prohibition Act, 1937. The Division Bench after finding that the document available in the paper book does not amount to certificate in terms of Section 32 of The Tamil Nadu Prohibition Act, 1937 and after holding that the detaining authority has not applied his mind, quashed the detention order.

4. On going through the factual details in our case, particularly the reference made in para 3 as well as the document, we are of the view that the decision relied on by the learned counsel for the petitioner is directly applicable to the case on hand. Inasmuch as the detaining authority has referred the destruction mahazar as a certificate in terms of Section 32 of The Tamil Nadu



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Prohibition Act, 1937, we are satisfied that the detaining authority has not properly applied his mind and on this ground the impugned detention order is liable to be quashed and accordingly, the same is quashed."

The said view taken by the Division Bench of this Court clearly fortifies the view expressed by me herein above."

7. The above observation applies to the facts of the instant case.

Since the respondent herein have violated the mandatory provisions of the Act, no useful purpose would be served in keeping the proceedings pending before the learned Judicial Magistrate, Paramathyvellur.

8. Accordingly, the petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

13.06.2023

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Index : Yes/No

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To

1.The Judicial Magistrate,
Paramathyvellur.

2.Inspector of Police,
PEW – Thiruchengode Police Station,
Namakkal District.



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SUNDER MOHAN. J,

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