



Crl.O.P.No.21184 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :01.12.2023

Pronounced on :07.12.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.21184 of 2023

and

Crl.M.P.No.14557 of 2023

1.Hemanth

2.Sathish

.. Petitioners/Accused 1-2

/versus/

1.The State rep.by

The Inspector of Police,

J-8, Neelankarai Police Station,

Chennai 600 115.

..Respondent/Complainant

2.Abdul Mujeeb

S/o Not known

Sub Inspector of Police,

J-8, Neelankarai Police Station,

Chennai 600 115.

.. Respondent/Defacto
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and quash the FIR registered in Crime No.1076 of 2020 against the petitioners pending on the file of the respondent Police.

For Petitioner

:Mr.R.Sreedhar



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For Respondents :Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)
for R1

ORDER

This Criminal Original Petition has been filed under Section 482 of Cr.P.C, to quash the First Information Report registered against the petitioner under Section 8(c) read with 20(b)(ii)(A) of Narcotic Drugs and Psychotropic Substances, Act, 1985.

2. The learned counsel appearing for the petitioners contends that it is a foisted case based on the information received from the Inspector of Police, Mr.Abdul Mujeeb, Law and Order attached to Neelangarai Police Station. According to the First Information Report, the Inspector based on the secret information received from his informant went to Enchampakam, Bethel Nagar, 19th Street along with his team and all necessary equipments required for testing Narcotic and Psychotropic Substances. The informant who accompanied him had identified two persons carrying a green colour polythene bag as the paddlers of ganja. When they tried to fled away from the place, on seeing the police party, they were apprehended by the police party. After informing them about the right under NDPS



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Act to opt for search in the presence of a Gazatted officer or a Judicial Magistrate, the white colour polythene bag held by them was searched and found 540 grams of ganja in it. After drawing 20 grams from it for analysis, the seizure was completed and the accused persons were arrested and remanded to judicial custody.

3. The learned counsel appearing for the petitioners contended that, the falsehood in the FIR apparently could be seen on the face of the FIR, which came to be registered by the informant and taken up for investigation by himself. The learned counsel appearing for the petitioners further submitted that discrepancy about the colour of the polythene bag in which 540 grams ganja allegedly kept and silence about the person who among the two accused holding the polythene bag shows that it is an invented story of the Inspector of Police, who is the informant-cum-investigating officer after the alleged seizure. Further, drawing of single sample from the bulk of Ganja instead of two samples is contrary to the Notification issued by the Directorate of Narcotic Bureau. It is also contended that, the maximum punishment prescribed for possession of cannabis, a narcotic drug is six months with or without fine upto Rs.10,000/-.



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Under Section 468 of Cr.P.C, limitation to take cognizance of offence punishable with imprisonment up to 3 years is only three years. Whereas in this case, after registration of the FIR on 14/08/ 2020, the Final Report is yet to be filed and therefore, on that score also the FIR is liable to be quashed.

4. The learned Government Advocate representing the respondents submitted that, the alleged discrepancies and non compliance of procedure laid by Narcotic Bureau are to be tested in the trial. It is a question of fact to be agitated in the trial and not a matter for consideration in the petition filed under Section 482 Cr.P.C. Regarding Limitation, the learned Government Advocate(Crl.Side) submitted that the Final Report is ready and will be filed soon. If the trial Court gets satisfied that there is reasonable cause for the delay in filing the Final Report, it may take cognizance of the offence even after the expiry of the period of limitation by exercising power under Section 473 of the Code. Therefore, the Criminal Original Petition is liable to be dismissed.

5. Heard both sides and perused the records.



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6. The case of the prosecution as found in the First Information Report was that 540 gram of ganja kept in the polythene bag was recovered. The FIR does not mention who among the two accused was carrying the polythene bag. Further, the colour of the polythene bag is first mentioned as green then mentioned as white and later, mentioned as black. Three different colour mentioned in the FIR is an inherent incurable defect which renders the averments found in the FIR registered by the informant and taken up for investigation by himself as a doubtful averment.

7. For the above said reason, the FIR registered on 14/08/2020 for the offence punishable for a maximum period of 6 months imprisonment and on which, investigation not yet completed is liable to be quashed.

8. Accordingly, the First Information Report registered in Crime No.1076 of 2020 against the petitioners is quashed and **this Criminal Original Petition is allowed.** Consequently, connected Miscellaneous Petition is also closed.



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Index:yes/no

Neutral Citation:yes/no

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To:

1.The Inspector of Police,
J-8, Neelankarai Police Station,
Chennai 600 115.

2.The Public Prosecutor,
High Court, Madras.

DR.G.JAYACHANDRAN,J.

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delivery Order made in
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