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Crl.O.P No.23955 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.23955 of 2021 and
Crl.M.P.No.13193 of 2021

1.Kannappan
2.Ramesh

... Petitioners / Accused 1 & 2

Vs.

1.The Inspector of Police,
CSCID, Salem.
(Crime No.134 of 2021)

2.Saravanakumar,
The Sub Inspector of Police,
CSCID,
Salem Unit.

... Respondents

PRAYER : 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 No.134 of 2021 pending on the file of the first respondent.

For Petitioners : Mr.Mohamed Riyaz

For Respondents : Mr. A.Gopinath
Government Advocate (crl.side)



ORDER

This Criminal Original Petition has been filed to call for the records and quash the proceedings as against the petitioners in Crime No.134 of 2021 pending on the file of the first respondent.

2. The petitioners are the accused A1 & A2. The case of the prosecution is that on 16.09.2021, the Sub Inspector of Police, CSCID along with his police party at Sai Motor Works Shop at Palanivel land, Mottangadu Orukkamalai Road, Sankari Taluk, Salem District, has searched the Ashok Leyland Tanker Lorry bearing registration No.TN 22 AA 7788 and found 5000 Litres of adulterated diesel. Thereafter, the vehicle was seized and a case in Crime No.134 of 2021 has been registered for the offence under Section 3(4) of Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 2005 and 7(1)(a)(ii) of Essential Commodities Act, 1955.

3. The learned counsel for the petitioners submitted that as per Clauses 7 and 8 of Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 2005, the authorised person who has the power of search and seizure in these types of case is a police officer not below the rank of Deputy Superintendent of



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Police duly authorised by general or special order of the Central Government or State Government as the case may be; in the case on hand, the search and seizure was done by the Sub Inspector of Police, CSCID, which is illegal; as per Clause 8(4) of the order, the authorised officer shall forward the 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; however, there is no communication as to the sample has been sent for analysis or not; since the mandatory statutory requirements have been violated, the entire proceedings get vitiated and hence the FIR should be quashed.

4. The learned Government Advocate (Crl.side) submitted that samples were collected by the Deputy Superintendent of Police after the complaint was given and he had sent the sample to the Director, Indian Institute of Technology, Chennai for chemical analysis through Court on 10.10.2022 and received the report on 23.10.2022; as per Section 5 of the



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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 legality in the proceedings; the proceedings cannot be quashed merely on the ground that investigation is not valid.

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, the search and seizure has been conducted by the Sub Inspector of Police, CSCID. 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 10.10.2022. 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. But the copy of the same was not furnished to the accused till now.

9. The very object of prescribing time limit to send the sample for analysis and get the test results in a prescribed time is to prevent further contamination in chemical products. Unless the mandatory time limits are complied, the test results will be unreliable. The object of prescribing time



limit for furnishing the copy of the analysis report to the accused is to enable him to retest the sample by sending it to the referral laboratory. The delay occurred in each stage of investigation has deprived the accused from availing due opportunity to defend their case.

10. Since the mandatory procedure and the prescribed time limit has been violated, 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 Crime No.134 of 2021 on the file of the first respondent is quashed. Connected miscellaneous petition is closed.

12.01.2023

Index : Yes/No
Speaking Order : Yes / No
gsk



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To

1.The Inspector of Police,
CSCID, Salem.
(Crime No.134 of 2021)

2.Saravanakumar,
The Sub Inspector of Police,
CSCID,
Salem Unit.

3. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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