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Crl.O.P.No.30253 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

Crl.O.P.No.30253 of 2019 and
Crl.M.P.No.16366 of 2019

Ramalingam

... Petitioner

Vs.

State Rep. By
The Inspector of Police,
Prohibition Excise Wing,
Thiruvarur Police Station,
Thiruvarur District
(Crime No.85 of 2019)

... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.183 of 2019 pending on the file of the learned Judicial Magistrate Thiruvarur and quash the same.

For Petitioner : Mr.S.Soundara Rajan

For Respondent : Mr.Leonard Arul Joseph Selvam

Govt. Advocate(Crl.Side)

ORDER

This petition is filed to quash the final report in C.C.No.183 of 2019 for the offences under Sections 4(1)(aaa), 4(1)(i) and 24 of the Tamil Nadu Prohibition Act.



2. It is alleged in the final report that the respondent police on suspicion searched the premises at Thiruvarur Muventhar Manamagizh Mandram FL2 Bar, on 03.02.2019 and found that the Mandram is selling liquor from 10.00 a.m. though under the licence they were permitted to sell only from 11.00 a.m. Further, they found that liquor was stocked in excess of the permitted quantity under the licence.

3. The learned counsel for the petitioner submitted that;

(a) the entire prosecution is misconceived. The offences under Sections 4(1)(aaa) and 4(1)(i) would not be made against the petitioner. The bar is run by a club called 'Thiruvarur Muventhar Manamagizh Mandram' which had a valid licence. Section 4 of the Prohibition Act would not be applicable to a licence holder;

(b) In any case, the FL2 licence is in the name of Thiruvarur Muventhar Manamagizh Mandram and assuming that there is violation of the provisions of the Act, the respondent ought to have filed a final report against the licence holder; and

(c) the petitioner is only the Secretary of the said Mandram and the prosecution against him in his individual capacity is not maintainable.



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5. This Court, on perusal of the final report and the materials on record, finds that the licence was given to the Club in Form FL2. The impugned final report has not made the said Club as an accused. Even if the case of the prosecution that the petitioner is in charge and responsible for the conduct of the business of the Club is accepted, he cannot be prosecuted independently without prosecuting the Club. It is well settled that where an offence is committed by a company which includes an association of persons, the person in charge of and responsible to the company cannot be prosecuted without prosecuting the company as he is only vicariously liable. The principal offender is the company. The relevant observations made by the Hon'ble Supreme Court in a Judgment in *Himanshu v. B.Shivamurthy and Another*



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reported in (2019) 3 SCC 797 is as follows:

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“7.

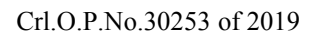
“58. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof.”

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable.”

6. Thus, since the “Thiruvarur Muventhar Manamagizh Mandram” which is the licence holder and the principal offender has not been made an accused in the final report, the impugned final report against the petitioner is liable to be quashed and this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

20.03.2023

Index: Yes/No
Speaking / Non Speaking Order
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1. The Inspector of Police,
Prohibition Excise Wing,
Thiruvarur Police Station,
Thiruvarur District.
2. The Judicial Magistrate
Thiruvarur.
3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J

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