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1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/04/2023

CORAM:

**THE HON'BLE MR JUSTICE G.ILANGOVA**

Cr1.OP(MD)No.6708 of 2023

and

Cr1.MP(MD)Nos.5828 and 5829 of 2023

1.Shiek Meeran  
2.Shahul Hameed @ Shahul Shivajideen  
3.Thajudeen : Petitioners/A1 to A3

Vs.

1.The State rep. by  
The Inspector of Police,  
Thoothukudi Central Police Station,  
Thoothukudi District.  
(Crime No.342 of 2017) : R1/Complainant  
2.J.Ravikumar,  
The Sub Inspector of Police,  
Thoothukudi Central Police Station,  
Thoothukudi District. : R2/De-facto Complainant

**Prayer:** Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records of the impugned charge sheet in CC No.44 of 2023 on the file of the Judicial Magistrate Court No.II, Thoothukudi in so far as the petitioners are concerned and pass such further or other orders.

For Petitioners : Mrs.G.Prabhu Rajadurai  
For Respondents : Mr.B.Nambiselvan  
Additional Public Prosecutor

**ORDER**

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This criminal original petition is filed seeking quashment of the case in CC No.44 of 2023 on the file of the Judicial Magistrate Court No.II, Thoothukudi.

**2.The case of the prosecution in brief:-**

On 14/08/2017, when the de-facto complainant was working as Sub Inspector of Police, on secret information, made a search in M.A.C Complex area, wherein the accused persons were running a mobile shop called 'Banu Mobiles'. The above said search was prevented by A1, A3 and A4 and criminally intimidated that they should not make any search. They were arrested and search was made in the mobile shop. During the search, they found Motorolo GM 338 VHF set with Accessories-13 Nos, Maxton Walky/Taky-2 Nos, GP-7000F 7-HIGH-CONTRAST TFT DISPLAY-COLOUR LCD GPS/WAAS PLOTTER-1 No, I COM (IC-2300H)VHF WITH ACCESSORIES-17 Nos, YAESU FM TRANSCEIVER 9FT-2900) VHF WITH ACCESSORIES-25 Nos and one ASUS TAP WITH MOBILE were seized, which were found to be properly not licensed. On the basis of the above said occurrence, FIR was registered in Crime No.342 of 2017 for the offences



under sections 353, 506(ii) IPC and section 20A of the Indian Telegraph Act, 1885 and 6(1) and 6(1-A) of Indian Wireless Telegraphy Act, 1933. After completing the investigation, final report was filed and it was taken cognizance in CC No.44 of 2023 by the Judicial Magistrate Court No.II, Thoothukudi.

3. Seeking quashment of the same, this petition has been filed by all the three accused persons on the ground that it is a motivated *suo motu* registration of the FIR and they are only dealing with the mobile and accessories and running a business after getting proper permission from the authorities concerned.

4. Heard both sides.

5. Only a simple ground is raised in the petition that there is no independent witness for the above said seizure and recovery; The seizure and recovery that alleged to have been taken is without any proper right or power.



6. But however, during the course of argument, some legal issues have been raised by the petitioners stating that the above said wireless accessories and other VHF units were not properly sent for certification that they are not licensed equipment and the tools, as the case may be.

7. Now let us go to the charges mentioned in the final report. A1 is alleged to have committed the offences punishable under sections 6(1) and 2(1-A) of the Indian Wireless Telegraphy Act, 1933 and section 20(1) of the Indian Telegraphic Act, 1885. A2 is also alleged to have committed the offences under sections 6(1) and 2(1-A) of the Indian Wireless Telegraphy Act, 1933 and section 20(1) of the Indian Telegraphic Act, 1885 and apart from the other IPC offences against A3 and A4 punishable under sections 353 and 506(ii) IPC. We need not concentrate much upon the IPC offences. We can concentrate only upon the Special offences.

9. Now let us first take section 4 of the Indian Telegraphic Act 1985. Section 20 imposes fine upon a person for violation, if the telegraphic is a wireless



telegraphic. Section 20-A punishes a person, who is holding a licence, but contravenes the condition.

10. Section 4 of the Indian Telegraphic Act, 1885, reads as under:-

***"4. Exclusive privilege in respect of telegraphs, and power to grant licence.***

*(1) Within [India], the Central Government shall have exclusive privilege of establishing, maintaining and working telegraphs:*

*Provided that the Central Government may grant a licence, on such condition and in consideration of such payment as it thinks fit, to any person to establish, maintain or work a telegraph within any part of [India];*

*[Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working-*



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6

(a) of wireless telegraphs on ships within Indian territorial waters [and on aircraft within or above [India], or Indian territorial waters], and

(b) of telegraphs other than wireless telegraphs within any part of [India]

(2) The Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of its powers under the first proviso to sub-section (1) -

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by notification, think fit to impose.

11. Section 20 of the Indian Telegraphic Act, 1885 reads as under:-

**"20. Establishing, maintaining or working unauthorized telegraph-**

(1) If any person establishes, maintains or works a telegraph within [India] in contravention of the



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7

*provisions of section 4 or otherwise than a permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to three years, or with fine, or with both, and in any other case, with a fine which may extent to one thousand rupees.*

*(2)Not withstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under this section in respect of a wireless telegraph shall, for the purposes of the said Code, be bailable and non-cognizable.*

*(3)When any person is convicted of an offence punishable under this section, the Court before which he is convicted made direct that the telegraph in respect of which the offence has been committed, or any part of such telegraph, be forfeited to Government]*



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**[20A.Breach of condition of**

**licence**-If the holder of a license granted under section 4 contravenes any condition contained in his licence, he shall be punished with fine which may extent to one thousand rupees, and with a further fine which may extent to fine hundred rupees for every week during which the breach of the condition continues]."

12. Reading of the above said provisions makes it clear that a person can obtain license for maintenance a telegraph, but contravention is punishable. Now the petitioner says that they obtained the licence for running a mobile phone centre. But as mentioned above, the ground is silent with regard to the possession of the telegraphic accessories.

13. Reading of the above said statement of the witnesses shows that they received secret information that the accused persons purchased the above said accessories from various persons and sold the same to the



fireman illegally. It is also further seen that they sold it to other persons by programming and assembling wireless program units. So this shows that without any proper licence, they have sold, by making the program and assembling. *Prima facie*, it is seen that no proper licence has been obtained by the petitioners.

14. Now coming to the Indian Wireless Telegraphy Act, 1933, it has been stated that section 3 prohibits the possession of wireless telegraphy apparatus without proper licence and if no proper licence has been obtained, then it is punishable under section 6 of the Act, which reads as follows:-

**"6. Offence and penalty. - (1) Whoever possesses any wireless telegraphy apparatus, other than a wireless transmitter in contravention of the provisions of section 3 shall be punished, in the case of the first offence, with fine which may extend to one hundred rupees, and in the case of a second or subsequent offence, with fine which may extend to two hundred and fifty rupees.**



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*[(1A)Whoever possesses any wireless transmitter in contravention of the provisions of section 3 shall be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees, or with both]."*

15.By pointing out this penal provision, it is contended on behalf of the petitioners that the above said apparatus units were not sent for proper analysis to the competent authority to certify the above said apparatus or accessories to find out, whether it is a wireless transmitter or wireless telegraphy apparatus. So according to the learned counsel appearing for the petitioners, unless proper material has been collected during the course of the investigation that the above said accessories required to be duly licensed, the prosecution itself is bad in law. But I am unable to agree with this line of argument.

16.As mentioned earlier, possession of the above said apparatus units without proper licence is *per se* illegal and punishable. Whether there is any requirement for sending the same for proper certification is a matter



for consideration by the trial court at the time of the trial court. But *prima facie*, it shows that they seized or recovered VHF sets with accessories and transmitter from the accused persons. So, I find absolutely no merit in this petition. The trial must be taken to its logical conclusion.

17. In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

21/04/2023

Index:Yes/No  
Internet:Yes/No  
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To,

1. The Judicial Magistrate No.II,  
Thoothukudi.
2. The Inspector of Police,  
Thoothukudi Central Police Station,  
Thoothukudi District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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12

G. ILANGO VAN, J

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