



Crl.O.P(MD)No.11745 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2023

CORAM:

THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD)No.11745 of 2021

and

Crl.M.P(MD)No.6010 of 2021

G.Navarathinavel

.. Petitioner/Accused No.2

Vs.

1. The State represented by,
The Inspector of Police,
Theni Police Station,
Theni District.
(Cr.No.3457 of 2020)

.. 1st Respondent/Complainant

2. Mrs.Latha
Sub-Inspector of Police,
Theni Police Station,
Theni District.

.. 2nd Respondent/ Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the and quash the FIR in Cr.No.3457 of 2020 on the file of the 1st respondent for the offences as u/s.6(b), 7(5),



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20(2), 24(1) of Cigarette and Other Tobacco Products Act, 2003 and Sec. 269 of IPC and Sec.3 of Epidemic Diseases Act, Sec.51 of the Disaster Management Act insofar as the petitioner/Accused No.2 is concerned.

For Petitioner : Ms.A.Arul Jenifer

For Respondents : Mr.M.Muthumanikkam,
Government Advocate(Criminal Side)

ORDER

The petitioner/ Accused No.2 has filed this petition to quash the FIR in Crime No.3457 of 2020 on the file of the 1st respondent police, wherein he is said to have committed the offences under Sections 6(b), 7(5), 20(2), 24(1) of Cigarette and Other Tobacco Products Act, 2003 and Section 269 of IPC and Section 3 of the Epidemic Diseases Act, Section 51 of the Disaster Management Act.

2. Pending this Criminal Original Petition, the respondent police has completed the investigation and filed final report before the jurisdictional Magistrate and the same was taken on file in S.T.C.No.752 of 2023 by the learned Judicial Magistrate, Theni. As per the judgment of the Hon'ble Supreme Court reported in **AIR2019SC210**, [**Anand Kumar**



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Mohatta v. State (NCT of Delhi)] eventhough final report filed and taken on file during the pendency of the petition to quash the FIR, after perusing the CD file, if the offence is not made out, this Court has power to exercise its extraordinary jurisdiction under Section 482 Cr.P.C. So, this Court amends the prayer of this petition 'from quash the Crime No. 3457/2023 into quash the STC.No.752/2023 on the file of the learned Judicial Magistrate, Theni.'

3.The case of the prosecution is that on 20.08.2020, A1-shop owner of a petty shop situated at Theni Edamal Street having possession of banned Tobacco products and A1 was arrested and recovery mahazer was prepared and all the banned goods were recovered. In his confession statement, he stated that he purchased the said Tobacco products from A2. With the said specific allegation, the investigation was completed and final report was field by the respondent police. During the investigation, the respondent police did not collect any materials to substantiate the allegation made in the FIR that A1 was purchased the banned Tobacco products from A2. As on date, even as per the FIR and document annexed



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with final report, only the confession of A1 is available to implead A2 in this case. As per the judgment of the Hon'ble Supreme Court reported in **2021(4)SCC1 [Tofan Singh v. State of T.N.,]**, the prosecution only on the basis of the co-accused's confession is not maintainable. Hence, this Court upon perusal of the materials produced along with the FIR found that there is no sufficient materials to punish the petitioner herein/A2 for the offences as stated supra.

4. In the result, this Criminal Original Petition is allowed and STC.No.752/2023 on the file of the learned Judicial Magistrate, Theni, is quashed as against the petitioner herein/A2 alone. Consequently, connected miscellaneous petition is closed.

21.04.2023

NCC : Yes/No
Internet: Yes/No
Index : Yes/No
PJJ



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To

1.The Judicial Magistrate,
Theni, Theni District.

2. The Inspector of Police,
Theni Police Station,
Theni District.

3.The Sub-Inspector of Police,
Theni Police Station,
Theni District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN,J.

PJL

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