



Crl.O.P.(MD).No12316 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD).No12316 of 2020

and

Crl.M.P(MD) Nos.5554 and 5555 of 2020

L.Kannan

... Petitioner

Vs.

1. The Sub Inspector of Police
Ambasamuthiram Police Station
Tirunelveli District

2. S.Arulappan
The Sub Inspector of Police
Ambasamuthiram Police Station
Tirunelveli District

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the charge sheet in S.T.C.No.48 of 2020 on the file of the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District and quash the same as illegal.

For Petitioners : Mr.G.Antoprince

For R-1 : Mr.M.Sakthi Kumar
Government Advocate(Crl.Side)



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ORDER

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This Criminal Original Petition has been filed to quash the charge sheet in S.T.C.No.48 of 2020 on the file of the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District .

2. According to the petitioner the first respondent police registered First Information Report in Crime No.163 of 2019 for the offences under Sections 4(1)(i) of TNP Act and thereafter the case was charge sheeted in S.T.C. No.48 of 2020 and taken on the file by the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District. According to the prosecution on 01.05.2019 at about 20.00 hrs when the defacto complainant who is the Sub Inspector of Police along with police officials were on duty at that time he came to know that the petitioner was holding a cotton bag containing 7 bottles of Honey Day brandy 180ml. The entire liquor quantity was recovered from the petitioner was measured as 1.260 litre and the police recovered the liquor and amount of Rs.150/- and then he lodged First Information Report. Even as per the First Information Report the petitioner has not committed any offence and even as per the First Information Report there is no *prima facie* material available to constitute the offence. As per guideline 2.7 of the Prohibition and Excise Wing of Home Prohibition and Excise Department manual the respondent is not authorised to register the First Information



Report and only the Inspector of Police is the competent person to register the First Information Report and the quantity is also below the permitted quantity. Therefore the registration of the First Information Report and the filing of final report by the respondent police is not in accordance with law and the same is liable to be quashed.

3. No counter was filed by the respondents.

4. The learned counsel for the petitioner would contend that the respondent police have registered First Information Report in Crime No.163 of 2019 for the offences under Sections 4(1)(i) of TNP Act and thereafter the case was taken on file in S.T.C. No.48 of 2020 by the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District. The respondent has no jurisdiction to register the First Information Report and investigate the case. The quantity is 1.260 litres and it is permissible. Therefore the petitioner has not committed any offence even as per the First Information Report no offence is made out and thereby the charge sheet is liable to be quashed.

5. The learned Government Advocate(Crl.Side) appearing for the official respondent would contend that while the respondent was on patrol on the date of occurrence saw the petitioner that he had possessed 7 bottles of Honey Day Brandy 180ml and he was having



Rs.150/- from the sale of the above said liquor, thereby registered the case and filed final report, hence the petition is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. On perusal of the records, it is observed that the First Information Report was registered for the offences under Sections 4(1)(i) of TNP Act and thereafter charge sheet was filed on the same day. Even according to the First Information Report the alleged occurrence took place on 01.05.2019 at about 21.00 hrs but as per the charge sheet the occurrence took place at 16.30 hrs and the charge sheet was filed on the same day. As contended by the learned counsel for the petitioner as per the Tamil Nadu Prohibition Act some guidelines were issued and separate wing has been formed and there are some rules and regulations to register the case and investigate the case and they prepared separate manual. In a similar case this Court in Crl.O.P(MD) No.12446 of 2020 has discussed about the powers of officers to register the case and investigate the case under Tamil Nadu Prohibition Act has been elaborately discussed and thereafter it was quashed.

8. According to the 2.7 of the said manual the e Additional Director General of Police (Enforcement) is the head of this unit and he is



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assisted by the Inspector General of Police (Enforcement), a Superintendent of Police, Central Investigation Unit at Chennai and a Superintendent of Police (Enforcement) each at Chennai, Salem and Madurai. As per the Act, 94 Prohibition Enforcement Wing units functioning in the State headed by the Inspectors of Police are declared as police stations for enforcing the Tamil Nadu Prohibition Act, 1937. Further, in the case on hand, the second respondent registered the F.I.R in Crime No.492 of 2017, who is not the enforcing officer under the Act

9. Further as per the Tamil Nadu Liquor(Possession for Personal Consumption) Rules,1996 in G.O.Ms.No.75,P&E, dated 16th April 1996 and amended vide G.O.(MS) No.14 H.P.EVI Department dated 09.06.2017, the prescribed limit for Indian made Foreign spirit is 4.5 litres but in the impugned S.T.C the quantity is only 1.260 litres. Therefore the petitioner is only having less quantity of prescribed limit. Further so far as section 4(1)(i) of TNP Act is concerned it relates to selling to liquor and intoxicated drugs but here there is no any material to show that the petitioner was selling the above said liquor and investigating officer only recovered a sum of Rs.150/- from the petitioner. Mere possession of liquor bottles and having money is not sufficient to hold that the petitioner sold the liquor and thereby the charge sheet is liable to be quashed.



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10. The respondent police without having jurisdiction has registered First Information Report and filed final report and even according to the First Information Report and final report no offence is made out and the registration of the First Information Report itself is clear violation of procedure and not in accordance with law, therefore the pending charge sheet in S.T.C. No.48 of 2020 is liable to be quashed

11. Accordingly this Criminal Original Petition is allowed and the proceedings in S.T.C. No.48 of 2020 on the file of the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District is hereby quashed. Consequently connected miscellaneous petitions are closed.

10.08.2023

Index : Yes / No

Internet : Yes / No

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To

1. The Judicial Magistrate, Ambasamuthiram, Tirunelveli District
2. The Sub Inspector of Police
Ambasamuthiram Police Station
Tirunelveli District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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