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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28/06/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

CrI.OP(MD)No.10897 of 2023

and

CrI.MP(MD)Nos.8693 and 8694 of 2023

Muthuramalingam : Petitioner/Sole Accused

Vs.

1.The State represented by
The Inspector of Police,
Ettayapuram Police Station,
Thoothukudi district. : R1/Complainant

2.Murugan.G,
The Sub Inspector of Police,
Ettayapuram 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 and quash the proceedings in CC No.478 of 2022 on the file of the Judicial Magistrate No.II, Kovilpatti, Thoothukudi district and pass such further or other orders.

For Petitioner : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor

**ORDER**

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This criminal original petition has been filed seeking quashment of the case in CC No.479 of 2022 on the file of the Judicial Magistrate No.II, Kovilpatti.

2.The case of the prosecution in brief:-

On 28/04/2022 at about 07.00 am in the morning, the police team comprising the de-facto complainant and others were on the routine patrolling duty, at that time, they found the accused standing near Ettayapuram Melavasal. When the police team tried to nab him, he tried to flee away from that place. He was apprehended and on search, he was found in possession of Indian made Foreign Liquors namely Express Brandy-180ml-128 bottles, Kada Mark-180-ml-43 bottles, Black Peral-650ml-9 bottles, Black SNJ-10000-650-ml- 3 bottles, King Fisher-650ml-01 No. On enquiry, he informed the police that he is selling the Indian Made foreign liquors for profit in the open market without proper permission. Rs.1,000/- money was also recovered from the accused. On the basis of the occurrence, a case in Crime No.142 of 2022 was registered for the offences punishable under sections 353, 506(ii)



IPC and sections 4(1)(a), 4(1)(i), 24 of the Tamil Nadu Prohibition Act. After completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.479 of 2022 by the Judicial Magistrate No.II, Kovilpatti.

3. Seeking quashment of the same, this petition has been filed on the ground that there is no material on record to show that the above said liquor bottles were purchased by the petitioner from the TASMAL shop and attempting to sell the same in the open market for higher price.

4. Heard both sides.

5. Even though, the learned Senior counsel appearing for the petitioner would draw the attention of this court to the judgment of the Hon'ble Supreme Court reported in the case of **Manik Taneja and another Vs. State of Karnataka and another [(2015) 7 Supreme Court Cases 423]**, a simple point, which arises for consideration is whether any sufficient ground is made out by the petitioner to quash the proceedings.



6.The recovery that was made from the petitioner is not disputed by the petitioner. It has been simply stated that no material has been collected during the course of investigation that the above said liquor has been purchased from the TASMAL shop.

7.Perusal of the records shows that recovery was made from the petitioner on the spot itself. The recovery cannot be now disputed, which is a matter for trial. Whether he was found in possession of above the quantity of liquor is also a matter for consideration by the trial court.

8.The next contention is that the above said contraband was not sent for chemical analysis.

9.No doubt that the above said contraband was not sent for chemical examination. The fact remains that the liquor bottles contains brand name. So the contention that it was not sent for chemical examination is also a matter for consideration during the course of trial. The prosecution has to establish the fact that these liquors were purchased by the petitioner from a particular TASMAL shop.



10. But perusal of the records shows that no such material has been collected during the course of investigation to show that from which TASMAL shop, the petitioner has purchased the contraband. These things must be explained by the prosecution at the time of trial.

11. The learned Additional Public Prosecutor would submit that the petitioner is having previous cases of similar nature. He has produced the list of cases, which are registered against the petitioner. Totally seven cases have been registered against the petitioner. Out of the seven cases, most of the cases are punishable under Tamil Nadu Prohibition Act. So, it is seen that the petitioner is habitually engaged in selling the illegal contraband in the open market. Such a person is not expected to say that he was not involved in the above said offence and the case has been falsely foisted.

12. Now coming to the judgment cited by the petitioner, in the case of **Manik Taneja and another Vs. State of Karnataka and another [(2015) 7 Supreme Court Cases 423]**, it speaks about sections 353 and 506(i) IPC.



Under what circumstances, the above said offences will be attracted has been elaborately discussed. Even if we ignore the offences under sections 353 and 506(ii) IPC and sections 4(1)(a), 4(1)(i), 24 of the Tamil Nadu Prohibition Act are concerned, as mentioned above, whether the petitioner was found in possession of the above said contraband is a matter for consideration by the trial court.

13. Similarly, in the case of ***State of Andhra Pradesh Vs. Madiga Boosena and others.*** (1967 AIR 1550), the Hon'ble Supreme Court deals about the similar offence under the provisions of Andhra Pradesh Prohibition Act, 1937. That case was decided after full trial. In that case, without any proper chemical examination, the trial was undertaken by the prosecution. The non-examination of the contraband through chemical examination is also found fault.

14. But here, as mentioned earlier, it is a branded liquor. Whether, the label, which is printed on the bottles indicate the contents is also a matter for consideration by the trial court. As mentioned above, it is also purely a factual issue.



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15. So, I am of the considered view that this is not a fittest case to exercise the power under section 482 Cr.P.C to quash the proceedings. The petitioner, being the habitual offender of such offence, must be proceeded to its logical conclusion. I find absolutely no reason to quash the proceedings.

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

28/06/2023

Index: Yes/No
Internet: Yes/No

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To,

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



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G.ILANGOVAN, J

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