



CrI.O.P.(MD)No.12350 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD)No.12350 of 2023

and

CrI.M.P.(MD) No.9691 of 2023

Gnanmani

... Petitioner

Vs.

1. The Inspector of Police,
Courtallam Police Station,
Tenkasi District.
(In Crime No.273 of 2021).

2. Stephen G R Jose,
The Inspector of Police,
Courtallam Police Station,
Tirunelveli District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of Charge Sheet in STC No.1301/2021 on the file of the Learned Judicial Magistrate, Sengottai and quash the same as illegal.

For Petitioner : Mr.M.Maharaja

For R1 & R2 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition is filed seeking quashment of charge sheet in STC.No.1301 of 2021 on the file of the learned Judicial Magistrate, Sengottai, which is registered against the petitioner for the offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937.

2. It is submitted by the learned counsel for the petitioner that on 08.06.2021 at about 5:30 p.m., when the defacto complainant and other police personnel were engaged on vehicle checking near Puli Aruvi, a Maruti Suzuki S Cross car bearing registration No.TN 72 BJ 9014 was stopped by its driver and has fled away. Police found '180 ML of Silver Cup Brandi Bottles' and the ID card of the petitioner in the car. The respondent police have contacted the petitioner who has allegedly revealed that he purchased the contraband from Bangalore and sold to one Anand Raj, who was running a hotel at Tenkasi.

3. A case has been registered in Crime No.273 of 2021 for the offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937, on 08.06.2021 against the petitioner and another.



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4. It is submitted by the petitioner that a false case was foisted against him and that there is no material with the prosecution to show that he has committed the offence. It is submitted further that the Inspector of Police in this case is the defacto complainant as well as the Investigating Officer thereby, the investigated done by the police cannot be considered.

5. Learned Additional Public Prosecutor while opposing the submissions of the learned counsel for the petitioner stated that there is a material in the charge sheet to show that the petitioner has committed the offence and the charge sheet filed by the respondent police cannot be quashed and therefore, sought for dismissal of this petition.

6. A case has been registered on a complaint filed by one Stephen GR Jose, Inspector of Police, basing on which, police have registered a case in Crime No.273 of 2021 on 08.06.2021. The Investigating Officer is none other than Stephen GR Jose, the Inspector of Police, who has filed the complaint.



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7. Once complainant and the Investigating Officer are one and the same, it is possible that the Investigating Officer could be biased against the accused. Therefore, the police must demonstrate that there was no possibility for the police except to make a complaint by the defacto complainant.

8. It is not a case of the respondent police that the place where the incident had occurred is an isolated place where there was no possibility of presence of civilian to make a complaint. The said offence was committed at the check post where the defacto complainant and other police officers were present. Therefore, at least one of the other police officers could have been asked to file a complaint and that the Inspector of Police could have taken up and completed the investigation. Therefore, even though there was opportunity of other police officers were present, the Inspector of Police being the defacto complainant has completed the investigation and filed charge sheet against the petitioner.



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9. The Hon'ble Supreme Court of India while dealing with similar case in *Megha Singh v. State of Haryana*, reported in *(1996) 11 SCC 709*, held as follows:-

"4. After considering the facts and circumstances of the case, it appears to us that there is discrepancy in the depositions of PWs 2 and 3 and in the absence of any independent corroboration such discrepancy does not inspire confidence about the reliability of the prosecution case. We have also noted another disturbing feature in this case. PW 3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 CrPC. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation."

(emphasis supplied)

10. Further, admittedly, the petitioner was not found in the car in which the contraband was found. The petitioner was away from the car



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and in fact, when the police have allegedly stopped the car and seized the contraband, the driver of the car ran away. According to the police, they found the ID card of the petitioner in the car thereby, he was made as one of the accused. The petitioner/accused has not confessed that he has committed offence, there is no record connecting the petitioner to the alleged offence. When there is no material connecting the petitioner with the contraband, the petitioner should not have been arrayed as accused. Therefore, the charge sheet in STC No.1301/2021 on the file of the Learned Judicial Magistrate, Sengottai, is hereby quashed and this petition is allowed. Consequently, the connected miscellaneous petition is closed.

26.07.2023

NCC	:	Yes / No
Index	:	Yes / No
Internet	:	Yes / No
PKN		



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To

1. The Inspector of Police,
Courtallam Police Station,
Tenkasi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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