



Crl.O.P.(MD)No.13580 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	28.08.2023
Delivered on	22.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.13580 of 2023

S.Panaselvam

... Petitioner/
Accused No.1

Vs.

1. The Inspector of Police,
Thideer Nagar Police Station,
Madurai City.
(Crime No.572 of 2022)

... 1st Respondent/
Complainant

2.Mr.Kasi
The Inspector of Police,
Thideer Nagar Police Station,
Madurai City

... 2nd Respondent /
Defacto complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C.No. 997 of 2023 pending on the file of the learned Judicial Magistrate No.V,



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Madurai and quash the same.

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For Petitioners : Mr.R.Anand

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
for R1

ORDER

Accused No.1 in C.C.No.997 of 2023 filed this petition under Section 482 of Cr.P.C seeking to quash the charge sheet for which cognizance was taken for the offences under Sections 4(1)(aaa), 4(1)(i) and 24 of Tamil Nadu Prohibition Act (in short "the Act").

2. The facts in brief are that on 05.11.2022 at 12:30 AM, the Inspector of Police along with other police personnel on information that the liquor bottles were being sold on the top floor of a wine shop Vaigai No.1 Recreation Club (Sports Club) on 05.11.2022. The respondent police have surprised the said premises and found some boxes containing the liquor bottles. They also found one Maharajan and Rajkumar. The



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police party has verified the stock register and found that the entries were made till 31.01.2022. Both Maharajan and Rajkumar have been informed the police that the owner of the wine shop by name Panaselvam has brought the liquor bottles and sold in the top floor of the club and instructed them to sell after closing hours of the wine shop until morning. They also informed that they sold some liquor bottles worth of Rs.5,250/-. Their confession statements were recorded and seized the liquor bottles of various make and quantities and ultimately, registered a case in Crime No.572 of 2022 for the offences punishable under Sections 4(1)(aaa), 4(1)(i) and 24 of the Act and handed over the arrested persons in the police station. After completion of investigation charge sheet has been filed against the petitioner and two others showing the Special Sub-Inspector of Police and Head Constables as witnesses. Aggrieved by the same, the petitioner has challenged the charge sheet on the ground that the petitioner has got licence to sell the liquor and that there is no material placed before the Court that he has been selling the liquor after closure of the wine shop for excess amount. The petitioner and other accused have charge sheeted for the offences punishable under Section 4(1)(aaa) of the Act and according to which, whoever imports, exports,



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transports or possesses liquor of one hundred litres or above thereby punishable for an imprisonment for a term which may extend to 3 years and with fine which may extend to Rs.10,000/-. The petitioner and accused were also charged for the offences punishable under Section 4(1) (i) of the Act, according to which, whoever sells liquor or intoxicating drug thereby punishable for an imprisonment which may extend to 3 months or fine which may extend Rs.1,000/-. Section 24 of the Act describes about the penalty for breach of the conditions of licence and permits, according to which licence holder if committed breach of the conditions of the licence apart from termination of his licence he shall be punished with imprisonment for a term which may extend to 3 years and with fine which may extend to Rs.3,000/-.

3. According to the prosecution, the petitioner has possessed the liquor bottles and was selling the liquor thereby punishable under Sections 4(1)(aaa), 4(1)(i) and 24 of the Act. The petitioner is the Secretary to Vaigai No.1 Recreation Sports Club and in that capacity he has applied for licence under Tamil Nadu Liquor (Licence and Permit) Rules, 1981, for selling of liquor in the premises of Vaigai No.1 Sports



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Club situated at Door Nos.74,75,75A, Mela Perumal Maistry Street, Madurai District and on the basis of the request, the Commissioner of Prohibition Excise and Excise (FAC) had issued proceedings dated 29.04.2021 *vide* proceedings in R.DIS.No.P&E 2(1)/4285/2020 granting licence to the petitioner. As per paragraph No.5 of the said licence, the licence was in force from 01.04.2021 to 31.05.2021. That means, as on the date of alleged raid by the police, the petitioner was having valid licence to possess and sell the liquor. Once the petitioner was possessing the licence, the respondent police without even inquiring as to whether the petitioner club has got licence to possess or sell the liquor have raided the club and seized the stock of liquor bottles as if the petitioner has been selling the liquor unauthorisedly in the club premises. It is submission of learned counsel for the petitioner that after seizure of the stock of liquor, the petitioner went to the respondent police and has shown the licence and with great difficulty after approaching this Court, the liquors were returned back to the petitioner. However, in spite of having licence the respondent police have gone to the extent to file charge sheet against the petitioner without even mentioning as to whether the petitioner club was having a licence to sell the liquor. Once



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the respondent police have realized that the petitioner is having licence to possess or sell the liquor, the respondent police should not have filed the charge sheet.

4. The second allegation against the petitioner is that the accused 2 and 3 were selling the liquor in the late hours after closure of wine shop. Except the alleged confession recorded by the respondent police which is not valid under Section 25 of the Evidence Act, there is no other material placed before the Court to show that the petitioner was selling the liquor later in the midnight. In fact, even according to the police, when they have raided the club, except accused 2 and 3 who belong to the petitioner club there was no other person. Nobody was consuming liquor, nobody was purchasing the liquor at the club.

5. According to the respondent police, on inquiry, the accused 2 and 3 have informed them that they sold liquor for a sum of Rs.5,250/-. If at all the respondent police have raided the club at 12:30 AM and if the allegation of the respondent police that the person belonging to the petitioner was selling the liquor in the late hours by the time the police



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have raided the club, there will be customers purchasing the liquor. The respondent police have not seen anyone purchasing the liquor at in the late hours. Perhaps the very idea of raiding in midnight is to check whether anybody is consuming or selling the liquor in the late hours but there is no such complaint from the respondent police. Therefore, there is no material placed before this Court by the respondent police to establish that the petitioner and others were selling the liquor in the late hours.

6. In respect of Section 24 of the Act, the respondent police did not specify as to which conditions of the licence have been violated by the petitioner. One of the conditions of the licence can be selling the liquor on a specified timings. As already observed, there is nothing on record to show that the petitioner is selling liquor beyond the stipulated time. Except mentioning Section 24 of the Act, the respondent police does not mention anything in the said provision as to how Section 24 has been violated by the petitioner. It is to be noted that the licence has been given by the Excise Department under Rule 17(b)(ii) of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981. If at all as contended by the respondent police when the petitioner is violated the conditions of



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licence, the Excise Department should have cancelled the licence, however, admittedly licence of the petitioner has not been cancelled even after filing of the case. Therefore, the respondent police miserably failed to place on record the basic material prima facie to show that the petitioner club have committed an offence.

7. Therefore, the charge sheet filed against the petitioner for the offences under Sections 4(1)(aaa), 4(1)(i) and 24 of the Act shall not sustain and accordingly, the charge sheet in C.C.No.997 of 2023 pending of the learned Judicial Magistrate No.V, Madurai, is hereby quashed.

22.09.2023

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

PKN/mvs.



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To

1. The Inspector of Police,
Thideer Nagar Police Station,
Madurai City.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

PKN/mvs.

Pre-delivery order made in
Crl.O.P.(MD)No.13580 of 2023

Dated: 22.09.2023