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CRL.OP.(MD)No.19005 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.11.2022

DELIVERED ON : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)No.19005 of 2022

and

CRL.MP(MD).Nos.12801 & 12803 of 2022

R.Gopinath

: Petitioner/Sole Accused

Vs.

1. The Inspector of Police,
Abiramam Police Station,
Ramanathapuram District.
(Crime No.78/2021)

: 1st Respondent/Complainant

2. Sethuraman
The Sub-Inspector of Police,
Abiramam Police Station,
Ramanathapuram District.

: 2nd Respondent/De facto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned Order in STC.No.344 of 2022 on the file of the learned Judicial Magistrate, Kamuthi and quash the same as far as the Petitioner is concerned.

For Petitioner

: Mr.S.Ramsundar Vijayaraj

For Respondents

: Mr.R.Meenakshi Sundaram
Additional Public Prosecutor for R1

ORDER



CRL.OP.(MD)No.19005 of 2022

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This Criminal Original Petition has been filed to quash the Charge Sheet in STC.No.344 of 2022 on the file of the learned Judicial Magistrate, Kamuthi.

2. The brief facts, which are necessary to decide the case on hand, are as follows:

2.1.The case of the Prosecution is that on 11.03.2021 at about 04.00 p.m., during the patrolling within the limits of Abiramam Police Station, by Sethuraman, Sub-Inspector of Police along with Constable, the Petitioner/Accused without any permission was in possession of 180 ML bottle of Vorion Brandy half of which he was pouring in a glass tumbler near water tank at Veerachozhan Road, Abiramam. That therefore, the Petitioner committed offences punishable under Section 4(1)(k) of Tamil Nadu Prohibition Act.

3.The learned Counsel for the Petitioner would submit that the Petitioner is arrayed as Accused in STC.No.344 of 2022 pending on the file of the learned Judicial Magistrate, Kamuthi. The learned Counsel for the Petitioner invited the attention of this Court to the Charge in the final report laid before the learned Judicial Magistrate, Kamuthi and as well as the contents of the FIR, in which the Sub-Inspector of Police, Abiramam Police



CRL.OP.(MD)No.19005 of 2022

Station, is the De-facto Complainant as well as the Investigation Officer.

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4.It is the further submission of the learned Counsel for the Petitioner that the De-facto Complainant and the Investigation Officer are one and the same. He had laid the final report, which is taken cognizance by the learned Judicial Magistrate, Kamuthi in STC.No.344 of 2022. Therefore, he seeks to quash the same. He invited the attention of this Court to the Charge Sheet, wherein it is found that the Petitioner was seen in possession of 180 ML bottle of Vorion brandy near the water tank.

5.The learned Additional Public Prosecutor for the first Respondent vehemently objected to the Petitioner's contention stating that the defacto Complainant and the Investigation Officer can be the same person. The High Court had already over ruled the said proposition that the Investigation Officer and the defacto Complainant shall not be the same person.

6. The learned Additional Public Prosecutor had relied on the ruling in the case of ***Mukesh Singh Vs. State (Narcotic Branch of Delhi)***. The relevant portion reads as follows:

“12.....II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is



CRL.OP.(MD)No.19005 of 2022

vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the Accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of Mohan Lal V. State of Punjab (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the Accused is entitled to acquittal are not good law and they are specifically overruled.”

7.On perusal of the ruling relied by the learned Additional Public Prosecutor in the case of **Mukesh Singh Vs. State (Narcotic Branch of Delhi)**, it is not helpful to the facts of this case. Here, it is the simple case dealt with under the Tamil Nadu Prohibition Act wherein the De-facto Complainant and the Investigation Officer are one and the same. It is the case of the Petitioner/Accused that the case had been registered in Crime No.78 of 2021 by the Sub Inspector of Police, Abiramam Police Station in which he himself is the De-facto Complainant and also the Investigation Officer. Therefore, he seeks to quash the same.

8.In the reported ruling cited by the learned Additional Public Prosecutor, it was decided in the case of **Mohan Lal V. State of Punjab**



CRL.OP.(MD)No.19005 of 2022

reported in **(2018) 17 SCC 627** wherein the investigation had been conducted

by the Police Officer, the trial is vitiated and the Accused is entitled to acquittal. Subsequently, the same was referred to larger Bench in **Saranjit Kaur**. In the case of **Mukesh Singh Vs. State (Narcotic Branch of Delhi)**, it was the Narcotic Branch which dealt with the offences under the NDPS Act where the statute itself provides for procedure when the Complainant and the Investigation Officer are one and the same. But, that is an exceptional case. Here, in this case, FIR is registered based on the Complaint of the Sub Inspector of Police, he himself had investigated and laid the final report which was taken cognizance by the learned Judicial Magistrate and numbered as STC.No.344 of 2022. The exceptional case of the reported ruling of the Hon'ble Supreme Court relied by the learned Additional Public Prosecutor will not be helpful to the facts of this case. Therefore, as rightly pointed out by the learned Counsel for the Petitioner, when the De-facto Complainant and the Investigation Officer are one and the same, then the procedure is vitiated and the Accused is entitled to acquittal as per the earlier ruling of the Hon'ble Supreme Court reported in **(2018) 17 SCC 627** in the case of **Mohan Lal V. State of Punjab**.

In the light of the above, this **Criminal Original Petition is allowed**.



CRL.OP.(MD)No.19005 of 2022

The case in STC.No.344 of 2022 pending on the file of the learned Judicial

Magistrate, Kamuthi is quashed. Consequently, connected Miscellaneous

Petitions are closed.

13.06.2023

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

dh

To

1. The Judicial Magistrate,
Kamuthi.
2. The Inspector of Police,
Abiramam Police Station,
Ramanathapuram District.
3. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CRL.OP.(MD)No.19005 of 2022

SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in

CRL.OP.(MD)No. 19005 of 2022

13.06.2023