



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation : 14/03/2023

Date of Pronouncement : 14/08/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.2294 of 2023

and

Crl.MP(MD)No.2052 of 2023

Deepakraj : Petitioner/A3

Vs.

1.The State represented by
The Inspector of Police,
Avaniyapuram Police Station,
Madurai District.
(In Crime No.448 of 2022) : R1/Complainant

2.Mr.Arun,
Sub Inspector of Police,
Avaniyapuram Police Station,
Madurai 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 pertaining to the impugned final report filed in STC No.5869 of 2022 on the file of the Judicial Magistrate No.6, Madurai, in connection with the Crime No.448 of 2022 on the file of the respondent police station and to quash as against the petitioner is concerned and pass such further or other orders.



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For Petitioners : Mr.R.Karunanidhi
For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor
For 2nd Respondent : No appearance

O R D E R

This criminal original petition has been filed seeking quashment of the case in STC No.5869 of 2022 on the file of the Judicial Magistrate No.6, Madurai, in connection with Crime No.448 of 2022 on the file of the respondent police.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that on 22/09/2022 at about 09.30 in the night, he along with his team of members, were on the routine vehicle check up. At that time, they found a four wheeler vehicle bearing registration No.TN-64-L-0194 in a suspicious manner. They found four persons in that Car. On enquiry, they revealed their name as Raja, Balamurugan, Deepak Raj and Selvakumar. On Search, they were found in possession of banned tobacco products worth about Rs.38,000/-. They were arrested on the spot and remanded to custody. After



that, final report was filed and it was taken in STC No. 5869 of 2022 by the Judicial Magistrate No.6, Madurai.

3. Seeking quashment of the same, this petition has been filed on the sole ground that the tobacco products banned order was challenged in Writ Appeal No.2093 of 2018 and WP Nos.3076 and 3084 of 2019. One of the writ petition No.3076 of 2019 was filed to quash the private complaint pending on the file of the Judicial Magistrate No.II, Ariyalur in CC No.129 of 2018 and another Writ Petition in WP No.3084 of 2019 was filed seeking quashment of the Government Order, vide Tamil Nadu Government Gazette Extraordinary No.184 (No. 1418/2013/S8/FSSA), dated 23.05.2018.

4. Heard both sides.

5. As mentioned above, this petition has been filed solely on the ground of order passed by the Division Bench of this court in WA No.2093 of 2018, dated 20/01/2023. The GO No.184 (No.1418/2013/S8/FSSA), dated 23.05.2018, was the subject matter of WP No.3076 of 2019. In the judgment reported in the case of **The Designated**



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Officer, The Food Safety & Drugs Control Department Vs.

Jayavilas Tobacco (2023-1-L.W-639), elaborate discussion was made by the Division Bench of this court.

6.The above said writ petition was allowed by the single judge. Challenging the same, Food Safety Officer filed writ appeal before the Division Bench, as mentioned above, after elaborate discussion, the Hon'ble Division Bench allowed WP Nos.3076 and 3084 of 2019.

7.The following points were framed for consideration.

"7.From the pleadings and the submissions of the counsel on either side, the following core issues arise in these proceedings before us:

(i)Whether the enactment of The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) by invoking the power



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under Article 52 of the Constitution of India would denude the parliament to enact any other law relating to Cigarettes and Tobacco Products.

(ii) Whether there is nay conflict between the COTPA and the Food Safety and Standards Act, 2006 in relation to Tobacco products.

(iii) whether COTPA a special enactment would prevail over the Food Safety and Standards Act, 2006, a subsequent General Law.

(iv) Whether Tobacco or Tobacco Products would fall within the definition of food under Section 3(i) of the Food Safety and Standards Act, 2006.

(v) Whether the provisions of Section 30(2)(a) of the Food Safety and Standards Act, 2006 confer the power on



the Commissioner, Food Safety to impose a total ban on the sale of Tobacco and Tobacco products by issuing successive notification year on year.

8. Tobacco products with or without addict will be the Food Products as defined in section 3(g) of the Food Safety and Standards Act, 2006. But so far as the power of the Commissioner of Food Safety to impose the ban is concerned, it is concluded that no such power is available. On the ground that ban order was imposed by the Commissioner. And like other situation, issuance of successive ban orders is beyond the powers of the Director of Food Safety. On that ground, above said notification was quashed.

9. But against the judgment, Government of Tamil Nadu preferred SLP before the Hon'ble Supreme Court, wherein stay has been passed. The ground on which, this petition has been filed is now become non-existing. The petitioner can revive the petition at the appropriate time, if the trial is not completed within a period of six months, depending upon the SLP that was filed by the State.



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10. So with the above said liberty, this criminal original petition stands **dismissed**. But however, there shall be a direction to the trial court to expedite the trial process and complete the same within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

14/08/2023

Index:Yes/No
Internet:Yes/No
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To,

1. The Judicial Magistrate No.6,
Madurai.
2. The Inspector of Police,
Avaniyapuram Police Station,
Madurai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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