



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.1810 of 2024
and Crl.MP.Nos.1282 & 1283 of 2024

Prabakaran

...Petitioner/Accused (A9)

.Vs.

State rep.by
Inspector of Police
D-4, Padalam Police Station
Chengalpattu.

.. Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.42 of 2022, pending on the file of I Additional Special Judge for NDPS Cases, Chennai.

For Petitioner : Mr.M.Soudar Vijay Arul Ram

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The present petition has been filed seeking to quash the proceedings in C.C.No.42 of 2022, pending on the file of I Additional Special Judge for NDPS Cases, Chennai.

2.The case of the prosecution is that on 28.8.2021, the Inspector of Police

received an information that huge quantity of ganja has been stored in a house.



Immediately, the police party went to the spot at about 9.30 am., and a search was conducted inside the house and totally 61.400 kgs of ganja was seized. The FIR came to be registered in Crime No.532 of 2024, for offence under Sections 8c r/w 20(b)(II)(c) 25 and 29(1) of the NDPS Act. The FIR was registered as against 9 named accused persons and the petitioner has been arrayed as A9.

3.The investigation was taken up by the respondent and a final report came to be filed before the Court below as against 9 accused persons. The Court below took cognizance of the final report for offence under Sections 8c r/w 20(b)(II)(c) 25 and 29(1) of the NDPS Act. The petitioner who has been arrayed as A9 has filed this quash petition.

4.When the matter came up for hearing on 1.2.2024, this Court passed the following order:

The petitioner has been arrayed as A9 in this case. The case of the prosecution is that the petitioner (A9) had leased the property to A2. It is in this property the Ganja is said to have been stored. Except the confession of the petitioner, there is absolutely no material to show that the petitioner had consciously leased the property to enable the accused persons to use it for storing Ganja. Mere leasing of the property will not constitute an offence under Section 25 of NDPS Act. The owner of the property must also have knowledge that the property is being used for storing Ganja.

2. The learned Additional Public Prosecutor seeks for some time to go through the papers and make submissions. Post this case under the caption "For Orders" on 08.02.2024.



5. When the matter was listed for hearing on 26.2.2024, this Court passed the following order:

A counter has been filed by the respondent.

2. On going through the counter, it is seen that the respondent merely relied upon the confession of the petitioner.

3. Though the learned Additional Public Prosecutor relies upon the confession of A2 also, nothing comes out of the confession of A2 implicating A1.

4. The learned Additional Public Prosecutor submits that already steps have been taken for seeking leave to conduct further investigation in this case under Section 173(8) of the Criminal Procedure Code. He has sought for some time.

5. Considering this development, the appearance of the petitioner is dispensed with before the Court below. The learned Additional Public Prosecutor shall inform this Court as to the further course of action that is taken by the respondent during next date of hearing.

6. Post on 18.3.2024.

6. When the matter was taken up for hearing to day, the learned Additional Public Prosecutor on instructions submitted that the respondent police has not initiated any steps to conduct further investigation in this case.

7. Heard Mr. M. Soudar Vijay Arul Ram, learned counsel for the petitioner and Mr. A. Damodaran, learned Additional Public Prosecutor for the respondent.

8. The crux of the issue that is involved in the present case is as to whether the offence has been made out against the petitioner who was arrayed as accused



only on the ground that he had leased the property in favour of A2 and A2 had kept the ganja in this property.

9. Section 25 of the NDPS Act talks about punishment for allowing a premise to be used for commission of an offence. A careful reading of this provision shows that there must be knowledge on the part of the owner of the property that he is permitting the property to be occupied for commission of offence by any other person.

10. In the case on hand, even the co-accused do not state that the petitioner (A9) was aware of the fact that the property is being used for storing ganja. The only material that is available is the confession of the petitioner (A9). The mere confession of the accused cannot be the ground to proceed further against the petitioner. The law on this issue has been settled by the Apex Court in **Tofan Singh v. State of Tamil Nadu** reported in **2021 4 SCC 1**.

11. In the instant case, there is absolutely no material to show that the petitioner had the knowledge that the property is being used for storing ganja. In view of the same, the continuation of the prosecution as against the petitioner will result in abuse of process of law which requires the interference of this Court.

12. In the light of the above discussion, the proceedings in CC.No.42 of 2022

on the file of I Additional Special Judge for NDPS Cases, Chennai, is hereby quashed



only insofar as the petitioner (A9) is concerned. The Court below shall proceed further with the case as against the other accused persons in C.C.No.42 of 2024 and the trial shall be completed within a period of six months from the date of receipt of copy of the order.

13.This criminal original petition is allowed with the above directions. Consequently, connected miscellaneous petitions are closed.

18.03.2024

Index: Yes/No
Speaking Order/Non Speaking Order
kp

To

1. Inspector of Police
D-4, Padalam Police Station
Chengalpattu.
2. I Additional Special Judge for NDPS Cases,
Chennai.
3. The Public Prosecutor
High Court of Madras.



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N.ANAND VENKATESH.,J

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