



Crl.O.P.No.15724 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:08.07.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.15724 of 2024

and

Crl.M.P.Nos.9563 &9614 of 2024

A.Gunasekaran@ Guna

.. Petitioner

/versus/

State rep.by
The Inspector of Police,
E5, Foreshore Estate Police Station,
Chennai.(Cr.No.274/2020)

.. Respondent

Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records in connection with above said C.C.No.1843 of 2023 on the file of XXIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner :Mr.C.Sivakumar

For Respondents :Mr.K.M.D.Muhilan,
Government Advocate (Crl.Side)

ORDER



Crl.O.P.No.15724 of 2024

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The petitioner herein was found in possession of 200 grams of ganja and therefore, he was arrested by the respondent police on 01.05.2020. The police after completion of investigation had filed the final report on 24.03.2023 and taken cognizance of offence by the 23th Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1843 of 2023.

2. The learned counsel appearing for the petitioner submitted that it is a false case put up by the respondent police to wreck vengeance against the petitioner. The contraband alleged to have been seized from the petitioner never sent for chemical analysis till date to ascertain whether it contains green flowering and portion of cannabis plant to prosecute the petitioner under Section 8(c) r/w 20(b)(ii)(A) of NDPS Act, 1985.

3. The Inspector of Police, Foreshore Estate, by name C.Vijayakumari has filed counter stating that based on the specific information, the petitioner was intercepted on 01.05.2020 at 14.00 hours near R.K.Mutt Road, in front of Suresh Super Market. Since the petitioner was found in suspicious manner, he was searched and from his



Crl.O.P.No.15724 of 2024

possession 200 grams of ganja was recovered. Samples were drawn from the package and the petitioner was arrested and remanded to judicial custody. The contraband, which was seized under mahazar in the presence of witnesses was produced before 23rd Metropolitan Magistrate, Saidapet, Chennai on 30.05.2020 and the property number was assigned as A.No.19 of 2020, B.No.370 of 2020 dated 06.07.2020. The said samples till date not sent for chemical analysis.

4. The learned counsel appearing for the petitioner submitted that nothing was seized from the petitioner on the incident date and this is the reason why the same was not sent for analysis, even after lapse of 4 years. The final report of the first respondent indicates that the petitioner was intercepted by the team on 01.05.2020 at about 02.30 p.m. From the bag carried by the petitioner 200 grams of ganja was recovered and out of 200 grams, 2 samples each 25 grams were drawn, sealed and marked as S1 and S2. The remaining 150 grams was repacked and marked as P1. The suspected team has returned to police station at about 17.00 hours along with the accused and seized contraband and thereafter, registered the case in crime No. 274 of 2020 under Sections 8(c) r/w 20(b)(ii)A of



Crl.O.P.No.15724 of 2024

NDPS Act, 1985. The confession statement of the accused been recorded by the Sub Inspector of Police in the presence of two police men in the police station and he has done arrest on 15.00 hours. Form-91 reveals that three items marked as S1 and S2 each 25 grams of ganja and P1- the remaining 150 grams of ganja been produced before the Judicial Magistrate on 06.07.2020. Thereafter, no request was made to the Judicial Magistrate to forward the same for chemical analysis. The final report does not disclose the custody of the seized contraband from 01.05.2020 to 06.07.2020. Further, there is no explanation from the prosecution, why till date the same was not sent for chemical analysis.

5. Thus, as on date, two points stare on the face of the prosecution. First, unexplained custody of the contraband between 01.05.2020 to 06.07.2020. The unexplained omission of duty of not forwarding the sample drawn from the seized contraband for chemical analysis to ascertain whether it contains any substance, which would fall within the meaning of cannabis as defined under NDPS Act. The seizure memo does not reveal, how the police had come to a *prima facie* satisfaction that the substance carried by the petitioner is ganja. By



Crl.O.P.No.15724 of 2024

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smelling the substance, the Inspector of Police has come to the conclusion that it is dry leaves. That itself does not inspire the confidence of this Court to allow the prosecution to continue the trial against the petitioner, besides the other two reasons stated above. Hence, the case in C.C.No.1843 of 2023 is hereby quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

08.07.2024

Index:yes/no

Neutral Citation:yes/no

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To:

- 1.XXIII Metropolitan Magistrate, Saidapet, Chennai.
- 2.The Inspector of Police,E5, Foreshore Estate Police Station, Chennai.
- 3.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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Crl.O.P.No.15724 of 2024

Crl.O.P.No.15724 of 2024
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