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CrI.O.P.(MD)No.3821 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.(MD) No.3821 of 2022

and

CrI.M.P.(MD)No.2792 of 2022

Manmohan Kumarpunia

... Petitioner/A1

Vs.

Food Safety Officer,
Theni Allinagarar and its Circle,
Code No.474.
Theni District.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the case in S.T.C.No.1808 of 2019 on the file of the learned Judicial Magistrate, Theni and quash the same as illegal and devoid of merits.

For Petitioner : Mr.K.Jayabalan

For Respondents : Mr.P.Kottaichamy
Government Advocate (CrI. side) for R1

ORDER

This petition has been filed to quash the proceedings in S.T.C.No. 1808 of 2019 on the file of the learned Judicial Magistrate, Theni.



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2.The respondent/Food Safety Officer has filed a complaint against the petitioner/A1 and other accused persons in S.T.C.No.1808 of 2019 pending on the file of the learned Judicial Magistrate, Theni, for the offences under Sections 58 and 59(i) of Food Standard and Safety Act, 2006.

3.The case of the prosecution is that on 22.04.2019, at about 04.30 p.m., the respondent conducted inspection in shop No.13 of Shri.Mohammed Hanifa, Fathima Stores, Periyakulam Road, Theni-625 531 and seized the tobacco product known as Ganesh 701 tobacco weighed about 6.240 kgs in the said shop. When the respondent enquired the shop owner, who is arrayed as A2 in the complaint, informed the respondent that he did not have any receipt or voucher for the seized product and also he was unable to disclose the name of the seller; then the respondent collected the samples and sent the same to the Food Analyst, Palayamkottai, Tirunelveli, who in turn, issued an opinion vide his letter dated 07.05.2019 stated that the sample is unsafe under Section 3 (1)(ZJ) of Food Safety and Standard Act, 2006 and the samples containing nicotine resulting in the launching of the prosecution against the petitioner and also the seller for the offences as stated above. Challenging the same, the present petition is filed.



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4.The learned counsel for the petitioner would submit that admittedly, the tobacco substance was seized by the respondent from the second accused and thereafter, the sample was sent for analysis. The said tobacco product is not illegal in the State of Haryana. It is only illegal in the State of Tamil Nadu. As to how those banned substances came into the possession of the seller/A1 in Tamil Nadu, has to be established before the court. However, in the present case, that was not established before this Court and a similar issue was considered before this Court in a batch of petitions in ***Crl.O.P.Nos.16293 of 2023 etc batch, dated 18.08.2023 [M/s.S.S.Essence Private Limited VS. State of Tamil Nadu, Rep. by K.Chandran, Food Safety Officer]*** and in order to avail the very same benefit, the petitioner has filed the present petition before this Court.

5.The learned Government Advocate (Crl. side) would submit that admittedly, the expert opined that the tobacco product seized from the second accused is unsafe and the petitioner is a manufacturer and having an office at Hariyana and he sold the substance to the second accused. He would further submit that all those issues raised before this Court are triable issues and it cannot be tried before this Court under Section 482 of Cr.P.C. Accordingly, he prayed for dismissal of this petition.



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5.Heard the learned counsel on either side and perused the materials available on record.

6.The facts in the present case are not in dispute. Admittedly, the tobacco substances were recovered from A2 and not from the petitioner. The petitioner is a manufacturer of substance, having an office at Haryana and a similar issue came up for consideration before this Court in ***M/s.S.S.Essence Private Limited VS. State of Tamil Nadu, Rep. by K.Chandran, Food Safety Officer [Crl.O.P.Nos.16293 of 2023 etc batch, dated 18.08.2023]*** and the relevant paragraphs are extracted hereunder:

“6.It is seen from records that the respondent was not able to get any information from the seller of the banned substance as to where he procured the same. There was also no dispute with regard to the fact that the petitioner is based at Bengaluru and in Bengaluru, there is no ban of the tobacco substance. Hence, the manufacture of the tobacco substance by the petitioner at Bengaluru is not illegal. As to how those banned substances came into the possession of the seller in Tamil Nadu, is a vital fact which has to be established before the Court. Without such connecting materials, the petitioner cannot be straight away made as an accused, just because the name of the petitioner is found to be the manufacturer. At the



risk of repetition, it must be kept in mind that the manufacturing of the tobacco substance by the petitioner is not a banned product in Bengaluru.

7.This Court had an occasion to deal with a very similar issue in Crl.O.P.No. 19829 of 2017 and an order was passed on 19.01.2022. The relevant portions in the order are extracted hereunder:

6.Normally, this Court would be reluctant to interfere with the complaint, but at the same time when the materials relied upon by the prosecution, in the considered view of the Court, do not constitute any offence against the person and continuation of the prosecution is a sheer waste of time and futile exercise, this Court can very well exercise its power under Section 482 Cr.P.C. The charge against the petitioner itself indicates that some tobacco products were seized from A1, who is no way connected with the present petitioner. It is not the case of the prosecution that this product was supplied for sale in Tamil Nadu by the manufacturers. It is also brought to the notice of this Court that the sale and manufacture is not totally prohibited in some of the States. Therefore, the question remains whether the prosecution is maintainable if any such product is found in Tamil Nadu without establishing any nexus between the manufacture and sale. As discussed above, on perusal of the final report this Court finds that it is not the case of the prosecution that the manufacturer themselves has supplied the products for sale in Tamil Nadu. Only some unknown persons said to have supplied it. Therefore, in the absence of any nexus between sale and supply by the



manufacturer and when the manufacturing of the product is permitted in other States, the manufacturer cannot be prosecuted, as if he has committed the offence, without any material. For example, manufacture of IMFL (Indian Made Foreign Liquor) is permitted in Puducherry and Puducherry liquor is totally prohibited in Tamil Nadu. If any such prohibited liquor is found in possession of somebody, this Court cannot presume that the manufacturer has committed any offence. The same analogy will be followed here.

7. That apart, it is also relevant to note that report from the referral lab indicates that the products seized by the Food Safety Officer do not fall under the category of food product and referral lab report available on record clearly indicates that it was only a tobacco product and it is not a food product. This also cannot be ignored. Hence, this Court is of the view that continuation of prosecution against the present petitioner is a mere waste of time and futile exercise.

8. It is clear from the above order that unless the respondent is able to show that the petitioner is directly involved in the sale of the banned substance in Tamil Nadu, the petitioner cannot be proceeded against just because he happens to be the manufacturer in a different State, where the product is not banned. I'm in a complete agreement with the above order passed and the reasonings given therein.

9. Even when the Show Cause was issued to the petitioner, reply was given by the petitioner and they have taken a very specific stand that they have not sold any banned substance in the State of Tamil Nadu. When such a specific



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Crl.O.P.(MD)No.3821 of 2022

stand is taken, it has to be dealt with in the complaint and the complaint must say as to why the stand taken by the petitioner is unsustainable with supporting materials. The same has not been done and the petitioner has been mechanically added as an accused in this case.

10.In the considered view of this Court, the continuation of the criminal proceedings against the petitioner will amount to an abuse of process of Court which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

11.In view of the above, the proceedings in STC No. 1494 of 2019, C.C. No.327 of 2019, C.C. No.30 of 2018, STC No.382 of 2018 and STC No.3621 of 2019 pending on the file of the Chief Judicial Magistrate Court, Erode, the Judicial Magistrate Court No.II, Coimbatore, the Judicial Magistrate Court No.II, Erode and the Judicial Magistrate Court No.III, Salem, are hereby quashed.”

7.After elaborate discussions, this Court held that the petitioner has taken a specific stand that he has not sold any banned substance in the State of Tamil Nadu. When such a specific stand is taken, it has to be dealt with in the complaint and the complaint must say as to why the stand taken by the petitioner is sustainable with supporting materials. The same has not been done and the petitioner has been mechanically added as an accused in this case. Hence, applying the ratio laid down by this Court in the decision stated *supra*, this Court is inclined to quash the



Crl.O.P.(MD)No.3821 of 2022

proceedings in S.T.C.No.1808 of 2019, in respect of the petitioner/A1 alone and accordingly, it is quashed.

8.Accordingly, this Criminal Original Petition is allowed.

Consequently, connected miscellaneous petition is closed.

21.03.2024

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

To

- 1.The Judicial Magistrate, Theni.
- 2.The Food Safety Officer,
Theni Allinagarar and its Circle,
Code No.474.
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.3821 of 2022

M.DHANDAPANI. J.

Sji

Crl.O.P.(MD)No.3821 of 2022

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