



Crl.O.P.(MD)No.8316 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **06.03.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

Crl.O.P.(MD) No.8316 of 2022

and

Crl.M.P.(MD)Nos.5610 and 5611 of 2022

R.Selvakumar

... Petitioner

Vs.

The State Rep. By
The Inspector of Police,
NIB CID, Ramanathapuram District.
Crime No.58 of 2019

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of C.P.C., to call for the records in connection with C.C.No.46 of 2021 on the file of the learned Additional District and Sessions Judge/Special Judge for NDPS Cases, Pudukottai, Pudukottai District and quash the same in respect of the petitioner alone.

For Petitioner : Mr.A.V.Arun
for Mr.R.Rajan

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor



ORDER

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The Criminal Original Petition has been filed to quash the proceedings in C.C.No.46 of 2021 on the file of the learned Additional District and Sessions Judge/Special Judge for NDPS Cases, Pudukottai, Pudukottai District in respect of the petitioner alone.

2.The case of the petitioner is that the petitioner is arrayed as A9 and he was implicated for the offence under Sections 8(c) r/w 20(b)(ii) (C), 25, 27A and 29(1) of the NDPS Act, in Crime No.58 of 2019 based on the confession made by the first accused and due to the non-appearance before the trial Court, the case was split up. On conclusion of trial, A1 to A8 were acquitted in C.C.No.38 of 2020 on the file of the learned Additional District and Sessions Judge/Special Judge for NDPS Cases, Pudukottai, dated 24.02.2022. Against the order of acquittal, the State did not prefer any appeal before this Court as on date and that the allegations are one and the same for all the accused and for the very same allegation, the trial Court conducted trial and the same was ended in acquittal and in order to avail the same benefit for the petitioner also, the present petition is filed.



3.The learned counsel for the petitioner would submit that in respect of A1 to A8, trial was conducted and the prosecution has not been able to prove the case against the accused persons and the allegation against the petitioner is that based on the confession of A1, as per the instructions of the petitioner/A9, A1 to A5 illegally transported Ganja from Vallavanpattinam, Thanjavur District to Rameshwaram, in order to hand over the same to A7 and A10. He would further submit that to prove the same, there is no document available to link the petitioner with the other accused persons and it is only a hearsay evidence. Since A1 to A8 were already acquitted by the trial Court, forcing the petitioner to face the trial is non-est in the eye of law. Accordingly, he prayed for allowing this petition.

4.The learned Additional Public Prosecutor would submit that at the instruction of the petitioner, A1 to A5 jointly transported the contraband weighing about 70 kgs from Vallavanpattinam, Thanjavur District to Rameshwaram, in order to hand over the same to A7 and A10. Though the prosecution version was established before the trial Court, the case was ended in acquittal in respect of A1 to A8. However, the petitioner is on similar footing and there are incriminating materials



available to the respondent police to prove the same before the trial Court. However, the petitioner has not appeared before the trial Court and thereby, the trial court issued a Non-Bailable Warrant against him and split up the case in C.C.No.46 of 2021 and there are humpty number of evidence available against the petitioner. Hence, he vehemently opposed for allowing this petition.

5.Heard the learned counsel on either side and perused the material records of the case.

6.Admittedly, based on the confession statement of A1, the petitioner was implicated in the above said offence and it is an equally undisputed fact that due to non-appearance before the trial Court, the case was split up in C.C.No.46 of 2021 against the petitioner/A9. Further, it is an equally undisputed fact that in respect of A1 to A8, the trial was conducted in C.C.No.38 of 2020 and in that case, all the accused were ended in acquittal. No documents were produced before the trial Court to link the petitioner with the other accused persons and the very same document was produced before the trial Court through the prosecution witnesses and it is only a burden to the prosecution to come before the



Crl.O.P.(MD)No.8316 of 2022

trial Court again and adduce witnesses. It is relevant to note that though the case was ended in acquittal in the year 2022, till date, the respondent police has not preferred any appeal against the order of acquittal

7.In view of the above, since the main accused were already acquitted by the trial Court, this Court is inclined to extend the very same benefit to the petitioner.

8.Accordingly, the proceedings in C.C.No.46 of 2021 on the file of the learned Additional District and Sessions Judge/Special Judge for NDPS Cases, Pudukottai, Pudukottai District, is quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

06.03.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
SJI

To

1.The Additional District and Sessions Judge/Special Judge
for NDPS Cases, Pudukottai, Pudukottai District.



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CrI.O.P.(MD)No.8316 of 2022

M.DHANDAPANI. J.

SJI

- 2.The Inspector of Police,
NIB CID, Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P.(MD)No.8316 of 2022

06.03.2024