



**Crl.O.P.(MD).No.10051 of 2023**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 14.12.2023**

**DELIVERED ON : 13.03.2024**

**CORAM**

**THE HON'BLE MR. JUSTICE G.ILANGO VAN**

**Crl.O.P.(MD).No.10051 of 2023**

**and Crl.M.P.(MD).Nos.8018 and 8020 of 2023**

**Krishna Kumar**

**... Petitioner/Sole Accused**

**Vs.**

**1.The State through rep. by  
The Inspector of Police,  
S.S.Colony Police Station,  
Madurai City,  
Madurai District.  
(Crime No.314 of 2023)**

**2.Perarasi  
Sub Inspector of Police,  
S.S.Colony Police Station,  
Madurai.**

**... Respondent/Complainant**

**Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to  
call for the records relating to the Final Report in C.C.No.357 of 2023 on  
the file of the Special Court for NDPS Act Cases, Madurai and quash the  
same as illegal.**



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For Petitioner : Mr.M.Ajmal Khan, Senior Counsel for  
M/s.Ajmal Associates

For Respondents : Mr.Veerakathiravan  
Additional Advocate General  
assisted by Mr.S.Ravi,  
Additional Public Prosecutor

### **ORDER**

This Criminal Original Petition has been filed seeking to quash the Final Report in C.C.No.357 of 2023 on the file of the Special Court for NDPS Act Cases, Madurai.

#### **2.The facts in brief:**

The respondent police filed the final report against this petitioner stating that the defacto complainant namely the Sub Inspector of Police on secret information along with her team of police officials went in search of the suspected near Central Go-down, Bypass Road, Madurai Town, on 07.03.2023 at about 6.30 a.m. On suspicion, they intercepted the vehicle bearing Registration No.TN-59-BR-2916. The rider was one Krishna Kumar. On seeing the police party, he tried to escape from that place. He was apprehended and search was made and they found ten boxes of Ganja weighing about 21 kg. On enquiry, he revealed that it is



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intended for selling. Sampling was undertaken as per the Rules. He was arrested on the spot along with the contraband. A case was registered in Crime No.314 of 2023. After completing the investigation, final report was filed on 11.04.2023 before the Special Court and the same was taken cognizance in C.C.No.357 of 2023.

3. Seeking quashment of the same, this petition has been filed by the petitioner, preliminary on the ground that in order to over come or pressurizing him to with draw the private complaint filed by him earlier in C.C.No.807 of 2019 on the file of the learned Judicial Magistrate No.V, Madurai, against the police officials, this case was registered against him.

4. Heard both sides.

5. The trust and confidence is the central fulcrum upon which every public office functions to serve the interest of the society. It must be allowed to function in a free and fair manner. Then only, it can achieve its goal of working towards the interest of the society. Any intrusion, if



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made, in any form by any one, the immediate causality, is the rule of law and ultimate will be the interest of the society. This observation is made by this Court in another matter, which is also relevant for this discussion. So I have extracted that portion.

6. I bound to make this observation at the outset itself for the simple reason that when I was holding the Roster dealing with the transfer of investigation, quashment, etc., a petition was moved urgently by this petitioner to transfer the investigation in this crime number to some other agency stating that private complaint filed by them in C.C.No.807 of 2019 is now under commencement of trial process. A pressure was made upon the petitioner to withdraw the private complaint. When that was not conceded, the present false case has been foisted. He was arrested and remanded to custody. When such being the position, the matter must be investigated by some other agency. When a petition was filed in Crl.O.P.(MD).No.6576 of f2023 by the wife of this petitioner, it was taken up for hearing on 11.04.2023 and later adjourned to 21.04.2023. On that date, the respondent/Investigating Officer also present before this Court and CD file also perused by me. On perusal of



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CD file, I came to know that the investigation in this matter is taken up at a lightening speed. So I advised the Investigating Officer to wait till the disposal of that petition. But, later it was informed the Court that in the meantime, final report itself was filed before the trial Court.

7.A too strong exceptional behaviour and conduct exhibited by the respondent herein.

8.Simultaneously, the petitioner also moved bail application before the Co-ordinate Bench of this Court in Crl.O.P.(MD).No.7379 of 2023. That matter was heard on 24.04.2023. An elaborate argument was heard by the Co-ordinate Bench of this Court. Bail was granted to him by noting down the factual circumstances. Para No.14 of the order is relevant.

*“14.The Inspector General of Police, South Zone is directed to take appropriate departmental action as against the respondent police, namely, Mr.Boominathan, Inspector of Police and others if any who foisted the false case as against the petitioner, at the insistence of the accused persons*



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*in C.C.No.807 of 2019 on the file of the learned Judicial Magistrate No.5, Madurai and completed the same within a period of three months from the receipt of a copy of this order and send a report to the Registry of this Court.”*

With the above said directions, that petition was allowed.

9.Subsequently, enquiry was undertaken as directed by this Court and they also filed a report. An elaborate enquiry report also submitted before this Court, touching upon the merits of this criminal prosecution.

**Let the above said Status report be annexed as part of this order. So that it need not elaborately reproduced here.** Suffice to say that para No.9 fixes the issue. That portion alone is extracted hereunder.

*“9.Based on the above mentioned findings of the inquiry, it is evident that the below mentioned police officials involved in registration, seizure, arrest, etc. of the case in S.S.Colony PS Cr.No.314 of 2023 u/s 8(c), 20(b)(ii)(C) and 25 of NDPS Act, 1985 have flagrantly abused their authority and engaged in grave misconduct.*

| Sl. No. | Name                           |
|---------|--------------------------------|
| 1.      | Inspector Thiru.P.Bhoominathan |



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|    |                                   |
|----|-----------------------------------|
| 2. | SI Tmt.M.Perarasi                 |
| 3. | SI Thiru G.J.Amalan               |
| 4. | Head Constable Thiru N.Nagasundar |
| 5. | Grade I PC Thiru.J.Prabhakaran    |
| 6. | Grade I PC Thiru.R.Ashokkumar     |

*In light of these grave transgressions, it is imperative that appropriate departmental proceedings should be initiated against them to ensure accountability and to have future deterrence. However, it is respectfully submitted that the undersigned lacks the requisite authority to initiate departmental proceedings against the implicated police officials as they are working in another jurisdiction i.e., Madurai City which is not under the administrative control of the undersigned/Inspector General of Police, South Zone.*

*This is submitted for favour of kind perusal and orders as this Hon'ble High Court may deem fit and proper in the circumstances of the case and thus render justice.”*

10.By relying upon these dates and events, it is contended by the learned counsel for the petitioner that the criminal prosecution initiated by the respondent herein squarely falls under one of the categories



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investigated by the Honourable Supreme Court in the case of ***State Of Haryana And Ors Vs. Ch. Bhajan Lal And Ors*** reported in ***1992 AIR 604***. According to him, it is a clear malafide exercise of power by the respondent herein. When *prima facie* ground in the form of judicial orders and departmental enquiry, the prosecution must be quashed.

11.The category of cases are extracted hereunder. The Honourable Supreme Court is of the view that this list is not exhaustive in nature. Each case must be decided on its own facts and circumstances and on merits. It is only a broad indication of circumstances.

- (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R.do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*



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*(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*

*(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;*

*(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*

*(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;*

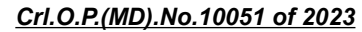


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*(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

12.Per contra, the learned Additional Advocate General would submit that no doubt there is a finding by the Co-ordinate Bench of this Court in Crl.O.P.(MD).No.7379 of 2023 and the departmental enquiry undertaken by Deputy Inspector General of Police, South Zone. But the materials have been collected and placed before the trial Court and the trial Court has also taken cognizance and framed the charges also. So the trial must be directed to be taken its logical conclusion.

13.The power of this Court under Section 482 of Cr.P.C. is only very restricted. This Court cannot undertake the mini trial to record any finding as to the reliability or non reliability of the materials collected during the course of investigation in short. According to the learned Additional Advocate General, it is beyond the scope of the power



1. In the case of *Vijender Vs. State of Delhi* reported in (1997) 6 Supreme Court Cases 171 and
2. In the case of *Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra and others* reported in 2021 SCC Online SC 315.

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behaved himself in a fair manner not only before this Court, but also during the course of investigation. In a lightening speed, investigation was concluded, final report filed, apparently to take the investigation out of the purview of this Court. So such an attempt, if it is looked into the factual matrix, then it will amount to clear malafide exercise of power.

15. When such malafide exercise of power is apparent on the face of the records then the power under Section 482 of Cr.P.C. can be exercised as set out in the famous Honourable Supreme Court's Bajanlal's case.

16. Apart from that it is also brought to my notice that the private complaint filed by the petitioner in C.C.No.807 of 2019 ended in conviction against the police officials involved in the occurrence. The Judgment was rendered on 16.10.2023. This according to the learned counsel for the petitioner also fixes the issue and now apparently to escape from that criminal prosecution only, this false case has been foisted. I am not expressing any opinion on that point since the affected parties can avail the appeal remedy. It is for the appellate Court to decide



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the issue.

17.Now coming back to the opening paragraph of the discussion, this is a classic case of malafide exercise of power. The trust and confidence reposed upon the public officer, namely the Investigating Officer herein has been completely disobeyed or dis-honoured, even to his own conscience. The said malafide exercise of power is apparent on the basis of the record. So, I am of the considered view that here as mentioned above, the criminal prosecution is clear abuse of the process of the Court and law. On the sole ground this petition is liable to be allowed.

18.Accordingly, this criminal original petition stands allowed. The final report filed in C.C.No.357 of 2023 on the file of the learned Special Judge, Special Court for NDPS Act Cases, Madurai, is hereby quashed in respect of this petitioner. Consequently, connected miscellaneous petition is closed.

**13.03.2024**



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Index : Yes/No  
Internet : Yes/No  
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To

- 1.The Special Judge, Special Court for NDPS Act Cases, Madurai.
- 2.The Inspector of Police,  
S.S.Colony Police Station,  
Madurai City,  
Madurai District.  
(Crime No.314 of 2023)
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.



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**G.ILANGO VAN,J.**

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**PRE-DEIVERY ORDER MADE IN**

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