



Crl.O.P.(MD)No.15104 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.03.2024

CORAM:

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

Crl.O.P.(MD) No.15104 of 2022
and Crl.M.P.(MD).No.9871 of 2022

K.Ganapathi Raja

... Petitioner

Vs.

1.The State rep.by
The Inspector of Police,
VPC-CID Police Station,
Madurai District.
Crime No.392/2017.

2.Mohamed Abdulla

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings in S.T.C.No.66 of 2018 pending on the file of the learned Judicial Magistrate No.I, Madurai District and quash the same, as far as the petitioner is concerned.

For Petitioner

: Mr.P.Samuel Gunasingh

for Mr.B.Arun

For Respondents

: Mr.P.Kottaichamy

Government Advocate (Crl.side)

for R1

Mr.B.Fazil Kirmani for R2



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.66 of 2018 pending on the file of the learned Judicial Magistrate No.I, Madurai District, insofar as the petitioner is concerned.

2. The case of the prosecution is that the defacto complainant, who is the Manager and Distributor of Syed Beedi Company in Madurai District, was brought to the knowledge of the fact that the sales and purchase of Beedi products were vehemently diminishing near the surrounding areas and when it was enquired, it came to light that the petitioner herein, who was running a shop in Amman Sannathi in the name of Sri Megna Store, was selling the infringed Beedi products in the market. On 06.12.2017, the defacto complainant has conducted raid in the shop and seized the infringed products, pursuant to which, he made a complaint before the first respondent Police and a case in Crime No.392 of 2017 was registered for the offence punishable under Sections 51(b)(i) and 65 of Copyright Act, 1957. After completion of investigation, the final report has been filed before the learned Judicial Magistrate No.I, Madurai and the same was taken on file in S.T.C.No.66 of 2018 for the offence punishable under Sections 51(b)(ii)



and 65 of the Copyright Act, 1957.

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3. The learned counsel appearing for the petitioner submits that the petitioner was implicated for the offence punishable under Sections 51(b)(i) and 65 of Copyright Act, 1957 and after completion of investigation, the respondent Police filed a charge sheet before the learned Judicial Magistrate No.I, Madurai and the same was taken on file in S.T.C.No.66 of 2018. The offences registered against the petitioner are punishable for imprisonment for less than three years. As per Part II of the First Schedule to Criminal Procedure Code, if the offence is punishable with imprisonment for less than three years, it is a non-cognizable offence and the Police have to get permission from the Magistrate before registration of the First Information Report as mandated under Section 155(2) of the Code of Criminal Procedure. However, the said mandatory procedure has not been followed in this case. Without obtaining the permission from the Magistrate, the first respondent Police registered the FIR against the petitioner. Hence, he prays for quashing of S.T.C.No.66 of 2018 as against the petitioner.

4. The learned counsel appearing for the second respondent/defacto complainant submits that though the offences



registered against the petitioners are punishable and the imprisonment for these offences is less than three years, the petitioner was selling the infringed Beedi products in the market, hence, the second respondent has made a complaint before the first respondent Police. Hence, he prays for dismissal of this petition.

5. The learned Government Advocate (Crl.side) appearing for the first respondent Police submits that there are materials available to proceed with the case as against the petitioner herein and at the threshold, the criminal proceedings cannot be quashed and hence, he would pray to dismiss the present petition.

6. It appears that the petitioner was implicated for the offence punishable under Sections 51(b)(i) and 65 of Copyright Act, 1957 in Crime No.392 of 2017, on the ground that he was selling the infringed beedi products in the market, based on the complaint made by the defacto complainant. The offences registered against the petitioner are punishable and the imprisonment for such offences is less than three years. As per Part II of the First Schedule to Code of Criminal Procedure, if the offence is punishable for imprisonment for less than three years or with fine, the offence can be said to be non-cognizable.



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7. Under Section 155 (2) of Code of Criminal Procedure, it has been held that “no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial”.

8. In this case, before registration of the First Information Report, the first respondent Police have not obtained permission from the Magistrate and has not followed the procedure as mandatory in Section 155 (2) of Code of Criminal Procedure. Hence, this Court is inclined to quash S.T.C.No.66 of 2018 pending on the file of the learned Judicial Magistrate No.1, Madurai District.

9. In the result, this Criminal Original Petition is allowed and S.T.C.No.66 of 2018 pending on the file of the learned Judicial Magistrate No.1, Madurai District is quashed in respect of the petitioner. Connected miscellaneous petition is closed.

19.03.2024

Index : Yes/No
Internet : Yes/No
ssb



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To

- 1.The learned Judicial Magistrate No.I, Madurai District.
- 2.The Inspector of Police,
VPC-CID Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI. J.

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