



Crl.O.P.(MD)No.14772 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.10.2024

Pronounced on : 28.10.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.14772 of 2024

and

Crl.M.P.(MD)No.9231 of 2024

G.Raju

... Petitioner

Vs.

1.The Inspector of Police,
Prohibition Enforcement Wing,
Madurai City Police Station,
Madurai District.

2.R.A.Venkateswaran,
The Special Sub-Inspector of Police,
Prohibition Enforcement Wing,
Madurai City Police Station,
Madurai District.

... Respondents

Prayer : This Criminal Original Petition filed under Section 528 BNSS, to call for the records pertaining to the First Information Report in Crime No. 1579 of 2021 on the file of the first respondent police and quash the same.



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For Petitioner : Mr.G.Hari Haran
For R1 : Mr.P.Kottaichamy,
Government Advocate(Crl.side)

ORDER

This criminal original petition has been filed invoking Section 528 BNSS seeking orders to quash the First Information Report in Crime No.1579 of 2021 on the file of the Prohibition Enforcement Wing, Madurai City.

2.The second respondent / Special Sub-Inspector of Police, attached to the Prohibition Enforcement Wing of the Madurai City has registered a case in Cr.No.1579 of 2021 against two persons including the petitioner for the alleged offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act.

3.The case of the prosecution is that on 02.10.2021, at about 17.15 hours, when the second respondent and the Head Constable were on patrol duty, around E-1 Puthur Police Station jurisdiction, they had noticed two persons, namely Raju and Raja, carrying a bag in their hand and on seeing



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the Police Party, they had attempted to escape from that place, that the second respondent and his team had rounded them and searched their bag and they had noticed that the accused were in illegal possession of two bottles of 180 ML of Honey Day Brandy, without any valid licence and permission and that the Police Party had seized the bottles from the accused and on that basis, FIR in Cr.No.1579 of 2021 came to be registered.

4.The case of the petitioner, who is the first accused in this case, is that he is innocent and he has been falsely implicated in the above case, that when the petitioner was crossing near Meenakshi Bavan, Uthangudi, the Second respondent Police intercepted and lodged a false FIR against him, that he was not in possession of any liquor bottles at that time, that the Police Party has not recovered any bottles from the petitioner, that the petitioner has absolutely no connection or relation with the second accused, that even assuming that the petitioner was possessing two bottles of 180 ML Brandy, as per the amended GO(MS)No.14, Home (P &E(VI) dated 09.06.2017, any person can possess 4.5 litres of Indian made foreign spirit and that therefore, the petitioner is constrained to file the present petition to quash the FIR as against him.



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5.The learned counsel appearing for the petitioner would rely on a decision of this Court in Muthukumar Vs. Mohamed Ibrahim, SSI and another in Crl.O.P.(MD)No.22292 of 2018 dated 24.01.2022, wherein this Court quashed the FIR for the offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act, in which, the accused was in possession of 20 bottles of 180 ML liquor, which comes to 3600 ML and the relevant paragraphs are extracted hereunder:-

9.As already pointed out, though FIR came to be registered for the offence under Sections 294(b), 353, 506(ii) IPC and under Section 4(1)(a) of Tamil Nadu Prohibition Act, the basic case upon which, the prosecution case was built up is the illegal transportation of liquor. Section 4 of Tamil Nadu Prohibition Act prohibits the manufacture of, traffic in, and consumption of liquor and intoxicating drugs.

10.Section 4(1)(a) contemplates that, who ever imports, exports, transports or possesses liquor or any intoxicating drug shall be punished with imprisonment for a term which may extend to three months or with fine which may extent to one thousand rupees.



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11.As per Rule 2 of Tamil Nadu Liquor (Possession for personnel Consumption) Rules 1996, any person will possess 1000 ml of Indian made foreign spirit and in case, if any person possess liquor in excess of the quantity specified is liable to be prosecuted for the offence under the Tamil Nadu Prohibition Act.

12.The learned counsel for the petitioner would submit that the Government of Tamil Nadu has amended the Rule 2 of Tamil Nadu Liquor (Possession for personnel Consumption) Rules 1996, and as per G.O.Ms.No. 14, Home (P& E (VI), dated 09.06.2017, any person can possess 4.5 litres of Indian made foreign spirit.

13.In the case on hand, even according to the prosecution, the petitioner was allegedly in possession of 20 bottles of 180 ml liquor, which comes to 3,600 ml. As rightly contended by the learned counsel for the petitioner, even assuming that the petitioner was in possession of 3,600 ml of Indian made foreign spirit, the same is within permitted limit, as per G.O.Ms.No.14, dated 09.06.2017 and as such, the very registration of FIR under Section 4(1)(a) of Tamil Nadu Prohibition Act has no legs to stand.

14.The learned Additional Public Prosecutor in an attempt to counter the said contention has submitted that



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though the G.O.Ms.No.14, allows a person to possess 4.5 litres of liquor for personnel consumption, it does not mean that he can transport the same and make profit by selling the same.

15.As rightly contended by the learned counsel for the petitioner, in the case on hand, it is not the case of the prosecution that the petitioner was caught red handedly while selling the liquor. Moreover, absolutely, there is no material to show that he has transported the liquor for the purpose of selling the same and that he was making profit by selling the same.

6.The above decision is squarely applicable to the case on hand. In the present case, as already pointed out, the petitioner was allegedly in possession of two bottles of 180 ML liquor, which comes to 360 litres only, which is within the permitted limit as per GO.(MS)No.14 dated 09.06.2017.

7.Considering the above, this Court has no hesitation to hold that the very registration of FIR in Cr.No.1579 of 2021 for the offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act cannot be sustained and the same is liable to be quashed.



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8.In the result, this criminal original petition is allowed and the FIR in Cr.No.1579 of 2021 pending on the file of the learned first respondent is hereby quashed as against the petitioner. Consequently, connected miscellaneous petition is closed.

28.10.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
gns

To

- 1.The Inspector of Police,
Prohibition Enforcement Wing,
Madurai City Police Station,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

gns

Pre-Delivery Order made in
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