



Crl.O.P.(MD)No.15055 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15055 of 2024

and

Crl.M.P.(MD)Nos.9428 and 9429 of 2024

Kumar @ Kadavul Kumar

... Petitioner

Vs.

The Inspector of Police,
Karimedu Police Station,
Madurai City.

... Respondent

PRAYER : Criminal Original Petition filed under Section 528 B.N.S.S., to call for the records relating to the proceedings in C.C.No.93 of 2024 on the file of the II Additional District Judge for NDPS Act, Madurai and quash the same as against this petitioner alone.

For Petitioner : Mr.A.S.Abul Kalaam Azad
for M/s.Spicy Law Firm

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



Crl.O.P.(MD)No.15055 of 2024

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ORDER

This Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders to quash the charge sheet in C.C.No.93 of 2024 pending on the file of the II Additional District Court for NDPS Act, Madurai.

2. It is not in dispute that the respondent police has registered an FIR in Crime No.904 of 2023 against four persons including the petitioner and after completing the investigation, final report came to be filed for the offences under Sections 8(c), 20(b)(ii)(C), 25 and 29(1) of Narcotic Drugs and Psychotropic Substances Act against four persons including the petitioner and the case was taken on file in C.C.No.93 of 2024 and is pending on the file of the II Additional District Court for NDPS Act, Madurai.

3. The case of the prosecution is that the accused persons were found in illegal possession of 51 kgs of ganja.



Crl.O.P.(MD)No.15055 of 2024

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4. The main contention of the petitioner is that there was no recovery from the petitioner, that the petitioner was not present at the time of occurrence and that there is absolutely no material to connect the petitioner with the present case.

5. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the petitioner's name finds place in the FIR and subsequently, in the confession statement given by the first accused, he has specifically stated that the other accused along with the petitioner went to Andhra Pradesh and purchased 10 kgs of ganja and thereafter again three days before taking the confession statement, they went to Andhra Pradesh in Renault Lodgy car bearing Registration No.TN-81-C-7312 and brought 51 kgs of ganja in their car.

6. The learned counsel appearing for the petitioner would submit that the petitioner has been implicated only on the basis that he is the owner of the car and he has produced an agreement showing that the petitioner is not the owner.



Crl.O.P.(MD)No.15055 of 2024

WEB COPY

7. In the present proceedings, the validity and the genuineness of the agreement cannot be gone into and it is matter for trial. Moreover, as rightly contended by the learned Government Advocate (Criminal Side), on the basis of the confession taken from the co-accused, the petitioner was subsequently arrested and was remanded to judicial custody. Whether the petitioner was involved in the occurrence and whether the petitioner was added only on the basis of being owner of the car cannot be gone at this stage and are matter for trial.

8. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426*** has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following



Crl.O.P.(MD)No.15055 of 2024

categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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;

(2) 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;

(3) 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;



Crl.O.P.(MD)No.15055 of 2024

(4) 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;

(5) 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;

(6) 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;

(7) 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.”



Crl.O.P.(MD)No.15055 of 2024

WEB COPY

9. In ***Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others*** reported in **2019 (18) SCC 191**, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

10. The Hon'ble Supreme Court in ***Kaptan Singh Vs. The State of Uttar Pradesh and others*** reported in **2021 (3) Crimes 247** has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and *prima facie* materials, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.



Crl.O.P.(MD)No.15055 of 2024

WEB COPY

11. A cursory perusal of the final report and the statements filed along with the final report would make it clear that there existed a *prima facie* case to proceed against the petitioner.

12. Considering the above and also the submission made by the learned Government Advocate (Criminal Side) and also taking note of the fact that this is not a fit case to quash the charge sheet against the petitioner, this Court is not inclined to grant the relief claimed.

13. In the result, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

10.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
csm

To

1.The II Additional District Judge for NDPS Act,
Madurai.



Crl.O.P.(MD)No.15055 of 2024

2.The Inspector of Police,
Karimedu Police Station,
Madurai City.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.15055 of 2024

K.MURALI SHANKAR,J.

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