



Crl.O.P.(MD)No.15292 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.10.2024

Delivered on : 30.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15292 of 2024

and

Crl.M.P.(MD)Nos.9579 and 9580 of 2024

Abish Bal

... Petitioner/A2

Vs.

1.State rep by

The Inspector of Police,
Vadaseri Police Station,
Kanyakumari District.
Crime No.275 of 2022.

2.John Victor

Sun-Inspector of Police – 162,
Vadaseri Police Station,
Nagercoil, Kanyakumari District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records pertaining to the impugned charge sheet in C.C.No. 271 of 2022, pending on the file of the learned Judicial Magistrate No.II, Nagercoil, dated 28.01.2023 filed in FIR in Crime No.275 of 2022 on the file of the first respondent police, registered under Section 8(c), 20(b)(ii)



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(A) of NDPS Act, 1985 r/w Section 77 of J.J Act 2015, dated 12.11.2022 and quash the same.

For Petitioner : Mr.P.M.Vishnuvarthanan

For R1 : Mr.K.Sanjai Gandhi,
Government Advocate (Crl. Side)

ORDER

The Criminal Original Petition has been filed, invoking Section 528 of BNSS., seeking orders, to call for the records pertaining to the impugned C.C.No.271 of 2022, pending on the file of the learned Judicial Magistrate No.II, Nagercoil and quash the same.

2. The second respondent has lodged a complaint and on that basis, the first respondent registered a case in Crime No.275 of 2022 on 12.11.2022 against two persons for the alleged offence under Sections 8(c), 20(b)(ii)(A) of NDPS Act, 1985 r/w Section 77 of Juvenile Justice (Care and Protection of Children) Act 2015. The first respondent, after completing the investigation, has filed the final report and the same was taken on file in C.C.No.271 of 2023 and is pending on the file of the learned Judicial Magistrate No.II, Nagercoil.



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3. The petitioner is the second accused in C.C.No.271 of 2023 on the file of the Court of Judicial Magistrate No.II, Nagercoil.

4. The case of the prosecution is that on 12.11.2022 at about 19.15. hours, receiving a secret information that some persons were selling Ganja behind the Moderator Gnanadason Polytechnic College at Vadaseri, the second respondent, after getting permission from the first respondent visited the spot along with team of police; that the informant had identified the suspected persons and immediately, the second respondent and his team surrounded them on the spot and caught them red-handed and found 36 grams of Ganja with the first accused and another juvenile; that the first accused has stated hat he has purchased 350 grams of Ganja for Rs.3,500/- from the petitioner/A2, who is studying at Coimbatore, Karpagam Engineering College and sold the same in small pockets in Nagercoil and on that basis, FIR came to be registered.

5. In the final report, it has been alleged that the first accused had purchased 350 grams of Ganja from the second accused and without any



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license or permission has been selling for higher cost to the school and college students and for youth and that therefore, they had been charge sheeted for the offence under Sections 8(c), 20(b)(ii)(A) of NDPS Act, 1985 r/w Section 77 of Juvenile Justice (Care and Protection of Children) Act 2015.

6. The learned counsel for the petitioner would submit that the petitioner/A2 was not at all present in the scene of occurrence; that even as per version of the second respondent; they have not recovered any contraband from the petitioner; that the petitioner is a student of Rathinam Technical Campus and not a student of Karpagam Engineering College as stated by the prosecution and he never studied in that college; that except the confession of the first accused, the prosecution has not produced any other material to implicate the petitioner in the above case; that the first respondent/Investigating Officer has not conducted the investigation properly and there is a serious flaw in the investigation and that therefore, the impugned charge sheet is liable to be quashed against the petitioner.



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7. The learned Government Advocate (Criminal Side) appearing for the State would submit that the contraband was recovered from the first accused; that the first accused has given confession statement wherein, he had implicated the second accused; that the first accused has given a statement subsequently that he used to purchase the contraband from the second accused, who is studying in Karpagam Engineering College, Coimbatore and that on the basis of the said confession, he was added in the FIR itself and after investigation, he was rightly added as the second accused in the charge sheet.

8. Admittedly, the petitioner/A2 was not present at the time of occurrence, more particularly, at the time of arresting the first accused and seizure of contraband. It is not the case of the prosecution that the petitioner was very much available at the place of occurrence and after seeing the police party, he escaped from the that place.

9. It is not the case of the prosecution that they have arrested the petitioner/second accused and taken a confession statement from him.



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Admittedly, no contraband was recovered from the petitioner/A2.

Though the prosecution has alleged that the first accused has given a statement that the petitioner/A2 was a regular seller of Ganja, the prosecution has not produced any iota of evidence or materials to show that the petitioner was selling Ganja to the retailers at Coimbatore.

10. It is not the case of the prosecution that the petitioner is having previous cases under the NDPS case. It is also not their case that the petitioner is having bad antecedents. According to the prosecution, he was a student of Karpagam Engineering College, Coimbatore at the relevant point of time, but according to the petitioner, he never studied at Karpagam College, but was a student of Rathinam Technical Campus.

11. More importantly, the prosecution has not even arrested the petitioner/accused and they have filed the charge sheet by showing the petitioner as absconding accused and the learned Magistrate, while taking cognizance, has ordered for issuance of summons to both the accused and with a direction that the second accused should produce two sureties on his appearance.



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12. Considering the above, it is clear that there is absolutely no material or evidence to implicate the petitioner in the case on hand. Though the prosecution has alleged that they have taken a confession from the first accused, they have not produced the confession statement before the trial Court or even before this Court.

13. It is evident from the copy of the charge sheet filed along with the present quash petition, that in the annexure containing the list of documents enclosed, the prosecution has only produced the FIR, Special report under Section 57 of Cr.P.C., Seizure mahazar, Observation mahazar, Rough sketch, Statements of witnesses recorded under Section 156(3) Cr.P.C., which were already sent to the Court and produced Form-95 along with the charge sheet.

14. No doubt, on the basis of the alleged statement of the first accused, the second accused was named in the FIR and that by itself cannot be found fault with. However, when the first respondent took up the case for investigation, he should have taken steps to examine the



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petitioner/accused, his antecedents, especially since it was alleged that the petitioner/accused was a regular seller of ganja." It is crucial to emphasize that when the prosecution elects to file a charge sheet against a college student, particularly under the NDPS Act, they have a responsibility to thoroughly verify the legitimacy of the prosecution's claims and the accuracy of the charges alleged against the student. The police must not file a charge sheet in a perfunctory or mechanical fashion, as it can have severe consequences for the student's future.

15. Considering the above, this Court has no hesitation to hold that charge sheet as against the petitioner is liable to be quashed and is quashed accordingly. This Court is also constrained to observe that it is a fit case for directing necessary action against the erring officials for their grave lapses.

16. In the result, this Criminal Original Petition is allowed and the impugned charge sheet in C.C.No.271 of 2022, pending on the file of the learned Judicial Magistrate No.II, Nagercoil, is quashed as against the petitioner. The Superintendent of Police, Kanyakumari District is



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directed to initiate necessary disciplinary action against the first respondent and to submit a report to the Registry within two months.

Consequently, connected Miscellaneous Petitions are closed.

17. Post the matter ;for compliance' after three months.

30.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das

To

- 1.The Judicial Magistrate No.II, Nagercoil.
- 2.The Superintendent of Police,
Kanyakumari District.
3. The Inspector of Police,
Vadaseri Police Station,
Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Order made in
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Dated: 30.10.2024