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CrI.O.P. No.2201 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2025

CORAM

THE HONOURABLE Mr. JUSTICE G.K. ILANTHIRAIYAN

CrI.O.P. No.2201 of 2024

AND

CrI.M.P.Nos.1582 & 1583 of 2024

Ezhilarasan

Vs.

.. Petitioner

1.The State rep. by
The Inspector of Police
Erode Town police Station
Erode District
(Ref. Crime No.320/2021 dated 23.5.21)

2.The Sub Inspector of Police
D.G.Ramprabu
Erode Town police Station
Erode District

.. Respondents

Criminal Original Petition under Section 482 Cr.P.C. to call for the records and quash the prosecution in C.C.No.155/2022 on the file of the Additional District and Special Court for trial of cases under the E.C. Act, Coimbatore for offences under Sections 8(c) r/w 20(b)(ii)(B) and 29(1) of NDPS Act, 1985.



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For Petitioner :: Mr.C.Arun Kumar
For Respondents :: Mr.R.Vinothraja
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.155/2022 on the file of the Additional District and Special Court for trial of cases under the E.C. Act, Coimbatore, for the offences under Sections 8(c) r/w 20(b)(ii)(B) and 29(1) of the NDPS Act, 1985.

2. The case of the prosecution is that on 01.06.2021 at about 12.30 p.m., while the 1st respondent is involved in vehicle checkup near Kumarasamy Hospital, Periyar Nagar, Erode, some unknown persons, on seeing the police jeep, attempted to escape. On enquiry, the 1st respondent seized 120 gms. of contraband from A-8. Thereafter, after recording their confession, seized 2 kgs. of ganja from them. Thereafter, registered an FIR in crime No.320/2021 for the offences under Sections 8C, 20(b)(ii)(B) and 29(1) of NDPS Act, 1985. NDPS Act, 1985.

3. After completion of investigation, filed a final report against the 14 accused persons and the same has been taken cognizance by the learned



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Additional District Judge, Special Court for E.C. Act Cases, Coimbatore, in

C.C.No.155 of 2022, in which, the petitioner is arrayed as A-4. The petitioner/A-4

has been implicated on the strength of the confession statement of the co-accused.

Except the confession statement of the co-accused, there is no other material to suggest the petitioner/A-4's participation in the offence. That apart, on the basis of the confession statement of the co-accused, there was no recovery from the petitioner. Further, no one has spoken about the overt act of the petitioner to contact the other accused persons.

4. Now, the petitioner is charged for the offence under punishable Sections Sections 8C, 20(b)(ii)(B) and 29(1) of NDPS Act, 1985. On a perusal of the confession statement of the co-accused revealed that A-1 and A-3 conspired with the petitioner/A-4 for procuring the contraband from Andhra Pradesh and distributed amongst the accused. Admittedly, the petitioner being an Advocate appeared for other accused persons in several cases. Therefore, except the confession statement of the co-accused, there is no material as against the petitioner to attract any of the charges.

5. Challenging the aforesaid proceedings, this Criminal Original Petition has been filed.



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6. The learned counsel for the petitioner submitted that both the petitioner was implicated as accused, only on the confession statement of co-accused. On the strength of the confession statement, there was no recovery and there is no material to substantiate the confession statement of co-accused. Further, except the confession statement of co-accused, no one has spoken about the overt act of the petitioner to attract any of the charges as alleged by the prosecution. On the strength of the confession statement of co-accused, the 1st respondent has filed a final report. The petitioner conspired with other accused persons, procured contraband and sell it. Therefore, there is no material, muchless, a legal one to connect the other accused persons with the petitioner/A-4 in crime No.320/2021.

7. The learned counsel for the petitioner further submitted that a confession of a co-accused cannot by itself be taken as substantive piece of evidence as against another co-accused and at the best, it can be used to lend assurance of this Court. In support of this contention, he relied upon several judgments of the Hon'ble Supreme Court as well as this Court.



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8. The learned Government Advocate (Crl. Side) submitted that there are totally 14 accused, in which, the petitioner is arrayed as A-4. Though the petitioner was implicated as accused on the basis of the confession statement of the co-accused, there are incriminating materials as against the petitioner.

9. Heard both sides and perused the materials available on record.

10. Admittedly, the petitioner/A-4 was not named accused in the FIR registered in crime No.320/2021. While investigation, on the strength of the confession statement from the co-accused, he has been implicated as A-4 and a final report has been filed. On a perusal of the confession statement of co-accused revealed that A-4 being an Advocate, the other accused have acquaintance with regard to the conduct of cases and with the help of A-4, they have sold the contraband and shared the proceeds. Pursuant to the said confession statement, there was no recovery from A-4 either the contraband or any cash from him.

11. Further, there is absolutely no material to show that he had contact with other accused persons. The prosecution did not even produce any call details or call records to substantiate the acquaintance between A-4 with other accused



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persons. Though A-4's bank account has been frozen, there is no money transaction from the other accused persons or from A-4 to other accused persons.

That apart, from the confession statements, no witnesses have spoken about the overt act of the petitioner. Further, no other material was produced by the prosecution to attract any of the charges levelled against him.

12. It is a settled law that the confession of a co-accused cannot be taken as substantive piece of evidence against another co-accused. Therefore, the contention of a co-accused person cannot be treated as substantive piece of evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. In criminal cases, where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him and so, he is entitled to the benefit of doubt.



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13. Further, on a perusal of the statements of the witnesses of hearsay, that too, stereotype statements as if they heard about A-4 from the other accused persons. Therefore, their statements failed to support the case of prosecution as against A-4. Therefore, the entire case of the prosecution is foisted as against the petitioner with an ulterior motive to wreak vengeance, since he has appeared for the accused. In fact, except this case, no other case is registered as against the petitioner.

14. It is also relevant to rely upon the judgment of the Supreme Court in ***Tofan Singh Vs State of Tamil Nadu [(2021) 4 SCC 1]***, wherein, it has been held that the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which, any confession statement made to them would be a bar under the provisions of Section 25 of the Evidence Act and cannot be taken into account in order to convict an accused under the NDPS Act, *i.e.*, the statement recorded under Section 67 of the NDPS Act cannot be used as confessional statement in the trial of an offence under the NDPS Act. Therefore, the confession statement will remain inadmissible in the trial of an offence under the NDPS Act.



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15. On a perusal of the records also revealed that except the sole material *i.e.,* co-accused confession statement against the petitioner, cannot translate into admissible evidence at the stage of trial and against the petitioner. When that being the position, there is no absolute *prima facie* case made against the petitioner to stand before the trial Court. Further, on examination of the materials produced by the prosecution revealed that it does not *prima facie* establish any physical manifestation on the part of the petitioner in any part of the conspiracy or its execution. Therefore, the confession of the co-accused placed on record do not make sufficient ground for proceeding against the petitioner. Further, it would reveal that in order to wreak vengeance, a false case has been foisted against the petitioner.

16. The Hon'ble Supreme Court also held in the case of ***Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and Another [(2019) 16 SCC 547]***, as under :

“The confession of co-accused cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said



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evidence. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.”

17. As stated *supra*, in the case on hand, except the confession statement of co-accused, there is no material to connect the petitioner in the crime as alleged by the prosecution. Therefore, the confession statement of a co-accused cannot be treated as a substantive piece of evidence and in the absence of any substantive material, it could not be appropriate to proceed as against the petitioner based on the confession statement of co-accused.

18. In view of the above, the entire proceedings in C.C.No.155/2022 pending on the file of the Additional District and Special Court for trial of cases under the E.C. Act, Coimbatore, cannot be sustained as against the petitioner and accordingly, the same is quashed.

In the result, this Criminal Original Petition is allowed. Connected Crl.M.P.s are closed.

07.02.2025

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G.K. ILANTHIRAIYAN, J.

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To

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Coimbatore

2.The Inspector of Police
Erode Town police Station
Erode District

(Ref. Crime No.320/2021 dated 23.5.21)

3.The Sub Inspector of Police
D.G.Ramprabu
Erode Town police Station
Erode District

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4.The Public Prosecutor
Madras High Court, Chennai

07.02.2025

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