



Crl.A.No.739 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.739 of 2016 and
Crl.M.P.No.11124 of 2016

Agastin

... Appellant

Vs.

State by the Inspector of Police,
Prohibition and Enforcement Police Station,
Adyar, Chennai.
(Crime No.319/2012).

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the entire records in connection with S.C.No.96 of 2016 on the file of the learned 17th Additional Sessions Judge, Chennai-1 and set aside the conviction and sentence imposed by the 17th Additional Sessions Judge, Chennai-1 dated 30.08.2016 in S.C.No.96/2016.

For Appellant : Mr.T.Gowthaman, Senior Counsel for
Mr.S.Karpagapriya
For Respondent : Mr.L.Baskaran,
Government Advocate (Crl. Side)

JUDGMENT



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The appellant/A2 was convicted by judgment, dated 30.08.2016 in SC.No.96 of 2016 by the learned XVII Additional Sessions Judge, Chennai (Trial Court) for offence under Section 4(1)(aaa) of Tamil Nadu Prohibition Act, 1937 and sentenced to undergo four months Rigorous Imprisonment and to pay a fine of Rs.8,000/- in default to undergo Simple Imprisonment for one month and for offence under Section 4(1-A) of Tamil Nadu Prohibition Act, 1937 r/w Rules 6 & 7 of Rectified Spirit Rules, 2000, the appellant/A2 was convicted and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.7,000/-, in default to undergo one month Simple Imprisonment. Both the sentences ordered to run concurrently. Challenging the judgment of conviction, the present criminal appeal is filed.

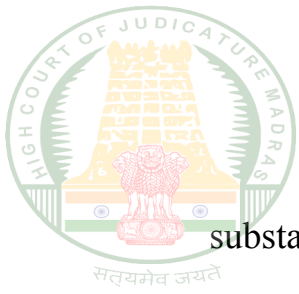
2.The case of the prosecution is that on 29.08.2012 at 06.00 p.m, PW6/Investigating Officer along with PW1 & PW2/Special Sub Inspectors and PW3/Grade-I Constable from the Prohibition Enforcement Wing, Adyar were conducting road check in L.B.Road opposite to Aavin Booth, at that time, A1/Nagaraj came in his two wheeler viz., Honda Activa bearing Reg.No.TN-09-AA-0778. A1 was intercepted and his two wheeler was checked, he was found in possession of 5 Nos. of 750 ml



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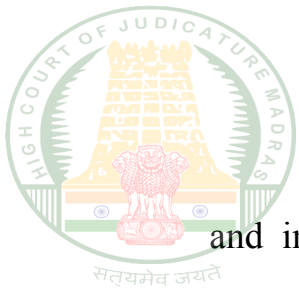
green magic brandy (MO6). On enquiry, A1 disclosed that he along with the appellant/A2 were in illegal possession and sale of liquor bottles and illicit arrack. A1 took the PEW team to Ennore, identified the appellant who was standing in a petty shop near a church. When the appellant was questioned, he led the team to No.4, 6/2, P.V.Kovil Street, 8th Lane, Royapuram where 20 Nos. of 500 ml Kingfisher Tin Beer, 20 Nos. of 500 ml Fostors Tin Beer, 23 Nos. of 500 ml Kingfisher Draught Beer, 20 Nos. of 275 ml of Backardi Breezer and 3 Nos. of 35 litre plastic cane containing rectified spirit (MO1 to MO5), found. On opening the plastic cane (MO5), pungent poisonous smell emanated, two samples of 500 ml each from one plastic can drawn. Thereafter, the accused were brought to the Prohibition Enforcement Wing, Adyar along with the liquor bottles, FIR (Ex.P12) in Crime No.319 of 2012 registered, both the accused arrested and their confession statements (Exs.P2 & P4) recorded.

3. Based on their confession statements (Exs.P2 & P4), the liquor bottles seized, the samples taken sent for chemical analysis. PW4, the Scientific Officer confirmed the samples contained Atropine a poisonous



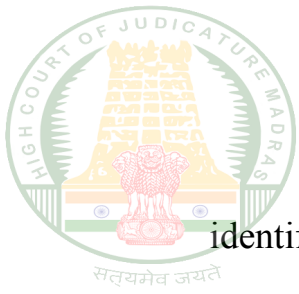
substance and gave report (Ex.P9). This report was shown to PW5, the Doctor attached to Kilpauk Medical College and Hospital, Chennai who gave opinion (Ex.P11) that consumption of rectified spirit mixed with Atropine would cause bodily injury and death. On collecting the evidence and materials, charge sheet filed before the learned IX Metropolitan Magistrate, Saidapet, Chennai (Committal Court) and assigned PRC.No.135 of 2015. On committal, the case transferred to the file of the XVII Additional Sessions Court, Chennai (Trial Court) and renumbered as SC.No.96 of 2016.

4.The Trial Court framed charges under Sections 4(1)(a), 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 r/w 6 and 7 of Rectified Spirit Rules, 2000 against A1 and also framed charges under Sections 4(1)(aaa) and 4(1-A) of Tamil Nadu Prohibition Act, 1937 r/w 6 & 7 of Rectified Spirit Rules, 2000 against the appellant/A2. During trial, on the side of the prosecution, six witnesses examined as PW1 to PW6, fourteen documents marked as Exs.P1 to P14 and six Material Objects marked as MO1 to MO6. On side of the defence, no witness examined and no document marked. On conclusion of trial, the Trial Court convicted A1 for offence under Section 4(1)(a) of Tamil Nadu Prohibition Act, 1937



and imposed a fine sentence of Rs.1,000/- in default to undergo one month Simple Imprisonment and acquitted from other charges. As regards the appellant/A2 is concerned, he was convicted as stated above.

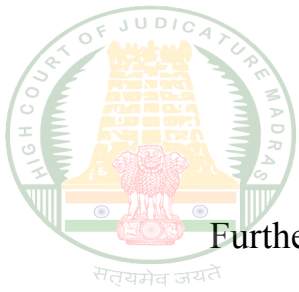
5.The learned Senior Counsel appearing for the appellant submitted that in this case, the informant and the Investigating Officer are same person namely PW6, which is not proper. The Investigating Officer/PW6 to somehow foist a false case, conducted investigation, filed charge sheet contrary to the true facts. In this case, it is projected that the Investigating Officer/PW6 along with PW1 & PW2/Special Sub Inspectors and PW3/Grade-I Constable conducted road check, at that time they intercepted A1 coming in a two wheeler, from him 5 Nos. of 750ml Green Magic Brandy bottles (MO6) seized. This had taken place at about 06.00 p.m on 29.08.2012. Thereafter, MO6 seized, seizure mahazar (Ex.P1) prepared on the spot, PW1 and PW3 attested the seizure mahazar (Ex.P1). It is projected that though the seizure mahazar (Ex.P1) prepared in a public place, PW1 and PW3, part of the raiding team, signed the seizure mahazar (Ex.P1) since the public refused to be a witness. In this case, after the seizure, confession of A1 (Ex.P4) recorded, pursuant to the confession of A1, the raiding team had gone to Ennore along with A1, A1



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identified the appellant, took the appellant into custody, thereafter the appellant led the team to Royapuram from where MO1 to MO5 recovered and seized through seizure mahazar (Ex.P3). The second seizure also made without public witness, PW1 & PW3 are the witnesses to Ex.P3. After the seizure, the confession (Ex.P2) of the appellant recorded. The Police had gone Ennore at about 10.00 p.m and the seizure taken place prior to the confession. Thereafter, the raiding team had come to the Police Station, the Investigating Officer/PW6 registered FIR (Ex.P12) in Crime No.319 of 2012 at about 04.00 a.m on 30.08.2012. But in the information slip attached to the bottles, the crime number is recorded that is even prior to registration of FIR (Ex.P12).

6.He further submitted that the Investigating Officer/PW6 admits that though A1 arrested at about 06.10 p.m on 29.08.2012 at Adyar and the appellant/A2 arrested at about 10.30 p.m on 29.08.2012 at Ennore, the arrest memo and arrest card are common for both accused. Added to it, in the arrest memo and arrest card, it is shown that A1 and appellant/A2 arrested on 29.08.2012 at about 06.00 p.m and the crime number recorded. Though the arrest of A1 and the appellant/A2 took place at two different places, but a common arrest card and arrest memo prepared.



Further, in this case, Investigating Officer/PW6 confirmed that 3 Nos. of 35 litres plastic cans containing rectified spirit found, but he opened one plastic can which emanated poisonous smell and he took two samples of 500ml each from one plastic can and sent for chemical analysis. What happened to the other two plastic cans and whether it contained any rectified spirit, not known. PW6 admits that in the information slip attached to the liquor bottles, his signature and crime number available and signature of the accused or witnesses not obtained.

7.The learned Senior Counsel further submitted that the specific case of the appellant is that since he was involved earlier in Prohibition Offence cases, for the purpose of detaining the appellant and the other accused under Goondas Act, the present case foisted against them. It is admitted that the appellant/A2 and A1 both detained under Goondas Act and the same quashed by this Court.

8.He further submitted that in the confession statements (Exs.P2 & P4) of the appellant/A2 and A1, the facts narrated gives a different version that on 29.08.2012 morning, both the appellant/A2 and A1 came from St.Thomas Mount carrying Pondicherry liquor bottles in a two wheeler, while passing through Kasi Theatre, Ekatuthangal, they were



intercepted by the Police, on seeing the Police, they dropped the liquor bottles, fled from the scene and thereafter, in the evening and night on 29.08.2012, the present offence committed by the appellant, is highly artificial. The present case registered only for the purpose of detaining the appellant/A2 and A1 under Goondas Act, nothing more.

9.The Trial Court though admitted that the informant and the Investigating Officer/PW6 in Crime No.319 of 2012 are same person, no prejudice shown against PW6. The above facts would establish prejudice the manner in which the Investigating Officer/PW6 conducted investigation.

10.He further submitted that admittedly, except for the Police witnesses PW1, PW2, PW3 & PW6, no public or private persons examined. The Investigating Officer/PW6 admits the preparation of common arrest card and arrest memo for appellant/A2 and A1 at about 06.00 p.m on 29.08.2012 despite the appellant was shown arrest only at about 10.30 p.m on 29.08.2012. In the arrest card, the crime number is available. Likewise in the information slip attached to the liquor bottles and in the samples, the crime number is recorded but in this case the FIR



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(Ex.P12) registered only on the next day on 30.08.2012 at 04.00 a.m.

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The Trial Court in the absence of any evidence or material on its own gives an explanation that it is possible the Investigating Officer/PW6 might have noted the crime number before going for road check, which is not proper. In view of the above, the judgment of the Court below is not sustainable and, to be set aside.

11.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that the Investigating Officer/PW6 along with PW1, PW2/Special Sub Inspectors and PW3/Grade-I Constable from the Prohibition Enforcement Wing, Adyar conducted road check on 29.08.2012 at about 06.00 p.m, at that time, A1 came in his two wheeler viz., Honda Activa bearing Reg.No.TN-09-AA-0778 transporting 5 Nos. of 750 ml Pondicherry Green Magic Brandy bottles (MO6). On interrogation, A1 disclosed the fact that he and appellant/A2 indulged in illegal transport and sale of Pondicherry liquor bottles and rectified spirit. Thereafter, A1 took the raiding team to Ennore, identified the appellant who led them to Royapuram where MO1 to MO5 recovered and seized. Finding that the rectified spirit mixed with Atropine emanating poisonous smell (MO5), two samples of 500 ml from



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one plastic can taken. Since no public came forward to be a witness, in presence of PW1 and PW3 the seizure mahazar (Ex.P1) prepared for MO6 and seizure mahazar (Ex.P3) prepared for MO1 to MO5. Thereafter, the seized liquor bottles along with the accused brought to the Police Station, FIR (Ex.P12) registered against the accused, seized liquor bottles sent to the Court through Form-95 (Ex.P13) and the samples taken sent to chemical analysis. PW4, the Scientific Officer report (Ex.P9) confirmed the presence of Atropine in the rectified spirit (MO5), a poisonous substance. This report produced before the Doctor (PW5) who gave opinion (Ex.P11) that the consuming rectified spirit mixed with Atropine would cause physical impairment and can be fatal. On collection of evidence and materials, PW6 filed charge sheet before the committal Court, thereafter, the case transferred to the Court of Sessions. During trial, PW1 to PW6 examined and Exs.P1 to P14 marked and MO1 to MO6 marked. The points raised by the appellant herein, already raised before the Trial Court and the Trial Court found the grounds raised not sustainable and convicted the appellant. Hence, he prays for dismissal of the appeal confirming the conviction of the Trial Court.

12.This Court considered the rival submissions and perused the



materials available on record.

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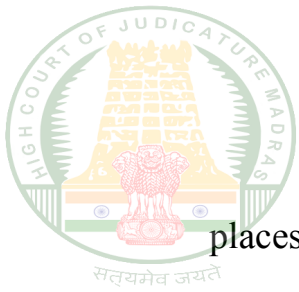
13.The admitted position of the prosecution case is that on 29.08.2012 in the evening at 06.00 p.m, the Investigating Officer/PW6 along with PW1, PW2/Special Sub Inspectors, PW3/Grade-I Constable conducted road check near L.B.Road opposite of Aavin Booth, Adyar, at that time, A1 came in a two wheeler intercepted and found in possession of 5 Nos. of 750 ml Pondicherry Green Magic Brandy bottles (MO6). Thereafter, MO6 seized by seizure mahazar (Ex.P1), his confession statement (Ex.P4) recorded. A1 disclosed about the appellant, led the team to Ennore, identified the appellant. The appellant was questioned who led them to Royapuram, from where, MO1 to MO5 found and seized through the seizure mahazar (Ex.P3), thereafter his confession statement (Ex.P2) recorded. The arrest, recovery of MO1 to MO6, confession (Exs.P2 & P4) of A1 and appellant/A2 not made in presence of any independent witness. Though an explanation was given that no public came forward to be a witness, the same not recorded in any of the contemporaneous document with details. Hence, the arrest, recovery of MO1 to MO6 and confession statements (Exs.P2 & P4) of A1 and appellant/A2, are highly doubtful. The absence of the independent



witness casts doubt on the liquors seized and seizure mahazar (Exs.P1 & P3). Added to it, the seizure of MO1 to MO6 precedes confession of A1 and appellant/A2 (Exs.P2 & P4).

14.As regards taking samples (MO5), it is seen that the samples of the rectified spirit taken from the scene of occurrence in two bottles of 500 ml each, is from one plastic cane. The Raiding Team confirms that only one plastic cane opened, poisonous smell emanated and with regard to other two plastic cans, the same were not opened and no samples taken from it. Thus, it remains unknown whether the other two cans contained rectified spirit with Atropine. Added to it, no acceptable explanation was given by the Investigating Officer/PW6 for not taking samples from the other two plastic cans. Hence, there is a procedural lapse.

15.In this case, the Investigating Officer/PW6 admits the recording of crime number in the documents prepared by him while preparing the arrest memo, arrest card and in the information slip attached to the liquors bottles and rectified spirit. He further admits that all these process took place on 29.08.2012 at the place of arrest and seizure that is at Adyar and Royapuram. Though A1 and appellant/A2 arrested at two different



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places, a common arrest memo dated 29.08.2012 at about 06.00 p.m is recorded with crime number. The arrest of the appellant admittedly is only at about 10.30 p.m on 29.08.2012 at Royapuram. There is no signature obtained from the accused or independent witnesses in any of the above documents. The admitted position is that the Investigating Officer took both the accused and seized liquors to the Police Station on 30.08.2012 and registered FIR (Ex.P12) at about 04.00 a.m. But the Trial Court on its own gives a reason that PW6 might have noted the crime number before going to road cheque, is not proper in the absence of any material. Admittedly, in this case, PW6 is the informant and the Investigating Officer. The above facts confirms prejudice in the investigation.

16.In the confession statements (Exs.P2 & P4) of A1 and appellant/A2, it is recorded that on 29.08.2012 in the morning hours, when A1 and appellant/A2 were coming in a two wheeler transporting Pondicherry liquor bottles, they intercepted by the respondent Police near Kasi Theatre, Ekatuthangal, on seeing the Police, they dropped the liquor bottles, fled from the scene and subsequently involved in the present case.



This confirms the manner in which the investigation conducted by PW6.

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17.The arrest, recovery of MO1 to MO6 is prior to the confession statements (Exs.P2 & P4), hence the recovery, seizure becomes highly doubtful coupled with the fact no independent witness examined despite the arrest, seizure and recovery made in a public place. Added to it, the Investigating Officer failed to give any acceptable reason for not taking samples from other two plastic cans (MO5). Whether the other two plastic cans contained rectified spirit, is questionable. Likewise, before registration of FIR, the crime number recorded in arrest memo, arrest card, information slip attached to the liquor bottles and rectified spirit, creates serious doubt on the prosecution case.

18.In view of the above, this Court finds the prosecution miserably failed to prove the case beyond all reasonable doubt. Hence, the conviction and sentence imposed by the Trial Court is liable to be set aside.

19.In the result, the judgment dated 30.08.2016 in SC.No.96 of 2016 by the learned XVII Additional Sessions Judge, Chennai is set aside



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and the appellant is acquitted from all the charges levelled against him.

Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

20. Accordingly, this criminal appeal is allowed. Consequently, connected criminal miscellaneous petition is closed.

09.04.2025

Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

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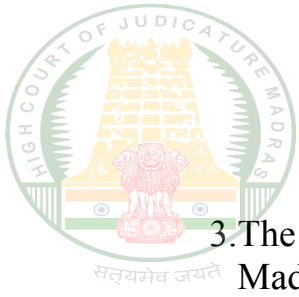
M.NIRMAL KUMAR, J.

vv2

To

1. The XVII Additional Sessions Judge,
Chennai.

2. The Inspector of Police,
Prohibition and Enforcement Police Station,
Adyar, Chennai.



3. The Public Prosecutor,
Madras High Court.

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