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Crl.O.P.No.7879 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 7879 of 2025 and
Crl.M.P.No.5096 of 2025

K.Jaganathan

.... Petitioner

Vs

1.State rep. by Inspector of police,
Prohibition Enforcement Wing,
Erode,
Erode District.
Crime No.966 of 2023.

2.S.Haridass

.... Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in S.T.C.No.61 of 2024 on the file of the District Munsif-cum-Judicial Magistrate, Kodumudi, and to quash the same by allowing the criminal original petition.

For Petitioner : Mr.P.Kannankumar

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)



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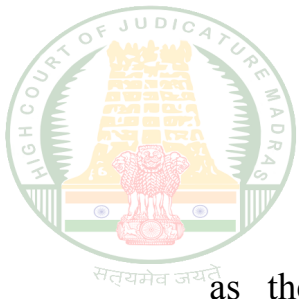
ORDER

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This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.61 of 2024 on the file of the District Munsif-cum-Judicial Magistrate, Kodumudi.

2. The case of the prosecution is that on 25.12.2023 at about 8.00 A.M., while the second respondent and his team were conducting a surveillance check near Vilakethi Puliyankadu Bus Stop, the petitioner allegedly attempted to flee with a bag. Upon interception and inspection, it was found that the petitioner was in possession of five bottles (180 ml each) of Express Brandy. Based on this, a case was registered in Crime No.966 of 2023 for the offence punishable under Section 4(1)(a) of the Tamil Nadu Prohibition Act. After completion of investigation, the first respondent filed the final report before the District Munsif-cum-Judicial Magistrate, Kodumudi and the same was taken cognizance in S.T.C.No.61 of 2024.

3. The learned counsel for the petitioner submitted that the petitioner is a respected individual in the locality and is currently serving



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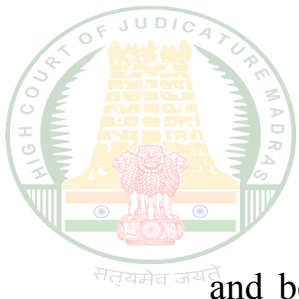
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as the President of Olapalayam Mayavar Temple Charities. It is contended that the present case has been falsely foisted against the petitioner with an ulterior motive and that he has no prior criminal antecedents. The counsel prayed for quashing of the proceedings on the ground that the alleged possession was minimal and no ingredients of illicit sale or distribution are made out. Hence, he prays to quash the proceedings.

4. The learned Government Advocate (Criminal Side) submitted that the FIR clearly discloses a cognizable offence under the Tamil Nadu Prohibition Act. He further submitted that during surveillance, the petitioner was found in possession of liquor bottles and attempted to evade the police. Hence, he prays for dismissal of this petition.

5. Heard both sides and perused the materials placed before this Court.

6. On perusal of the records, it is revealed that the petitioner was involved in selling liquor during non-permitted hours, i.e., after closure

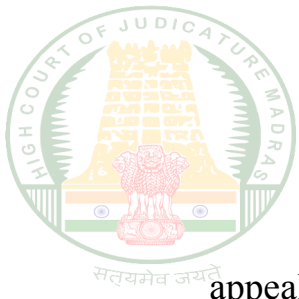


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and before opening of the TASMACH shop, which falls squarely within the prohibited Acts under Section 4(1)(a) of the Tamil Nadu Prohibition Act. That apart, it is seen that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.966 of 2023 for the offences under Sections 4(1)(a) of Tamil Nadu Prohibition Act. After completion of investigation, the first respondent filed the final report and the same has been taken cognizance in STC No.61 of 2024 by the Trial Court and it is pending. To quash the said criminal proceeding, the petitioner filed the present petition.

7. The Hon'ble Supreme Court of India, in the judgment reported in **2019 (4) SCC 351** in the case of **Devendra Prasad Singh vs. State of Bihar & Anr. (Criminal Appeal No.579 of 2019, dated 02.04.2019)**, while dealing with a petition to quash the entire criminal proceedings, held that the High Courts have no jurisdiction to appreciate the statements of witnesses and record a finding that there were inconsistencies in their statements, and therefore, no *prima facie* case was made out against the accused. Such an exercise can be done only by the Trial Court while deciding the case on merits or by the Appellate Court while deciding the



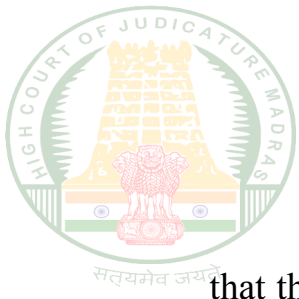
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appeal arising out of the final order. The charge sheet having been laid on the basis of inconsistent statements under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is not a ground for quashing at the pre-trial stage.

8. Further, the Hon'ble Supreme Court of India, in the judgment reported in **2019 (10) SCC 686** in the case of ***Central Bureau of Investigation vs. Arvind Khanna (Criminal Appeal No.1572 of 2019, dated 17.10.2019)***, held that the High Courts cannot record findings on disputed facts. The defence of the accused is to be tested after appreciation of evidence by the Trial Court during trial. Therefore, this Court has no power to consider disputed facts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

9. The Hon'ble Supreme Court of India, in another judgment ***dated 02.12.2019*** passed in ***Criminal Appeal No.1817 of 2019*** in the case of ***M. Jayanthi vs. K.R. Meenakshi & Anr.***, held that while considering a petition for quashing a complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All



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that the Court should examine is whether the allegations in the complaint form the basis of the ingredients constituting the offences complained of. Further, the Court can also examine whether the preconditions required for taking cognizance have been complied with, and whether the allegations contained in the complaint, even if accepted in their entirety, would constitute the offence alleged. Whether the accused will be able to disprove the allegations is a matter to be determined during trial.

10. Further, this Court cannot, at this stage, observe that the initiation of criminal proceedings is malicious. Whether the proceedings are malicious or not is a matter to be considered only at the conclusion of the trial. Therefore, the ground raised by the petitioner to quash the final report/charge sheet cannot be entertained for quashing the entire proceedings at this stage.

11. In view of the above discussion, this Court is not inclined to quash the proceedings in S.T.C.No.61 of 2024 on the file of the District Munsif-cum-Judicial Magistrate, Kodumudi. The petitioner is at liberty to raise all the grounds before the trial Court. The Trial Court is directed



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to complete the trial within a period of three months from the date of receipt of copy of this Order.

12. Accordingly, the Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.
shk

To

- 1.The District Munsif-cum-Judicial Magistrate, Kodumudi
- 2.The Inspector of police,
Prohibition Enforcement Wing,
Erode,
Erode District.
3. The Public Prosecutor, High Court, Madras.

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