



Crl.O.P.No.7395 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2025

CORAM:

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

Crl.O.P.No.7395 of 2025
and Crl.M.P.Nos.4715 and 4716 of 2025

N.Vagaram

... Petitioner

Vs

State Rep.By, The Inspector of Police,
Selvapuram Police Station,
Coimbatore District.

Cr.No.572/2019

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Crl.P.C/Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating to PRC.No.181 of 2023 on the file of the learned Vth Judicial Magistrate, Coimbatore and quash the same.

For Petitioner : Mr.K.Pragadeesh Kumar

For Respondent : M/s J.R.Archana

Government Advocate (Crl.side)

ORDER

This petition has been filed to quash the proceeding in PRC.No.181 of 2023 on the file of the learned Vth Judicial Magistrate, Coimbatore.

2. Heard the learned counsel for the petitioner and the learned



Government Advocate (Crl.side) for the first respondent and perused the materials placed on record.

3. The case of the prosecution is that the respondent Police, on secret information went to the place of occurrence and found that the petitioner and other accused were in illegal possession of banned tobacco products. Hence, the complaint.

4. On receipt of the complaint, the respondent registered FIR in Crime No.572 of 2019, for the offences punishable under Sections 273, 328 and 353 of IPC and Section 24(1) of COTPA Act. After completion of investigation, the respondent Police filed a final report and the same has been taken cognizance in PRC.No.181 of 2023 on the file of the Vth Judicial Magistrate, Coimbatore.

5. The learned counsel for the petitioner would submit that the alleged contrabands were seized from the petitioner's residence and even then, the respondent Police did not enquire any of the independent witnesses. Further, the respondent also failed to follow the procedure as contemplated under the Criminal Procedure Code. The respondent had examined 14 prosecution witnesses and among them no one is an independent witness.



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6. A perusal of records revealed that there are specific allegations as against the petitioner to attract the offences under Sections 273, 328 and 353 of IPC and Section 24(1) of COTPA Act. That apart, the grounds raised by the petitioner can be considered only during the trial before the Trial Court.

7. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.



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13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, wherein, it has been held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent



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jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

9. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **CrI.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the



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appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

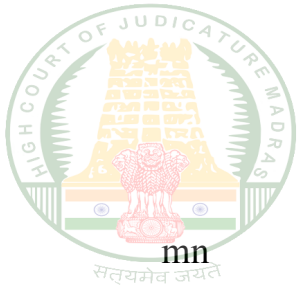
The above judgments are squarely applicable to this case and as such, the points raised by the petitioner are mixed question of facts and it cannot be considered in quash petition under Section 482 Cr.P.C.

10. In view of the above, this Court is not inclined to quash the proceeding in PRC.No.181 of 2023 on the file of the learned Vth Judicial Magistrate, Coimbatore.

11. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petitions are closed.

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order



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G.K.ILANTHIRAIYAN. J.

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To

1. The Vth Judicial Magistrate, Coimbatore.
2. The Inspector of Police,
Selvapuram Police Station,
Coimbatore District.
3. The Public Prosecutor,
High Court, Madras.

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