



Crl.O.P.No.8975 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2025

CORAM:

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

Crl.O.P.No.8975 of 2025
and Crl.M.P.No.5953 of 2025

Vishnu Vijay

... Petitioner

Vs

The Inspector of Police,
Anamalai Police Station,
Coimbatore.

In FIR No.129 of 2019.

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C./Section 528 of BNSS Act, 2023, to call for the entire proceedings of the Charge Sheet in C.C.No.43 of 2020 on the file of the Special District Judge under the Essential Commodities Act, Coimbatore, quash the same.

For Petitioner : Mr.R.Prabakar

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



Crl.O.P.No.8975 of 2025

WEB COPY

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.43 of 2020 on the file of the Special District Judge under the Essential Commodities Act, Coimbatore.

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

3. The case of the prosecution is that A1 operates a resort called “Agrinest”. A2 manages the resort along with other individuals. It is alleged that a music festival was planned to be conducted at the resort by A11 and A12. In order to attract young attendees, A14 was brought from Russia to perform at the event. A1 said to have travelled to Kerala, where he purchased 200 grams of cannabis and also procured alcoholic beverages from other States. Thereafter, the purchased items were transported to the resort. During the program, the narcotic substances were supplied to other accused. Hence, the complaint.



Crl.O.P.No.8975 of 2025

WEB COPY

4. On receipt of the complaint, the respondent registered FIR in Crime No.129 of 2019 for the offences punishable under Sections 8(c), 20(b)(ii)(A), 22(c), 25 and 27(a) of NDPS, Act as against the accused. After completion of investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.43 of 2020 on the file of the Special District Judge under the Essential Commodities Act, Coimbatore.

5. Similarly placed accused person viz., A13 originally filed a discharge petition before the Trial Court in C.M.P.No.586 of 2020 under Section 227 of Cr.P.C and the same was dismissed. Aggrieved by the same, A13 filed a revision before this Court in Crl.R.C.No.1258 of 2022 and the same was also dismissed by this Court, by an order dated 14.09.2022. Against which, A13 viz., Karan Talwar preferred Special Leave Petition before the Hon'ble Supreme Court of India in Crl.A.No.10376 of 2022 and the same was allowed by the Hon'ble Supreme Court of India by an order dated 19.12.2024.



CrI.O.P.No.8975 of 2025

WEB COPY

6. A perusal of records revealed that the petitioner is also standing in the same footing for the allegation of consuming ganja. The relevant portion of the order dated 19.12.2024 in CrI.A.No.10376 of 2022 passed by the Hon'ble Supreme Court of India is as follows:-

“ 10. As is evident from the said Section, the alleged offence is consumption of narcotic drug or psychotropic substance other than those specified in or under clause (a) of Section 27, NDPS Act, and therefore, the question is whether any material is available to charge the appellant thereunder. The contention of the appellant is that he has been arraigned as accused No.13 based on the confession statement of co-accused viz., accused No.1. Certainly, in the absence of any other material on record to connect the appellant with the crime, the confession statement of the co-accused by itself cannot be the reason for his implication in the crime. This view has been fortified by the law laid down in Suresh Budharmal Kalani v. State of Maharashtra³, wherein it was stated that a co-accused's confession containing incriminating matter against a person would not by itself suffice to frame charge against him. The materials on record would reveal that the investigating agency had not subjected him to medical examination and instead, going by complaint Witness No.23, he smelt the accused. The less said the better and we do not think it necessary to comment upon adoption of such a course. We need only to say that even if he tendered such evidence, it would not help the prosecution in anyway. There is absolutely no case that any recovery of contraband was recovered from the appellant. As regards the confession statement of the appellant in view of Section 25 of the Indian Evidence Act, 1872 there can be no doubt with respect to the fact that it is inadmissible in evidence. In this context it is worthy to refer to



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the decision of this Court in Ram Singh v. Central Bureau of Narcotics⁴. In the said decision, this Court held that Section 25 of the Indian Evidence Act would make confessional statement of accused before police inadmissible in evidence and it could not be brought on record by prosecution to obtain conviction. Shortly stated, except the confessional statement of co-accused No.1 there is absolutely no material available on record against the appellant.

11. When this be the position, the question is whether the two Courts were justified in holding that there is prima facie case against the appellant to proceed against (2011) 11 SCC 347; 2011 INSC 342 him. In this contextual situation, it is relevant to refer to the decision of this Court in Dipakbhai Jagadishchandra Patel v. State of Gujarat and Anr.⁵ Paragraphs 23 and 24 of the said decision are relevant for the purpose of this case and they read thus:

“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a fullfledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be (2019) 16 SCC 547; 2019 INSC 568 translated into evidence



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CrI.O.P.No.8975 of 2025

at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

24. Undoubtedly, this Court has in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337], taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgment of this Court in Kashmira Singh v. State of M.P. [Kashmira Singh v. State of M.P., (1952) 1 SCC 275]. We notice that the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a conviction and an appeal therefrom. However, in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337], the Court has proceeded to take the view that only on the basis of the statement of the co-accused, no case is made out, even for framing a charge.” (underline supplied)

12. As noted hereinbefore, the sole material available against the appellant is the confession statement of the co-accused viz., accused No.1, which undoubtedly cannot translate into admissible evidence at the stage of trial and against the appellant. When that be the position, how can it be



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said that a prima facie case is made out to make the appellant to stand the trial. There can be no doubt with respect to the position that standing the trial is an ordeal and, therefore, in a case where there is no material at all which could be translated into evidence at the trial stage it would be a miscarriage of justice to make the person concerned to stand the trial.

13. In the said circumstances and in view of the settled position of law stated and reiterated by this Court, the impugned judgment is liable to be interfered with and the appeal is liable to be allowed.

14. Accordingly, the appeal is allowed and the impugned order dated 14.09.2022 passed by the High Court of Madras in CRLRC No.1258 of 2022 filed against the order dated 26.07.2022 passed by the ADJ in CMP No.586 of 2020 are quashed and set aside. As a necessary sequel, the appellant who is accused No.13 in CC No.43 of 2020 pending on the files of learned Additional District Judge-Special Court under Essential Commodities Act Cases, Coimbatore is discharged from the said case, by allowing the prayer of appellant for discharge.”

7. In view of the above, the entire proceeding cannot be sustained as against the petitioner and is liable to be quashed. Accordingly, the proceeding in C.C.No.43 of 2020 on the file of the Special District Judge under the Essential Commodities Act, Coimbatore, is hereby quashed.



Crl.O.P.No.8975 of 2025

8. In the result, this Criminal Original Petition is allowed.

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Consequently, connected Miscellaneous petition is closed.

26.03.2025

Index: Yes/No

Speaking Order: Yes/No

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Crl.O.P.No.8975 of 2025

WEB COPY

To

- 1.The Special District Judge under the Essential Commodities Act,
Coimbatore.
- 2.The Inspector of Police,
Anamalai Police Station,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.



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CrI.O.P.No.8975 of 2025

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