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Crl.O.P.No.10896 and 10978 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2025

CORAM:

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

Crl.O.P.Nos.10896 and 10978 of 2025
and Crl.M.P.No.7268 of 2025

Sridhar

... Petitioner / A6
in Crl.OP.10896/2025

1.Mathan Kumar
2.Ganga Gowri

... Petitioners / A1 & A2
in Crl.OP.10978/2025

Vs.

1.The State rep. by its
The Inspector of Police
Erode Taluk Police Station
Erode 638 002
(Crime No.235 of 2021)

2.The Sub Inspector of Police
Mr.Duraisamy
Erode Taluk Police Station
Erode District

... Respondents
in both Crl.OPs

COMMON PRAYER: Criminal Original Petition is filed under Section 482
of Cr.P.C., /528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for

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the records in C.C.No.120 of 2022, on the file of Additional District and Special Court for trial of cases under NDPS & EC Act, Coimbatore and quash the charges against the petitioner.

For Petitioner : Mr.S.Patrick
in Crl.OP.10896/2025

For Petitioners : M/s.R.Subadra Devi
in Crl.OP.10978/2025

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

COMMON ORDER

Crl.O.P.No.10896 of 2025 has been filed by A-6 and Crl.O.P.No.10978 of 2025 has been filed by A-1 and A-2, to quash the proceedings in C.C.No.120 of 2022 pending on the file of the Additional District Court and Special Court for Trial of cases under the E.C. Therefore, this Court passed common order in these two criminal original petitions.

2.The 2nd respondent registered an F.I.R in crime No.235 of 2021 alleging that on 23.05.2021 at about 11.30 a.m. received a message from a



reliable source with regard to procurement and sale of ganja by a couple

viz., A-7 and A-8 at their residence. After obtaining permission to conduct their residential search, the 2nd respondent made a search and when they attempted to escape, they were caught hold and based on their information, A1, A2, A9 and A10 were arrested and remanded to judicial custody. Based on their confession, the 2nd respondent had seized 232.5 kgs of ganja and thereafter, registered an FIR in crime No.235 of 2021 for the offences under Sections 8C, 20(b)(ii)(c) and 29(1) of NDPS Act, 1985.

3. During the course of investigation, the 2nd respondent recorded the confession statements of the accused and implicated the above petitioners. As per the confession statement that they also colluded with other persons and convinced them to purchase contraband and the amount has been deposited in A-3's bank account, pursuant to which, the 2nd respondent had requested the bank authority to freeze the A-3's bank account. Accordingly, A-3's IOB, District Court Branch, Erode, A/c.No. 182501000016431 had been frozen.



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4. After the completion of investigation, the 2nd respondent filed a final report and the same has been taken cognizance by the learned Additional District Judge, Special Court for E.C. Act Cases, Coimbatore, in C.C.No.120 of 2022.

5. Challenging the aforesaid proceedings, these Criminal Original Petitions have been filed.

6. The learned counsel for the petitioners submitted that both the petitioners, A-1 and A-2 are husband and wife and they were 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 petitioners to attract any of the charges as alleged by the prosecution. On the strength of the confession statement of co-accused, the 2nd respondent has filed a final report. The petitioners conspired with other accused persons, procured contraband in their office and sell it. Therefore,



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there is no material, much less, a legal one to connect the other accused persons with these petitioners in crime No.235 of 2021. The petitioners now have been charged for the offence punishable under Section 120-B IPC and Section 8C, 20(b)(ii)(c) and 29(1) of NDPS Act, 1985.

7. The learned counsel for the petitioners 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.

8. The learned Government Advocate (Crl. Side) submitted that there are totally 15 accused, in which, the petitioners are arrayed as A-1, A2 and A6. Though they were implicated as accused on the basis of the confession statement of the co-accused, there are incriminating materials against the petitioners. The entire crime proceeds were deposited with the A-3's bank account. Therefore, on the instructions of the Investigating Officer, the bank account of A-3 had been frozen and he is not permitted to operate the same.

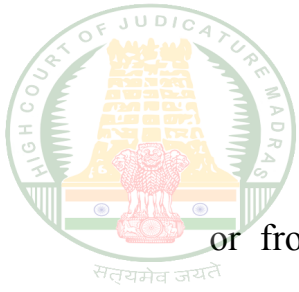


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WEB COPY 9. Heard both sides and perused the materials available on record.

10. Admittedly, the petitioner viz.A6 was not named accused in the FIR registered in crime No.235 of 2021. While investigation, on the strength of the confession statement from the co-accused, they have been implicated and a final report has been filed. On a perusal of the confession statement of co-accused revealed that A-3 and A-5 being Advocates, the other accused have acquaintance with regard to the conduct of cases and with the help of A-3 and A-5, they have sold the contraband and shared the proceeds. Pursuant to the said confession statement, there was no recovery either the contraband or any cash from them.

11. Further, there is absolutely no material to show that they had contact with other accused persons. The prosecution did not even produce any call details or call records to substantiate the acquaintance between the petitioners with other accused persons. Though A-3's bank account has been frozen, there is no money transaction from the other accused persons



or from A-3 to other accused persons. That apart, from the confession

statements, no witnesses have spoken about the overt act of the petitioners.

Further, no other material was produced by the prosecution to attract any of the charges levelled against them.

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 the petitioners from the other accused persons. Therefore, their statements failed to support the case of prosecution as against the petitioners. Therefore, the entire case of the prosecution is foisted as against the petitioners with an ulterior motive to wreak vengeance. In fact, except these cases, no other case is registered as against the petitioners.

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

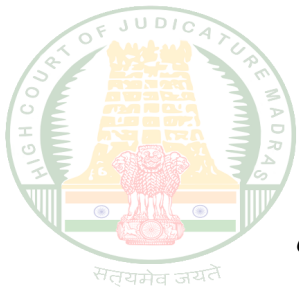


the trial of an offence under the NDPS Act.

WEB COPY 15. On a perusal of the records also revealed that except the sole material *i.e.*, co-accused confession statement against the petitioners, cannot translate into admissible evidence at the stage of trial and against the petitioners. When that being the position, there is no absolute *prima facie* case made against the petitioners to stand them 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 petitioners 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 petitioners. Further, it would reveal that in order to wreak vengeance, a false case has been foisted against the petitioners and the petitioners do not constitute conspiracy.

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



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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.”

17. As stated *supra*, in the case on hand, except the confession statement of co-accused, there is no material to connect the petitioners 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 petitioners based on the confession statement of co-accused.

18. In view of the above, the entire proceedings in C.C.No.120 of 2022 pending on the file of the Additional District and Special Court for



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trial of cases under the E.C. Act, Coimbatore, cannot be sustained as against

the petitioners and accordingly, the same is quashed.

19.In the result, these Criminal Original Petitions are allowed.

Consequently, connected miscellaneous petitions are closed.

17.04.2025

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Index : Yes/No

Neutral citation : Yes/No

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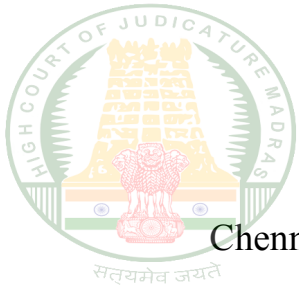
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4.The Public Prosecutor
Madras High Court

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