



Crl O.P.No.8559 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2025

CORAM

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

Crl.OP.No.8559 of 2023

and

Crl.M.P.No.5448 of 2023

Munniyyappan

... Petitioner/ A4

vs.

1. State represented by
The Inspector of Police,
Mathigiri Police Station,
Krishnagiri District..
Crime No.150/2022

..1st respondent/Complainant

2. S Balakrishnan

..2nd respondent/De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the CrPC, to call for the records comprised in FIR in Crime No.150/2022 dated 11.04.2022 pending on the file of the first respondent, The Inspector of Police, Mathigiri Police Station, Krishnagiri District and quah the same.

For Petitioner	:	Mr.Palanivel Rajagopal Senior Counsel for Mr. Vimal B Crimson
For R1	:	Mr. A Gopinath Government Advocate (Crl.Side)

ORDER



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2. The case of the prosecution is that on 10.04.2022 at about 22.00 hours on receipt of information, a vehicle bearing registration number TN 22 DH 1792 TATA Canter near Aanekal Road at Poonapallu Check Post, unstopped even after the signal was given by the first respondent. On a search it was found that the Diver/A1 was found transporting banned tobacco products, viz., 1. GR Swagat Gold 27 bags, 2. Vimal Pan masala 28 bags, 3. Cool lip 62 gunny bags, 4. MDM Gold 36, 5. RKM Remo 25 bags, 6. Tobacco 10 bags, 7. Hands Tobacco Chaap 158 bags, 8. RMD 4 boxes and 9. Oonche Log Oonchi Pasand 3 boxes from Karnataka to sell the same in Tamil Nadu and they were seized from him along with his cell phone. Thereafter, the first respondent registered a FIR in Crime No. 150/ 2022 for the offences under Sections 328 of the IPC and under Sections 7 and 20(1) of the Cigarette and other Tobacco Products Act, 2003.

3. The learned Senior Counsel for the petitioner would submit that the petitioner is arrayed as A4 and he is the owner of the vehicle.

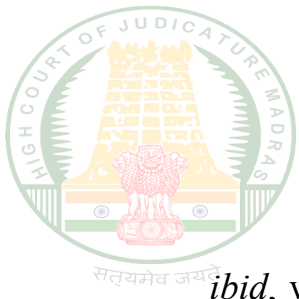


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The vehicle was sent to Bangalore for logistic purpose and after unloading the consignment, the petitioner instructed the Driver to go back to Tiruvannamalai. However, without informing the vehicle owner, the Driver booked a consignment and transported materials to Tamil Nadu. The petitioner was not aware of the consignment transported by the Driver. As per the FIR, the tobacco products purchased were seized from the A1 and the same is banned in the State of Tamil Nadu and had committed the alleged offence under Sections 7 and 20(1) of the *ibid*. Insofar as Section 328 of the IPC is concerned, there is no mention of details about the ban of manufacture, storage, transport, distribution or sale of chewable food products, gutka, pan masala containing Nicotine. Therefore, both the offences are not attracted as against the petitioner which is being immoral and he has no connection with the consignment that was transported in his vehicle.

4. Though the learned Senior Counsel vehemently contended that these products are not banned in the State of Karnataka, they are banned in the State of Tamil Nadu and therefore, the possession of the said products itself attracts the offences under Sections 7 & 20(1) of the



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ibid, without due permission. Further, it is clear from the investigation report of A1 and A2 that only on the instructions of the petitioner the consignment was put and transported to Tamil Nadu. However, they were found in possession of 9,092 kgs of banned tobacco products worth about Rs.52,03,978/-. Therefore, the grounds raised by the petitioner to quash the FIR in Crime No.150/2022 cannot be sustained and hence, the petition itself is liable to be dismissed.

5. The Hon'ble Supreme Court of India passed in the judgment reported in **2019 (14) SCC 350** in the case of ***Sau. Kamal Shivaji Pokarnekar vs. The State of Maharashtra & ors., (Crl.A.No.255 of 2019*** dated **12.02.2019**) held that the learned Magistrate while taking cognizance and summoning, is required to apply his judicial mind only with the view to taking cognizance of the offence whether a *prima facie* case has been made out for summoning the accused person. The learned Magistrate is not required to evaluate the merits of the materials or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to conviction or not. Only in a case where the complaint does not disclose

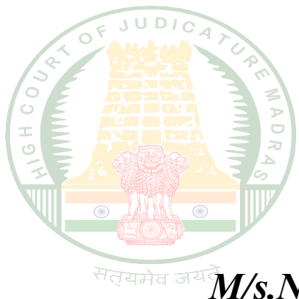


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any offence or is frivolous, vexatious or oppressive, the complaint/FIR can be taken for consideration for quashment. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by Magistrate, it can be considered for quashment. Therefore, it is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification to interfere. At the initial stage of issuance of process, it is no open to the Court to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Therefore, the criminal complaint cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are *prima facie* made out in the complaint, the criminal proceeding shall not be interdicted.

6. Further the Hon'ble Supreme Court of India issued directions in the judgment reported in **2021 SCC Online SC 315** in the case of



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M/s.Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra &

ors., as follows :-

“23.

vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

.....

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned*



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Magistrate in accordance with the known procedure;

.....

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;”

7. In view of the above discussions, this Court is not inclined to quash the First Information Report. However, the first respondent is directed to complete the investigation in Crime No.150 of 2022 and file a final report within a period of 12 weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed.

G.K.ILANTHIRAIYAN, J.

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8. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

24.02.2025

vca

Index : Yes/No

Neutral citation : Yes/No

Speaking/non-speaking order

To

1. The Inspector of Police,
Mathigiri Police Station,
Krishnagiri District.
2. The Public Prosecutor,
High Court Madras.

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and
Crl.M.P.No.5448 of 2023