



Crl. O.P. No. 11910 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 22.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl. O.P. No. 11910 of 2025

and

Crl. M.P. No. 7942 of 2025

1. Mathan Kumar
2. Ganga Gowri

... Petitioners

Vs

1. The State Represented by
The Inspector of Police,
Erode Town Police Station, Erode 638 002.
(Crime No. 320 of 2021)

2. The Sub Inspector of Police,
Mr. Ram Prabu,
Erode Town Police Station,
Erode District.

.... Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to call for the records relating to C.C. No.155/2022 on the file of the learned Additional District and Special Court for Trial of cases under the E.C.Act, Coimbatore and quash the same.

For Petitioners : Ms. R.Subadra Devi

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



Crl. O.P. No. 11910 of 2025

WEB COPY

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C. No.155 of 2022 on the file of the Additional District and Special Court for Trial of cases under the E.C.Act, Coimbatore.

2. The petitioners arrayed as A1 and A2. The case of the prosecution is that, the petitioners along with other accused persons procured contraband and sold in public. Hence, the case.

3. Learned counsel for the petitioners would submit that the petitioners are husband and wife and they have been implicated as an accused only on the confession of co-accused. Even on the confession of the co-accused there is no recovery from the petitioners.

4. Learned Government Advocate appearing for the respondents would submit that there are specific allegations as against the petitioners to attract the offences under Sections 8(c) r/w 20(b) (ii) (c), 29(i) of NDPS Act. Further, the petitioners so far involved in six previous cases, in which 4 cases are similar in nature.



Crl. O.P. No. 11910 of 2025

5. 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., (Crl.A.No.579 of 2019 dated 02.04.2019)** while dealing with the petition to quash the entire criminal proceedings held that the High Courts have 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 as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

6. 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, (Crl.A.No.1572 of 2019 dated 17.10.2019)** held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this Court has no power to consider the disputed facts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

7. The Hon'ble Supreme Court of India in another judgment dated



Crl. O.P. No. 11910 of 2025

02.12.2019 passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs.**

K.R.Meenakshi & anr, held that while considering the petition for quashment of complaint or charge sheet, 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. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

8. Further this Court cannot observe at this stage that the initiation of criminal proceeding itself is malicious. Whether the criminal proceeding is malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. Therefore, the ground raised by the petitioners to quash the final report/charge sheet cannot be entertained to quash the entire proceedings.

9. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.155 of 2022 on the file of the Additional District and



Crl. O.P. No. 11910 of 2025

Special Court for Trial of cases under the E.C.Act, Coimbatore. The petitioners is at liberty to raise all the grounds before the trial Court. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

10. Accordingly, the Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petition is closed.

22.04.2025

Index:Yes/No

Neutral Citation :Yes/No

AT

To

1. The Additional District and
Special Court for Trial of cases under the E.C.Act,
Coimbatore.
2. The Inspector of Police,
Erode Town Police Station, Erode 638 002.
3. Mr.Ram Prabu, Sub Inspector of Police,
Erode Town Police Station,
Erode District
- 4.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl. O.P. No. 11910 of 2025

G.K.ILANTHIRAIYAN. J,

AT

Crl. O.P. No. 11910 of 2025 and
Crl. M.P. No. 7942 of 2025

22.04.2025