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Crl.O.P.No. 19505 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2025

CORAM:

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

Crl.O.P.No.19505 of 2024 and
Crl.M.P.No.11418 of 2024

Seeman

Vs.

... Petitioner

1.State by: Sub-Inspector of Police,
C-1, Flower Bazaar Police Station,
Chennai -1.
(Crime No.53 of 2024).

2.Mahalingam
..Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in C.C.No.742 of 2024 on the file of the VIII Metropolitan Magistrate Court, George Town, Chennai and quash the same.

For Petitioner : Mr.P.Pugalenth

For R1 : Mr.A.Gopinath,
Government Advocate (crl.side)



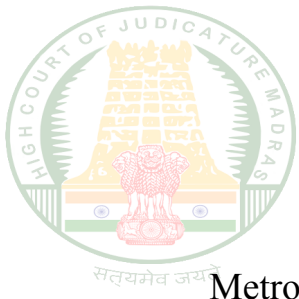
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ORDER

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This petition has been filed to quash the proceedings in C.C. No. 742 of 2024 on the file of the VIII Metropolitan Magistrate, George Town, Chennai.

2. The case of the prosecution is that, on the complaint lodged by the second respondent, the first respondent registered an FIR in Crime No. 53 of 2024 for the offences punishable under Sections 272 and 273 of the Indian Penal Code (IPC) and Section 24(1) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003 (hereinafter referred as “COTPA Act, 2003”). It is alleged that on 02.04.2024, the second respondent, along with another constable, observed at the Flower Bazaar Bus Stand and found the selling of suspected tobacco at Jayam Tea Stall. They seized nine packets of tobacco products, branded under the name of “Hans.” On the basis of this report, the first respondent registered a complaint. After completing the investigation, the first respondent filed a final report, which has been taken cognizance of in C.C. No. 742 of 2024 on the file of the VIII



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Metropolitan Magistrate, George Town, Chennai.

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3. The learned counsel for the petitioner submits that Sections 12 and 13 of the COTPA Act, 2003 explicitly confer the power to seize such products only upon a police officer not below the rank of a Sub-Inspector of Police. It is relevant to extract Sections 12 and 13 of the said Act, which read as follows:

“12. Power of entry and search. -(1) Any police officer, not below the rank of a Sub-Inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised by the Central Government or by the State Government may, if he has any reason to suspect that any provision of this Act has been, or is being, contravened, enter and search in the manner prescribed, at any reasonable time, any factory, building, business premises or any other place, -

(a) where any trade or commerce in cigarettes or any other tobacco products is carried on or cigarettes or any other tobacco products are produced, supplied or distributed; or

(b) where any advertisement of the cigarettes or any other tobacco products has been or is being made.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to every search and seizure made under this Act.



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13. Power to seize.-(1) *If any police officer, not below the rank of a sub-inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub Inspector of Police, authorised by the Central Government or by the State Government, has any reasons to believe that, -*

(a) in respect of any package of cigarettes or any other tobacco products, or

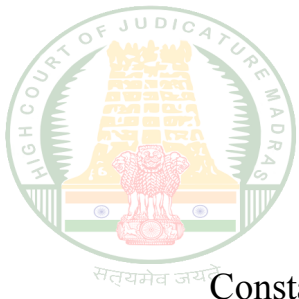
(b) in respect of any advertisement of cigarettes or any other tobacco products,

the provisions of this Act have been, or are being, contravened, he may seize such package or advertisement material in the manner prescribed.

(2) No package of cigarettes or any other tobacco products or advertisement material seized under clause (a) of sub-section (1) shall be retained by the officer who seized the package or advertisement material for a period exceeding ninety days from the date of the seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention."

4. Heard both sides and perused the materials placed on record.

5. In the case at hand, the second respondent, who is a Grade II



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Constable, along with another constable, conducted a search at the petitioner's tea shop and seized tobacco products. This action clearly violates Sections 12 and 13 of the COTPA Act, 2003. Though any police officer has the power to seize under the Criminal Procedure Code, the Cigarettes and Other Tobacco Products Act is a special enactment and the first respondent has failed to follow the procedure prescribed therein.

6. On the aforementioned ground, the entire proceedings in C.C.No.742 of 2024 pending on the file VIII Metropolitan Magistrate Court, George Town, Chennai is vitiated and is liable to be quashed. Accordingly, the proceedings in C.C. No. 742 of 2024 is hereby quashed. The Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

12.03.2025

Neutral citation : Yes/No
Speaking/non-speaking order
shk

G.K.ILANTHIRAIYAN, J.

shk

To



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1. VIII Metropolitan Magistrate Court, George Town, Chennai
2. The Sub-Inspector of Police,
C-1, Flower Bazaar Police Station,
Chennai -1.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.19505 of 2024 and
Crl.M.P.No.11418 of 2024

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