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CRL O.P. No. 32775 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2025

CORAM:

THE HON'BLE MR JUSTICE A.D. JAGADISH CHANDIRA

CRL OP No. 32775 of 2025 and CrI.M.P.Nos.22839 & 22840 of 2025

Veeramani

Petitioner

VS.

The State
represented by the Inspector of Police
Chinnasalem Police Station
Kallakurichi District
(Cr.No.87 of 2025)

Respondent

Criminal Original Petition filed under Section 528 of the Bharatiya
Nagarik Suraksha Sanhita, 2023, to call for the records in C.C.No.1496 of 2025
(year of the case has been wrongly stated in the prayer as 2024) on the file of
the Judicial Magistrate Court No.II, Kallakurichi and quash the same.

For petitioner Mr. D. Edwin Yovan Raj

For respondent Mr. S. Santhosh

Government Advocate (Crl. Side)

ORDER

This criminal original petition is filed for quashment of the
proceedings in C.C. No.1496 of 2025 on the file of the Judicial Magistrate
Court No.II, Kallakurichi.



2. The prosecution case, in a nutshell, is as under:

On 16.02.2025, the Sub-Inspector of Police, Chinna Salem Police Station, having received information that there was sale of liquor sans permit or licence within his jurisdiction in Thottiyam Village, along with his party, was keeping watch near the Government TASMACH shop at 9.30 a.m. At that time, the petitioner who was a native of Namachivayapuram Village, on seeing the police, attempted to escape. When he was intercepted and the carton box which was in his possession was checked, he was found to be in possession of 23 bottles of Topstar Brandy and 20 bottles of Orion Brandy (totally, 43 bottles of 180 ml. each). On enquiry, the petitioner admitted that the bottles belong to him and that he had purchased the same from Chinna Salem TASMACH shop for Rs.140/- each to be sold at Rs.200/- per bottle and since he was not found in possession of any permit/licence or order, he was arrested and brought to the police station and a case was registered in Cr.No.87 of 2025 under Section 4(1)(A) of the Tamil Nadu Prohibition (Amendment) Act, 2024. The respondent, after completion of investigation, filed a final report against the petitioner before the Judicial Magistrate Court No.II, Kallakurichi, for the offence under the aforesaid provision and the case was taken cognizance in C.C. No.1496 of 2025, challenging which, this criminal original petition has been filed.



3. The learned counsel for the petitioner made the following submissions:

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i. Though it is the case of the prosecution that on 16.02.2025, at 9.30 a.m., the accused was found in illegal possession of liquor bottles purchased from the TASMAL shop in excess quantity than the permissible limit for the purpose of selling the same at a higher price, all the witnesses are only police witnesses and no independent witness from the TASMAL shop or in the vicinity has been examined to prove recovery, seizure and arrest.

ii. No chemical analysis has been done to prove that the alleged contraband is liquor.

4. In support of his contention that failure to subject the alleged contraband to chemical analysis would vitiate the case of the prosecution, the learned counsel for the petitioner pressed into service the decision of this Court in **Simson and 3 others vs. State by Inspector of Police, Tuticorin South [1996 (1) MWN (Cr.) 157]**.

5. Based on the aforesaid submissions, the learned counsel for the petitioner sought quashment of the impugned FIR.



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6. Mr. S. Santhosh, learned Government Advocate (Crl. Side), submitted that during a search conducted on specific information, the petitioner was intercepted near the TASMAL shop and he was found to be in possession of 43 bottles of TASMAL liquor sans permit or order of the Government and hence, he was arrested and the case was registered for the offence under Section 4(1)(A), *ibid.*, and after completion of the investigation, final report was filed. He further submitted that non-examination of private witnesses other than the police witnesses, will, by itself, not vitiate the prosecution and the liquor bottles were seized in the presence of L.W.2 and L.W.3 Gr. I Police Constables belonging to the respondent police station who have signed as witnesses to the seizure mahazar. However, he fairly conceded that the bottles in question were not subjected to chemical analysis.

7. Heard the learned counsel for the parties and also perused the materials available on record.

8. As already stated *supra*, as per the prosecution case, the petitioner was found to be in illegal possession of liquor bottles supplied by TASMAL shop in excess for the purpose of selling the same at a higher price and hence, he was arrested near the TASMAL shop.



9. At this juncture, it is apposite to point out that if at all, the correct provision under which a case can be registered against the petitioner is only Section 4(1)(i), *ibid.* or Section 4 (1-A), *ibid.* and not certainly Section 4(1)(A), as has been done in the instant case, which provision is, in fact, non-existent. In this background, it becomes imperative to have a glance at Section 4(1) and Section 4 (1-A), *ibid.* at the cost of verbosity:

“4. Prohibition of the manufacture of, traffic in, and consumption of, liquor and intoxicating drugs.— (1) Whoever—

(a) imports, exports, transports or possess liquor or any intoxicating drug; or

(aa) imports, exports, transports or possesses liquor exceeding fifty litres but less than one hundred litres; or

(aaa) imports, exports, transports or possesses liquor of one hundred litres and above; or

(b) manufactures liquor or any intoxicating drug; or

(c) except in accordance with the rules made by the State Government in that behalf, cultivates the hemp plant (*Cannabis sativa*); or collects any portion of such plant from which an intoxicating drug can be manufactured; or

(d) taps any toddy-producing tree or permits or suffers to be tapped any toddy-producing tree belonging to him or in his possession; or

(e) draws toddy from any tree or permits or suffers toddy to be drawn from any tree belonging to him or in his possession; or

(f) constructs or works any distillery or brewery; or

(g) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug, or keeps or has in his possession any materials which have undergone any process towards the manufacture of liquor or any intoxicating drug or from which any liquor or intoxicating drug has been manufactured; or

(h) bottles any liquor for purposes of sale; or

(i) sells liquor or any intoxicating drug; or

(j) consumes or buys liquor or any intoxicating drug; or

(jj) knowingly expends or applies any money in direct furtherance or support of the commission of any of the acts specified in clauses (a) to (j);

(k) being the owner of, or in-charge of, or having the management of, or in control of, or in possession of, a place, allows any of the acts specified in clauses (a) to (jj) upon such place; shall be punished, in the case of offences—



(A) falling under clauses (aaa), (b), (f), (h) and (i), with rigorous imprisonment for a term not less than three years, which may extend to seven years and with fine which shall not be less than two lakh rupees but which may extend to three lakh rupees;

(B) falling under clauses (aa) and (k), with rigorous imprisonment for a term not less than two years, but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees;

(C) falling under other clauses, with imprisonment for a term not less than one year, but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees:

Provided that notwithstanding anything contained in clause (A), clause (B) and clause (C) above, offences relating to the transport, possession and consumption of any liquor specified by the State Government under sub-clause (i) of clause (j) which are manufactured and sold in accordance with the provisions of this Act and the rules made thereunder, shall be punished with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty five thousand rupees but which may extend to fifty thousand rupees or with both:

Provided further that nothing contained in this sub-section shall apply—

(i) to any act done under, and in accordance with, the provisions of this Act or the terms of any rule, notification, order, licence or permit issued thereunder; or

(ii) to the possession, sale, purchase, use of consumption of duty-paid medicinal or toilet preparations for their *bona fide* medicinal or toilet purpose.

(1-A) Where in the case of an offence falling under clause (a), clause (b), clause (h), or clause (i) of sub-section (1), the liquor or any intoxicating drug involved contains any ingredient which is likely to cause death or grievous hurt to the consumer, then the offender, on conviction, shall be punished—

(i) if death has ensued due to its consumption, with rigorous imprisonment for life and with fine which shall not be less than ten lakh rupees; and



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(ii) in any other case, with rigorous imprisonment for a term not less than five years, but which may extend to ten years and with fine which shall not be less than five lakh rupees but which may extend to ten lakh rupees.”

(emphasis supplied)

10. In the instant case, as rightly articulated by the learned counsel for the petitioner, no independent witness has been examined by the police to prove the recovery, seizure and arrest and moreover, the alleged contraband has also not been subjected to chemical analysis. Superadded, no evidence also has been let in to show that the liquor bottles were purchased from TASMAL shop for the purpose of sale of the same at a higher price. Furthermore, intriguingly, the Sub Inspector of Police who is said to have intercepted the petitioner, recovered bottles from him and arrested him and thereafter, registered the case, is the person who had filed the final report as well.

11. In **Simson** (supra) relied on by the learned counsel for the petitioner, it has been held unequivocally that in the case of offences under the Prohibition Act, the prosecution must establish through evidence that the bottles contained the prohibited liquor and that mere affixing of labels on the bottles may not be a proof to hold that the accused were found selling the prohibited liquor as defined in the Prohibition Act. The relevant paragraphs from **Simson** (supra) are profitably extracted as under:

“5. In this revision, only one ground has been urged by Mr. Jagadish Chandira, learned counsel for revision petitioners. It is submitted by learned counsel that though the brandy bottles have been



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seized from the shop in question, they were not sent for chemical analysis, so as to establish that the material objects contained the prohibited liquor as to warrant trial for the offence under Section 4(1)(i) of the Tamil Nadu Prohibition Act. In order to substantiate this submission, learned counsel relied upon the judgments reported in 1966 L.W. (CrI.) 26, 1969 L.W. (CrI.) 239 and 1979 L.W. (CrI.) 34. Admittedly, in this case, the bottles affixed with the brandy labels have not been sent for chemical analysis, especially when the recovery has been made from the accused in the scene place.

6. The dictum laid down in the above referred decisions is that the prosecution, in the case of offences under Prohibition Act, must establish through evidence that the bottles contained the prohibited liquor. In other words, the prosecution should establish that the commodity in question comes under one or other of the various items described in the definition of 'liquor' in the act. The mere affixing of labels on the bottles may not be a proof to hold that the petitioners were found selling the prohibited liquor as defined in the Prohibition Act. Therefore, the conviction and sentence imposed on the petitioners by the Trial Court and confirmed by the first appellate Court are not correct."

(emphasis supplied)

12. The aforesaid decision applies on all fours to the instant case, inasmuch as, though the respondent police claims that the bottles contained liquor, admittedly, they were not sent for chemical analysis so as to establish that the alleged contraband was liquor as to warrant trial. Under such circumstances, the chance of the impugned proceedings ending in conviction is very bleak.

13. In such perspective of the matter, the impugned proceedings in C.C. No.1496 of 2025 on the file of the Judicial Magistrate Court No.II, Kallakurichi, is quashed.



14. In the result, this criminal original petition stands allowed.

Connected criminal miscellaneous petitions are closed.

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02.12.2025



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CRL O.P. No. 32775 of 2



A.D. JAGADISH CHANDIRA, J.

cad

To

1. The Inspector of Police
Chinnasalem Police Station
Kallakurichi District
2. The Judicial Magistrate No.II
Kallakurichi
3. The Public Prosecutor
High Court of Madras

CRL OP No. 32775 of 2025

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