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CRL OP No. 33050 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-12-2025

CORAM

THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

CRL OP No. 33050 of 2025

and

CRL MP Nos. 23076 and 23080 of 2025

Saravanan

Petitioner

Vs

State Rep by,
Inspector of Police,
Erode Taluk Police Station,
Erode District.

Respondent

Prayer: Criminal Original Petition filed under Section 528 of BNSS to call for the records in C.C.No.120 of 2022 on the file of the learned Additional District and Special Court for trial of EC & NDPS Act Cases, Coimbatore and quash the same.

For Petitioner: Mr.D.Padmanabhan

For Respondent: Mr.K.M.D.Muhilan
Additional Public Prosecutor

ORDER

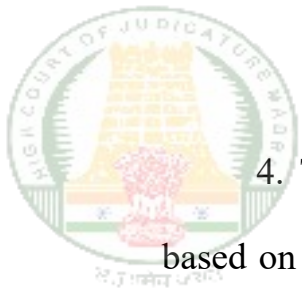
The present Criminal Original Petition has been filed by A9 to quash the proceedings in C.C.No.120 of 2022 pending on the file of the District & Special Court for trial of EC & NDPS Act cases, Coimbatore, arising out of Crime No.235 of 2021 registered by the respondent police for the alleged offences under sections 8(c), 20(b)(ii)(C) and 29(1) of the NDPS Act and Sections 120B



and 212 of the IPC.

2. During the course of the investigation, the respondent police had recorded the confession statement of A7 and A8 who are husband and wife, based on which the other accused were implicated. As per their confession, they had procured the contraband and transported it to other accused and they helped A8 to sell it in various places. It was alleged in the confession statement that the sale proceeds were deposited in A3's bank account. Based on the said confession, the bank account which was maintained by A3 in Indian Overseas Bank, District Court Branch, Erode was frozen as per the request of the investigating officer.

3. The learned counsel for the petitioner submitted that this Court had quashed the proceedings as against the Accused 1, 2 and 6, who are similarly placed persons, in Crl.O.P.Nos.10896 & 10978 of 2025 vide order dated 17.04.2025. They have been implicated based on the confession of Accused 7 and 8. Similarly, there is no material as against this petitioner in the confession statement of A7 and A8 and consequently, the petitioner is also similarly placed. He further submitted that the petitioner is also entitled to quashment of the impugned proceedings on the ground of parity and seek that the proceedings may be quashed against him.



4. The learned Additional Public Prosecutor submitted that the case is based on the confession statement recorded from A7 and A8, who are husband and wife. However, this Court, taking into consideration, the fact that A1, A2 and A6 have been implicated only on the basis of the confession of the arrested accused and also that there is no other material as against them, quashed the proceedings in respect of CrI.O.P.Nos.10986 and 10978 of 2025 dated 17.04.2025.

5. Admittedly, the petitioner was not a named accused in the FIR. He has been implicated only based on the confession of A7 and A8. This Court in respect of other accused implicated, had quashed the proceedings against them. The relevant portion from the order dated 17.04.2025 passed in CrI.O.P.No.10986 and 10978 of 2025 is extracted below:-

“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.

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



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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** reported in [(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.*

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** reported in [(2019) 16 SCC 547], as under : “The confession of co-accused cannot be treated as substantive 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.”



6. In view of the above, this Criminal Original Petition is allowed and the proceedings in C.C.No.120 of 2022 pending on the file of the District & Special Court for trial of EC & NDPS Act cases, Coimbatore is quashed. Consequently, connected miscellaneous petitions are closed.

05-12-2025

Shl

Index:Yes/No

Speaking/Non-speaking order

Neutral Citation:Yes/No

To

1. The Inspector of Police,
Erode Taluk Police Station,
Erode District.

2. The Public Prosecutor
High Court of Madras.



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