



Crl.O.P.(MD) No.21717 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2025

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD) No.21717 of 2025

and

Crl.M.P.(MD) Nos.18654 & 18655 of 2025

Sudalaikannu

... Petitioner

Vs.

1.The State of Tamil Nadu rep. by
The Inspector of Police,
Nanguneri Police Station,
Tirunelveli District.
In Crime No.527 of 2021

2.Munish,
Sub-Inspector of Police,
Naguneri Police Station,
Tirunelveli District.

... Respondents

Prayer : Criminal Original Petition filed under Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to call for the records pertaining to the charge sheet in S.C.No.878 of 2025 on the file of the learned Principal District Judge, Tirunelveli and quash the same as illegal as against the petitioner alone.

For Petitioner : Mr.S.Srikanth



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For R1

: Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)

ORDER

Seeking to quash the impugned final report in S.C.No.878 of 2025 on the file of the learned Principal District Judge, Tirunelveli, this Criminal Original Petition has been filed.

2. The case of the prosecution is that on 18.12.2021, at about 11.30 a.m., while the second respondent, along with his team, was conducting prohibition rounds near Railway Road at Nanguneri, the first accused was allegedly found in possession of eight bottles of 180 ml McLene Brandy and two half bottles of the same brand, which were mixed with a poisonous substance known as “atropine”, harmful to human life, for the purpose of increasing intoxication and earning unlawful profit, and with the intention of selling the same to the public at a higher price before the opening of the TASMAC shop; and that on enquiry, it was further found that the petitioner/second accused had purchased the liquor bottles in bulk from TASMAC. The petitioner and the first accused were charged with the offence under Section 4(1-A) of the Tamil Nadu Prohibition Act, 1937.



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3. Mr.S.Srikanth, the learned counsel for the petitioner, submits that, for implicating the petitioner for the offence under Section 4(1-A) of the Tamil Nadu Prohibition Act, 1937, on the allegation that he had mixed a poisonous substance known as “atropine”, the mandatory provision to be complied with by the police is that the samples of the liquor should be drawn only in the presence of the Prohibition Officer or a Police Officer not below the rank of Inspector of Police, and that the remaining illicit liquor has to be destroyed. However, in the instant case, the sample of the liquor in question was drawn by Head Constables and sent to the Forensic Laboratory for examination. Such an exercise is not mandated under the Tamil Nadu Prohibition Act, 1937, and the same will not stand the scrutiny of law. On this ground, the final report is liable to be quashed.

4. In support of his contention, the learned counsel relies upon the order of this Court in *Selvi v. State, rep. By the Inspector of Police, Namakkal*, reported in *2011 (2) MWN (Cr.) 623*, and prays for quashment of the final report.



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5. Mr.M.Sakthi Kumar, the learned Government Advocate (Criminal Side) appearing for the first respondent, submits that the petitioner and the first accused purchased liquor bottles and mixed atropine in the said liquor to increase intoxication; that mixing of atropine, except for medical use, would amount to poisoning; that the samples of the said liquor were subjected to forensic examination and were found to contain atropine, as reported by L.W.4, the Scientific Officer, who, in his statement recorded under Section 161(3) of the Code of Criminal Procedure, 1973, stated that there was mixing of atropine in the liquor, and therefore, the petitioner is liable for the offences punishable under Section 4(1-A) of the Tamil Nadu Prohibition Act, 1937, and prays for dismissal of this Criminal Original Petition.

6. The issue that arises for consideration in this Criminal Original Petition is whether the police has violated the mandatory provisions in this case.

7. This issue is already covered by the order of this Court in **Selvi** case (*supra*) cited by the learned counsel for the petitioner. This Court in the said order had observed as follows:



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“10. A close reading of the above third proviso to Section 32 (c) of the Tamil Nadu Prohibition Act would make it abundantly clear that the Officer who has seized the illicit arrack can draw samples only in the presence of a Prohibition Officer or any Police Officer not below the rank of an Inspector of Police and then he can destroy the remaining contraband. In respect of the destruction, the said Prohibition Officer or Police Officer, in whose presence the destruction is done, should give a certificate in respect of the total quantity seized, the total quantity taken as samples and total quantity destroyed and such certificate should be forwarded to the Magistrate having jurisdiction. But, in this case, drawing of samples as well as the destruction were not made in the presence of either a Prohibition Officer or any Police Officer not below the rank of an Inspector of Police. It may be true that P.W.8 himself is an Inspector of Police but that by itself will not satisfy the requirements of the above provision. Here, we have to look into the object behind the said proviso. In a case where the Officer, who seizes illicit arrack, decides to destroy the same after drawing samples, in order to ensure that samples were really taken from the illicit arrack seized and that the rest of the illicit arrack was destroyed, the presence of yet another responsible Officer namely, a Prohibition Officer or any Police Officer not below the rank of Inspector is insisted upon. This procedure, in my considered opinion, is mandatory as the object behind the same is to ensure that there is no manipulation at the hands of the Officer who seizes the illicit arrack. In this regard, I may refer to a judgement of a Division Bench of this Court in Jegannathan v. State of Tamil Nadu reported in Manu/TN/8992/2006 wherein while dealing with a Habeas Corpus Petition challenging the order of detention passed under Tamil Nadu Act 14 of 1982 , the Division Bench, while noticing Section 32 of the Tamil Nadu Prohibition Act and after referring to various orders passed on the earlier occasions, has held in paragraphs 3 and 4 as follows:-

“3. At the foremost, the learned counsel for the petitioner by drawing our attention to the reference made in



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paragraph 3 of the grounds of detention viz., the remaining I.D arrack and fermented wash were destroyed at the spot a "certificate was prepared to that effect, submitted that no such certificate was prepared as per Section 32 of the Tamil Nadu Prohibition Act, 1937 and the only document available is destruction mahazar. According to him, in the absence of the certificate as stated in paragraph 3 of the detention order, it is presumed that the detaining authority has not applied his mind while passing the detention order. He has also heavily relied on the decision of this Court dated 25.09.2003 in HCP No.2580 of 2002, which was followed by this Court in HCP No.140 of 2006 by an order dated 13.06.2006. In that case, before the Division Bench, a similar contention was raised. A perusal of the details mentioned in the said decision shows that in that case also the destruction mahazar alone was prepared and a copy was supplied to the detenu. However, as in the present case, the detaining authority therein referred to the said document as a certificate prepared under Section 32 of The Tamil Nadu Prohibition Act, 1937. The Division Bench after finding that the document available in the paper book does not amount to certificate in terms of Section 32 of The Tamil Nadu Prohibition Act, 1937 and after holding that the detaining authority has not applied his mind, quashed the detention order.

4. On going through the factual details in our case, particularly the reference made in para 3 as well as the document, we are of the view that the decision relied on by the learned counsel for the petitioner is directly applicable to the case on hand. Inasmuch as the detaining authority has referred the destruction mahazar as a certificate in terms of Section 32 of The Tamil Nadu Prohibition Act, 1937, we are satisfied that the detaining authority has not properly applied his mind and on this ground the impugned detention order is liable to be quashed and accordingly, the same is quashed."

The said view taken by the Division Bench of this Court clearly fortifies the view expressed by me herein above."

8. The above view has also been followed by a learned Single Judge of this Court in an order dated 13.06.2023 passed in the case of **Velu**



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Chettiyar v. State rep. By Inspector of Police, PEW-Thiruchengode

Police Station, Namakkal District, in Cr.O.P.No.18761 of 2021.

9. The above observations of this Court would squarely apply to the facts of the instant case. Since the police has violated the mandatory provisions of the Act by drawing samples of the liquor from the accused otherwise than in the presence of a Prohibition Officer or a Police Officer not below the rank of Inspector of Police, despite the fact that L.W.4, the Scientific Officer, found mixing of atropine in the liquor, this Court is of the view that the impugned prosecution is an abuse of the process of law. Hence, the impugned final report is quashed.

10. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

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JEN

Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking Order / Non-Speaking Order



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Copy To:

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- 1.The Principal District Judge,
Tirunelveli.
- 2.The Inspector of Police,
Nanguneri Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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