



Crl.OP(MD)No.3047 of 2026

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.02.2026

PRONOUNCED ON : 01.06.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.3047 of 2026

and

Crl.M.P.(MD)Nos.3307 and 3310 of 2026

Simiyon

... Petitioner/Accused

Vs.

1. The State of Tamilnadu
Rep. by, the Inspector of Police,
Nithiravilai Police Station,
Kanyakumari District.
Crime No. 258/2025

.... Respondent / Complainant

2. Antoniammal

.... Respondent /
Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records relating to the charge sheet in C.C.No.960 of 2025 pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai, and quash the same as against the petitioner.

For Petitioner : Mr.G.Karuppasamypandiyan



WEB COPY



Crl.OP(MD)No.3047 of 2026

For R-1

: Mr.Hassan Mohammed Jinnah,
State Public Prosecutor,
Assisted by,
Mr.M.Sakthi Kumar,
Government Advocate (Crl. side)

ORDER

Prologue:

The present Criminal Original Petition invokes the inherent jurisdiction of this Court under Section 528 BNSS seeking quashment of the criminal proceedings in C.C.No.960 of 2025 pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai, wherein the petitioner has been arrayed as Accused No. 2 for the alleged offences under Section 4(1)(c) of the Tamil Nadu Prohibition (Amendment) Act, 2024 and Section 24 of the Tamil Nadu Prohibition Act, 1937.

2. The case presents a delicate interplay between the statutory regime governing prohibition enforcement, the permissible limits for personal possession of liquor under the Government Orders issued by the State, the scope of vicarious liability upon a licence holder, and the evidentiary worth of a co-accused confession at the stage of framing of charge. The matter also raises a recurring legal question



Crl.OP(MD)No.3047 of 2026

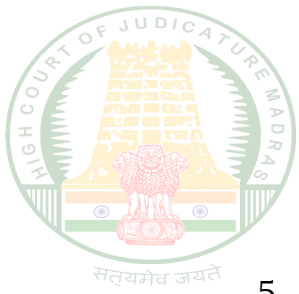
WEB COPY

regarding the competence of the Law and Order Wing Police to register and investigate offences under the Tamil Nadu Prohibition Act in the presence of a dedicated Prohibition Enforcement Wing.

3. This Court is therefore called upon to examine whether the continuation of the prosecution as against the petitioner would amount to abuse of process of Court warranting interference under Section 528 BNSS.

Case of the prosecution:

4. The prosecution case, in brief, is that on 02.09.2025 at about 11.00 a.m., upon receipt of secret information that liquor was being sold in a bar prior to the permitted hours, the respondent police conducted a raid in the concerned premises. During the course of inspection, Accused No.1, who was allegedly working as a staff member in the FL-II Bar belonging to the petitioner herein, was found in possession of 14 quarter bottles of liquor and cash amounting to Rs.26,000/-.



WEB COPY

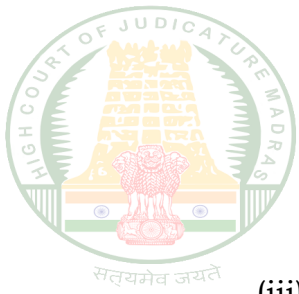
5. According to the prosecution, during enquiry, Accused No.1 confessed that he had been selling liquor unauthorisedly at the instance of the petitioner/A-2 and another accused. Based upon the said confession and the alleged surrounding circumstances, the petitioner came to be implicated in the occurrence. The final report came to be filed alleging commission of offences under Section 4(1)(c) of the Tamil Nadu Prohibition Act and Section 24 relating to breach of licence conditions. The learned Judicial Magistrate No.II, Kuzhithurai, took cognizance in C.C.No.960 of 2025.

Grounds for quash:

6. The petitioner assails the prosecution mainly on the following grounds:

(i) the petitioner was not present at the scene of occurrence and has been implicated solely based upon the confession statement of Accused No.1;

(ii) the quantity allegedly recovered is only 2.5 litres approximately, which falls within the permissible limit of 4.5 litres prescribed under G.O.(Ms) No.14, H.P. & EVI Department dated 09.06.2017;



WEB COPY

(iii) there are absolutely no materials to establish actual sale of liquor beyond permissible hours;

(iv) no independent witness has been cited by the prosecution to show that any person purchased liquor from Accused No.1;

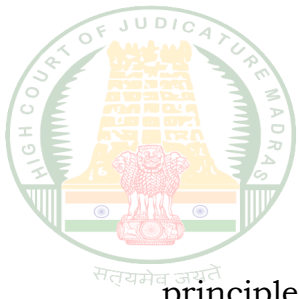
(v) the respondent police belonging to the Law and Order Wing had no jurisdiction to register and investigate offences under the Tamil Nadu Prohibition Act;

(vi) the informant and the investigation officer are one and the same person thereby vitiating the fairness of investigation; and

(vii) Section 24 of the Tamil Nadu Prohibition Act relating to breach of licence conditions is wholly inapplicable to the facts of the present case.

Submissions on either side:

7. The learned counsel appearing for the petitioner submitted that the petitioner is merely the holder of an FL-II licence and that there is absolutely no direct material connecting him with the alleged sale of liquor. It was vehemently contended that except the confession of Accused No.1, no incriminating material is available against the petitioner. According to the learned counsel, the settled



WEB COPY

principles of criminal jurisprudence make it abundantly clear that a co-accused confession by itself cannot constitute substantive evidence against another accused.

8. The learned counsel further submitted that the alleged quantity recovered from Accused No.1 is only 14 quarter bottles, which is well within the permissible possession limit prescribed under G.O.(Ms) No.14 dated 09.06.2017 permitting possession of 4.5 litres of Indian Made Foreign Spirits for personal consumption.

9. Reliance was placed upon the order of this Court in ***Deiva Nayagam @ Selva Nayagam Vs. State of Tamil Nadu***¹, wherein this Court had quashed prosecution under similar circumstances holding that possession within the permissible limit would not attract prosecution under Section 4(1)(i) of the Tamil Nadu Prohibition Act in the absence of material to establish sale.

10. The learned counsel also argued that all the witnesses cited by the prosecution are official witnesses and no independent purchaser has been examined to show that liquor was sold beyond

¹ CrI.O.P.(MD) No.23073 of 2025



WEB COPY

permissible hours. According to the petitioner, the foundational facts necessary to sustain the prosecution are conspicuously absent. The learned counsel further submitted that the Law and Order Police had no authority to register and investigate offences under the Tamil Nadu Prohibition Act, particularly in view of the existence of a dedicated Prohibition Enforcement Wing.

11. The learned counsel also raised the issue that the informant and the investigation officer are one and the same person and though the Constitution Bench judgment in **Mukesh Singh Vs. State (Narcotic Branch of Delhi)**² diluted the rigour of **Mohan Lal vs State of Punjab**³, the said circumstance still remains a relevant factor while testing the fairness of investigation on a case-to-case basis.

12. Per contra, the learned State Public Prosecutor appearing for the 1st respondent submitted that the petitioner admittedly is the owner and licence holder of the concerned FL-II Bar and therefore

² (2020) 16 SCC 120

³ (2018) 17 SCC 627

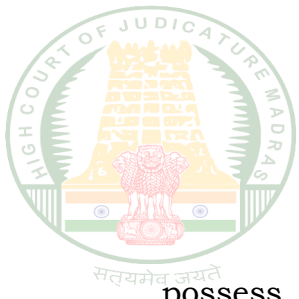


WEB COPY

cannot completely disassociate himself from the activities carried on within the premises.

13. The learned State Public Prosecutor contended that the prosecution is not based solely upon the confession of Accused No.1, but also upon the surrounding circumstances, witness statements and recovery of substantial cash from the employee. It was argued that the concept of permissible possession limit applies only to possession for personal consumption and not to sale of liquor. According to the prosecution, sale of liquor beyond permissible hours itself constitutes an offence irrespective of quantity.

14. The learned State Public Prosecutor further submitted that Sections 4(i), 4(j) and 4(k) of the Tamil Nadu Prohibition Act specifically contemplate liability upon persons who permit or facilitate illegal sale of liquor. Insofar as the competency of the Law and Order Police is concerned, the learned State Public Prosecutor produced various Government Orders and administrative instructions to contend that the regular territorial police continue to



Crl.OP(MD)No.3047 of 2026

WEB COPY

possess jurisdiction to enforce provisions of the Tamil Nadu Prohibition Act jointly with the Prohibition Enforcement Wing.

15. Reliance was also placed upon the Constitution Bench judgment in ***Mukesh Singh Vs. State (Narcotic Branch of Delhi)***⁴ and the subsequent judgment of the Hon'ble Supreme Court in ***State of Punjab Vs. Gurnam alias Gama***⁵, to contend that investigation is not vitiated merely because the informant and investigation officer are the same person. Finally, it was contended that disputed questions of fact cannot be adjudicated in a petition under Section 528 BNSS and the petitioner has to necessarily face trial.

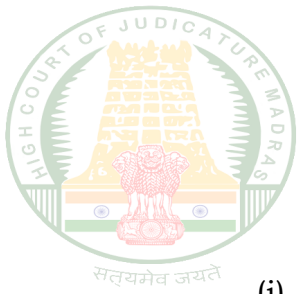
16. Heard the learned counsels on either side and carefully perused the materials available on record.

Points for consideration:

17. Upon consideration of the rival submissions, the following points arise for consideration:

4 (2020) 16 SCC 120

5 2025 SCC OnLine SC 1745



WEB COPY

(i) Whether the prosecution against the petitioner is founded solely upon the confession of co-accused?

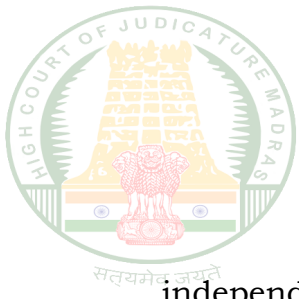
(ii) Whether the materials collected disclose the ingredients of the offences alleged under Sections 4 and 24 of the Tamil Nadu Prohibition Act?

(iii) Whether the registration and investigation by the Law and Order Police are without jurisdiction?

(iv) Whether continuation of the criminal proceedings would amount to abuse of process of Court?

Analysis:

18. The records reveal that the petitioner has not been shown to be physically present at the place of occurrence. No contraband or incriminating article was recovered from his possession. The prosecution fundamentally seeks to implicate the petitioner based upon the confession statement allegedly given by Accused No.1. It is trite law that the confession of a co-accused is not substantive evidence. Such confession may at best lend assurance to other



WEB COPY

independent incriminating circumstances but cannot, in isolation, form the sole foundation for prosecution.

19. In the present case, this Court finds that no independent witness has been cited to establish actual sale of liquor beyond permissible hours. No customer has been examined. No overt act attributable to the petitioner has been specifically spoken to by any independent material witness. Mere ownership of the premises or holding of an FL-II licence cannot automatically translate into criminal culpability unless there are materials disclosing conscious involvement, connivance or active facilitation.

20. The prosecution itself admits that only 14 quarter bottles were recovered from Accused No.1. The Government Order relied upon by the petitioner prescribes a permissible possession limit of 4.5 litres for personal consumption.

21. However, this Court is conscious of the distinction between lawful possession for personal use and unauthorised sale. Merely because the quantity falls within permissible limits, the same by



WEB COPY

itself would not exonerate an accused if there are materials to establish sale in violation of licence conditions.

22. Nevertheless, in the present case, the crucial deficiency lies in the complete absence of any acceptable material demonstrating actual sale. No purchaser has been identified. No trap proceedings were conducted. No surveillance material has been produced. No independent witness speaks about purchase of liquor beyond permitted hours.

23. The prosecution seeks to infer illegal sale purely from recovery of liquor bottles and cash from Accused No.1. Such inferential assumption, without foundational materials, cannot automatically justify continuation of prosecution as against the petitioner.

24. Considerable arguments were advanced regarding the competency of the Law and Order Police to register and investigate offences under the Tamil Nadu Prohibition Act. The materials produced before this Court disclose that the Prohibition Enforcement Wing functions as a specialised unit for enforcement of prohibition



WEB COPY

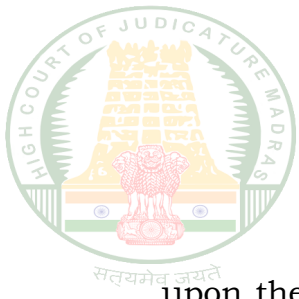
laws. At the same time, the Government Orders placed by the prosecution also indicate that regular territorial police continue to possess concurrent enforcement responsibilities.

25. Therefore, this Court is unable to accept the broad proposition that every investigation conducted by the Law and Order Police under the Tamil Nadu Prohibition Act is *per se* void. Accordingly, the contention regarding total lack of jurisdiction deserves rejection.

26. The contention relating to the informant and investigation officer being the same person also requires consideration. The Constitution Bench of the Hon'ble Supreme Court in ***Mukesh Singh Vs. State (Narcotic Branch of Delhi)***⁶ has categorically held that investigation does not automatically stand vitiated merely because the informant and the investigation officer are one and the same person.

27. However, the Hon'ble Supreme Court has also clarified that the issue has to be examined on a case-to-case basis depending

⁶ (2020) 16 SCC 120



WEB COPY

upon the surrounding circumstances and allegations of prejudice or bias. In the present case, though this Court is not inclined to quash the proceedings solely on the said ground, the same nevertheless assumes significance when viewed cumulatively along with the absence of independent witnesses, absence of direct incriminating materials, and the prosecution resting substantially upon co-accused confession.

28. Section 24 relates to breach of licence conditions. However, the prosecution has not placed any specific material demonstrating which precise licence condition was violated by the petitioner and in what manner.

29. A vague and omnibus allegation that the petitioner, being the licence holder, is liable for all acts occurring within the premises cannot satisfy the statutory ingredients necessary to sustain prosecution under Section 24. Criminal liability cannot be fastened merely on presumptive supervisory responsibility in the absence of tangible materials indicating knowledge, consent or active participation.

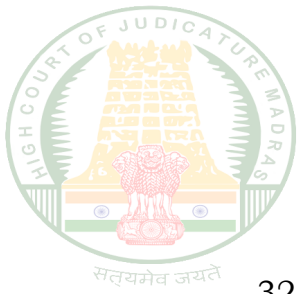


WEB COPY

30. This Court is fully conscious of the limited scope of interference under Section 528 BNSS in quash proceedings. Ordinarily, disputed questions of fact are not to be adjudicated at this stage. However, where the materials collected even if accepted in entirety fail to disclose the essential ingredients of the offences alleged and continuation of prosecution would merely amount to harassment, this Court would be justified in exercising its inherent jurisdiction to secure the ends of justice.

31. In the case on hand:

- (i) the petitioner has been implicated substantially based upon the confession of co-accused;
- (ii) no independent witness speaks about illegal sale;
- (iii) no material establishes active participation of the petitioner;
- (iv) no contraband was recovered from the petitioner;
- (v) the prosecution lacks foundational materials to attract Sections 4 and 24 of the Tamil Nadu Prohibition Act as against the petitioner.



WEB COPY

32. Continuation of the criminal proceedings against the petitioner, in the considered view of this Court, would amount to abuse of process of law.

Epilogue:

33. Criminal law cannot be permitted to operate on suspicion, surmise or vicarious assumptions unsupported by legally admissible materials. The majesty of criminal jurisprudence rests upon the foundational principle that culpability must emerge from cogent material and not from conjectural association.

34. While the State undoubtedly possesses legitimate authority to regulate sale of liquor and enforce prohibition laws in public interest, such enforcement must nevertheless conform to constitutional guarantees of fairness, legality and evidentiary discipline. The power to prosecute cannot become a substitute for proof.

35. Courts exercising inherent jurisdiction are duty-bound to prevent criminal proceedings from degenerating into instruments of



Crl.OP(MD)No.3047 of 2026

WEB COPY

needless oppression where the foundational ingredients of the alleged offences remain conspicuously absent.

36. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.960 of 2025 pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai, are hereby quashed insofar as the petitioner/A-2 is concerned. Consequently, connected miscellaneous petitions are closed.

01.06.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Sml

To

- 1.The Judicial Magistrate No.II,
Kuzhithurai.
- 2.The Inspector of Police,
Nithiravilai Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CrI.OP(MD)No.3047 of 2026

L.VICTORIA GOWRI, J.

Sml

CRL OP(MD)No.3047 of 2026

01.06.2026