

**(2017) 07 MAD CK 0030**

**In the Madras High Court**

**Case No : 824 of 2017 and Crl M P No 7663 of 2017**

Bharat Kumar

APPELLANT

Vs

The Sub Inspector of Police

RESPONDENT

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**Date of Decision : 26-07-2017**

**Acts Referred:**

[Indian Penal Code, 1860](#), [Section 353](#),  
[Section 506\(1\)](#) -  
Tamil Nadu Prohibition of Smoking and Spitting Act, 2002, Section 9, Section 7,  
Section 9(2)

**Citation : (2017) 07 MAD CK 0030**

**Hon'ble Judges : R.Suresh Kumar**

**Bench : SINGLE BENCH**

**Advocate : R.Suresh Kumar**

**Final Decision : Allowed**

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## **Judgement**

1. This criminal revision case has been filed against the order passed by the learned XVI Metropolitan Magistrate, George Town, Chennai in

Cr.M.P.No.1771 of 2017 dated 02.05.2017.

2. By the said petition, the petitioner had approached the trial Court seeking for return of property, seized by the respondent police, from the premises of the petitioner.

3. According to the respondent, they had seized about 82 bags containing raw materials, for the preparation of a stuff called, ""Mava,"" which is prohibited and hazardous to health, along with 11 numbers of small containers of lime.

4. According to the respondent, these are all prohibited items by the State of Tamil Nadu and whoever store and sell these items shall be

punishable under the provisions of the Tamil Nadu Prohibition of Smoking and Spitting Act, 2002 ( in short, the "Act").

5. It is the case of the respondent that on 19.5.2017, on information, they visited the petitioner's premises, from where, they have seized these

materials, which, according to the respondent, are prohibited items within the meaning of Section 7 of the Act and therefore, because the petitioner

had stored for selling the items for manufacture of any other snuff or stuff by name called "Mava" which attracts punitive provisions of Section 9 of

the Act and therefore, in the presence of witnesses, those items were seized from the premises of the petitioner and the petitioner and other

employees of the petitioner's shop were arrested on the same day.

6. However, it is the case of the petitioner that the petitioner is a licensed seller of betel nuts and other related items and he has been doing the

business for several years and they have gained reputation in the locality. It is the further case of the petitioner that he had never indulged in any

illegal activities and being a trader he only purchased the said goods from the manufacturers, and stored it, to, sell them for dealers and customers

with reasonable profit.

7. While so, according to the petitioner, on 19.5.2017, the respondent police suddenly came and arrested the petitioner and others and they

booked a case under Sections 7 and 9(ii) of the said Act r/w Section 353 and 506(i) of IPC.

8. Since the major items, containing 82 gunny bags seized, by the respondent police, is nothing but betel nuts, which are not at all a prohibited item

and storing of the same for selling purpose cannot be termed to be a violation of any law, much less Sections 7 and 9 of the said Act, the very case

booked against the petitioner and others itself is a false or frivolous case.

9. When that being so, the petitioner claimed, they moved a petition before the trial Court, seeking return of the said property, on the ground that

the petitioner is the owner of the property. Moreover since it is betel nuts, it will be vulnerable of fungi formation if it is stored for a longer period

and in that case, it becomes useless and would be unfit for human consumption. Therefore, on that ground also, the petitioner had moved the

necessary petition before the trial Court seeking for return of the said property and the said petition had been dismissed, as against which the

present revision has been filed by the petitioner.

10. Mr. N. Chandrasekaran, the learned counsel appearing for the petitioner would invite the attention of this Court to Sections 7 and 9 of the Act

which reads thus:

7. Prohibition of storage, sale and distribution of cigarettes, etc. No person shall himself or by any person on his behalf store, sell or

distribute cigarettes, beedies, cigar, supari with tobacco, zarda, snuff, or any other smoking or chewing substance or substances

containing tobacco within an area of one hundred metres around any college, school or other educational institutions.

.....

9. Penalties - Any person, who contravenes the provisions of--

(i) section 4, 5 or 8 shall be punishable with fine which may extend to one hundred rupees and in the case of second or subsequent

offence, shall be punishable with a minimum fine of two hundred rupees, but which may extend to five hundred rupees;

(ii) section 6 or 7 shall be punishable with fine which may extend to five hundred rupees and in case of second or subsequent offence,

shall be punishable with imprisonment which may extend to three months, or with a minimum fine of five hundred rupees, but which

may extend to one thousand rupees, or with both"".

11. The learned counsel would also invite the attention of this Court to Rule 6 of the Rules made under the said Act which reads as follows:

6. Power of entry, inspection and search.-

(1) Any authorised officer may enter and inspect at any time if he has reason to believe that any person is in possession of cigarettes,

beedies, cigars, supari with tobacco, zarda, snuff or any other smoking or chewing substance or substances for sale or distribution in

any premises which is within an area of 100 metres around any college, school or any other educational institutions and may search

and seize the articles or other substances under a seizure list as specified in Form-A"".

12. By citing the said provisions of the Act as well as the Rule made thereunder, the learned counsel would make his submissions that, even

according to the respondent, as recorded in the FIR, the alleged offences under Sections 7 and 9 of the Act, has not been, even prima facie, made out.

13. According to the learned counsel, both under Section 7 of the Act as well as Rule 6, certain items have been prohibited and if those prohibited items is stored and sold in a place within the radius of 100 metres of any college, school or any educational institution, the police would be empowered to search and seize those articles under a seizure list as specified under Form-A of the Rule.

14. In this regard, the learned counsel would submit that here, there is no educational institution within 100 metres area which is one of the necessary ingredient to invoke Sections 7 and 9 of the Act. Moreover, the very stuff seized from the petitioner's premises is nothing but betel nuts which has not been prohibited either under Sections 7 and 9 of the Act as well as any other provision. He would also submit that since the petitioner is a licensed seller of betel nuts and for the said purpose, when he stored, of course, after purchasing it in bulk from the manufactures for selling to dealers and consumers, the same has been seized and the petitioner and others were arrested. These action on the part of the respondent, according to the learned counsel, would disclose that prima facie, it is a frivolous case where the petitioner and others have been implicated.

15. The learned counsel would also submit that even under Rule 6, those articles seized under the sub rule (1) of Rule 6 shall be produced before the Magistrate for disposal of the articles or substances as per law.

16. Here in the case in hand, even though the goods were seized on 19.5.2017, the same were produced before the Magistrate concerned only on 29.5.2017 i.e., after ten days. There is no plausible reason given by the respondent for such belated production of such seized goods before the Magistrate, as mandated under the provisions of the Rule.

17. The learned counsel also would make a submission that in the FIR, it has been stated that the seized goods were stored at the petitioner's premises for the purpose of preparation of a prohibited tobacco item called "Mava". In this regard, the learned counsel would submit that the word or term, "Mava" has not been described either under the Act nor under the Rule made thereunder. It is not known to the petitioner as to the details

and explanation of the word, "Mava". The learned counsel would also submit that even the respondent police did not say anything about or

described about the word, "Mava", except quoting the said word in the FIR. He would further submit that certain items are specifically mentioned

at Section 7 of the Act, as has been extracted above, and only those items are prohibited, that too within or around 100 metres of the college,

school or educational institutions and if both the ingredients for invoking Section 7 of the Act are absent in this case, the very invocation of Sections

7 and 9 of the Act against the petitioner itself, is unlawful and therefore, on that ground also the petitioner would be entitled to get back the goods

which were stored by the petitioner for selling it to the dealers and consumers, ofcourse, from his premises / shops which is a licensed one.

18. The learned counsel would also submit that, since except the petitioner, no one has made any claim over the property, for which, application

was filed to return the same to the petitioner, the learned trial Court Judge should have allowed the said petition.

19. Per contra, Mr.Sekar, learned Government Advocate (criminal side) appearing for the respondent would submit that the word, "Mava"

mentioned in the FIR is only a local name for a stuff which is being produced or manufactured for which tobacco, betel nuts and other ingredients

are used. Only on specific information received from the respondent police, they made a sudden search at the premises / shop of the petitioner,

where there were 82 gunny bags of these raw materials and other items and since those items were procured and kept there for the purpose of

production and manufacturing of the stuff called, "Mava", the respondent police, immediately, seized it under seizure mahazar, in the presence of

independent witnesses and the petitioner and others were arrested, immediately.

20. The learned Government Advocate would further submit that on arrest and seizure of the properties, they were produced before the

concerned Magistrate court, where the petitioner and others were remanded to judicial custody. Insofar as the seized goods are concerned, though

the same was produced before the Magistrate on the very same date, the learned Magistrate wanted to produce the same during the working

hours. Only on the said instructions, the goods were subsequently been produced and based on which an order was passed by the learned

Magistrate that for want of space, those goods can be kept at the safe custody of the respondent police until further orders.

21. Only in that circumstances, the petition for return of property was filed before the Court below, where, after considering the claim of the

petitioner as well as the objection made by the respondent, the learned Judge rejected the said application and therefore, the learned Government

Advocate would submit that, absolutely, there is no infirmity in the said order.

22. The learned Government Advocate would also submit that these goods, which were seized from the premises of the petitioner, certainly would

come under the purview of prohibited items within the meaning of Section 7 of the Act and if those items are stored for selling, definitely, the

punitive provisions of Section 9(ii) of the Act would be attracted. Moreover, when the police team tried to seize the property, the petitioner and

others had prevented the police and also threatened the police force and that is the reason why the case has been booked against the petitioner not

only under Sections 7 and 9 of the Act and also under Sections 353 and 506(i) of IPC. Since the investigation is yet to be completed, if these

goods are returned to the petitioner, the same would be utilised for manufacturing or production of banned goods like ""Mava"", and that would be

hazardous to the health of the general public and only in the interest of the general public, these goods need not be returned to the petitioner atleast

for the time being and therefore, the learned Government Advocate is opposing this revision petition.

23. I have heard the learned counsel appearing for both sides.

24. As has been rightly pointed out by the learned counsel appearing for the petitioner, Section 7 of the Act prohibits certain items, wherein neither

the goods called ""Betel nut"", nor the word, "Mava" finds place. Therefore, prima facie these two items are not banned within the meaning of

Section 7 of the Act. Moreover, it is an important ingredient that, even the prohibited item under Section 7 of the Act must have been stored and

being sold from the shop of the premises around 100 metres from a school or college or educational institution. Here in the case in hand, nothing

had been stated about the same in the FIR filed by the respondent police. The 100 metres radius from the educational institutions is a necessary

ingredient, without which Section 7 of the Act cannot be invoked, however, the

respondent police failed to mention anything about the same in the FIR itself. This aspect prima facie weakens the case of the respondent police. Be that as it may, it is a matter for trial ofcourse, after filing charge sheet in this regard.

25. As has been pointed out by the learned counsel for the petitioner, in order to ascertain whether the seized goods have been produced before

the Magistrate immediately, as required under law, it was necessitated to call for the records, pursuant to which, the learned Government

Advocate has produced the records before the Court. On a perusal of the same, it discloses that on 19.5.2017 when the respondent attempted to

produce the seized goods to the Magistrate Court, it was specifically endorsed that "produce during working hours". Therefore, the respondent

police ought to have produced the same on the next day during working hours. However, as per the record, it shows that, only on 29.05.2017, the

same was produced, where the learned Magistrate has made an endorsement that, "for want of sufficient space which is not available in the

property room, the seized property was handed over to one SivaKumar Head Constable No.16666 L & O for safe custody.

26. In this regard, the submission of the learned counsel for the petitioner that the seized goods were not immediately produced before the

Magistrate for safe custody and by thus, has not been followed the provision strictly, by the respondent police, would have some force.

27. Also, since it is a definite case of the petitioner that the major seized goods, namely, 82 gunny bags are nothing but betel nuts which are

vulnerable for decay and it is perishable in nature, it is not advisable to keep those goods for a longer period, that too without any proper

protection and treatment. Moreover, since the petitioner is a licensed seller of betel nuts and in this regard, his license etc, and the bills for having

purchased the goods, which were seized, have been since produced before the Court below and the learned Judge has also recorded the said

factors in the said impugned order itself, it cannot be said that those goods do not belong to the petitioner nor those items were stored without the

authority of law atleast prima facie.

28. Considering all these aspects, this Court feels that, since the petitioner being the owner of the seized goods of 82 gunny bags of betel nuts, the

same can be handed over to him ofcourse, on conditions.

29. In the result, the impugned order is set aside.

(i) The court below shall hand over the seized goods, namely, 82 gunny bags of betel nuts seized from the petitioner's premises on 19.5.2017 and

kept in safe custody of respondent police, to the petitioner, on condition that, the petitioner executing a bond for a sum of Rs. 2,00,000/- (Rupees

Two Lakhs only) and also with a condition that some sample from each gunny bag, not more than 50 gms each, shall be taken and kept it for safe

custody by the Court below.

(ii) The other infirmities as pointed out by the learned counsel for the petitioner, need not be gone into at this juncture and therefore, in respect of

those alleged infirmities, the observations made by this Court, if any, shall be construed only for the purpose of disposing this Criminal Revision

Case and those observations, shall not stand in the way of completion of investigation by the respondent police and conducting of trial by the Court

below in accordance with law.

30. With these directions, this criminal revision is allowed.

Consequently, connected miscellaneous petition is closed.