

(1993) 03 MAD CK 0007

In the Madras High Court

Case No : Criminal Original Petition No. 1600 of 1993

Rajendran @ Kulla Rajendran

APPELLANT

Vs

State by Asst. Commissioner of Police, Pulianthope Range
(Law and Order), Madras-12

RESPONDENT

Date of Decision : 12-03-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1993) LW(Cri) 412

Hon'ble Judges : S.M. Ali Mohamed, J

Bench : Single Bench

Advocate : V. Parthiban, for the Appellant; P. Govindarajan, Government Advocate on behalf of the State, for the Respondent

Judgement

S.M. Ali Mohamed, J.—The Petition has been filed u/s 482 of the Code of Criminal Procedure to call for the records pending on the file of

the VI Additional Sessions Judge, Madras in C.C. No. 136 of 1992 and quash the same.

2. It is alleged that on 29-6-1989 at about 19:45 hours, the Inspector of Police, P.4 Basin Bridge Station, while going on rounds with his party,

saw the accused Rajendran on Basin Bridge top with a cement colour suitcase in his hand. On suspicion when the Inspector of Police interrogated

the accused, he failed to give proper answer. When the Inspector of Police opened the suitcase, there were two bundles each containing four

kilograms of ganja. The Inspector of Police seized the ganja under the cover of a Mahazar in the presence of Arumugam P.C. 6428 and

Rangasamy P.C. 7520 duly attested by them as no other independent witness came forward. The Inspector of Police arrested the accused at

19:45 hours and came to station with the seized items. Thereafter, the Inspector of Police at 20:30 hours registered a case in P-4, Basin Bridge

Police Station Crime No. 546 of 1989 u/s 20(b) of the Narcotic Drugs and Psychotropic Substance Act 1985. The criminal case filed against the

Petitioner in Crime No. 545 of 1989 for the alleged offence u/s 20(b) of N.D.P.S Act is now pending on the file of the VI Additional Sessions

Judge, Madras in C.C. No. 136 of 1992 for disposal.

2-a. The Petitioner has filed this petition to quash the proceedings on the ground that on the date of occurrence the Inspector of Police had no

Jurisdiction to investigate the matter under Narcotic Drugs and Psychotropic Substance Act, 1985. A notification under Ss. 42(1) and 67 of the

N.D.P.S. Act is required for investigation. It is submitted that during the material time, viz., on 29-6-1989, the date of the alleged offence, G.O.

Ms. No. 1437, dated 24-9-1987 issued by the Government of Tamil Nadu, was in force and as per the said G.O. the Deputy Superintendent of

Police alone had been authorised to exercise the power u/s 41(2) of the Act, within the area of the respective jurisdiction and Inspector of Police

had no jurisdiction.

3. Notice of motion of this case was ordered to the learned Public Prosecutor. The learned Public Prosecutor was heard and he has brought to the

notice of this Court G.O. Ms. No. 161, dated 12-8-1992. The said G.O. is as follows:

PROHIBITION AND EXCISE (VII) DEPARTMENT.G.O. Ms. No. 161

Dated:12-8-1992.

Read:

I.G.O. Ms. No. 1278, Home, Prohibition and Excise, Dated 9-2-85.

2. From the Inspector General of Police, Madras Letter C. No. 63/NIB/88, dated 15-2-1989 and C. No. 20/TNNIB/91, dated 21-3- 91.

ORDER: -

The following Notification will be published in the Tamil Nadu Government Gazette.

NOTIFICATION: -

Under Sub-S.(1) of Section 42 and Section 67 of the Narcotic Drugs and Psychotropic Substances Act 1985 (Central Act 61 to 1985), the

Government of Tamil Nadu hereby empowers and respectively authorises the officers specified below for the purpose of the said Ss. 42 and 67 of the said Act.

Officers:

1. Police Officer not below the rank of a Head Constable in the State Police Department including Special Unit.
2. Revenue Officer not below the rank the Revenue Inspector in the State Revenue Department.
3. Excise Officer not below the rank of an Excise Inspector in the State Excise Department.
4. Forest Officer not below the rank of a Forester in the State Forest Department.

(By order of the Governor)

K. Malaisamy,

Secretary to Government

4. As per the said Government Order, dated 12-8-1992, an Officer not below the rank of the Head Constable in the State Police Department

including Special Units is authorised to investigate the offences under Ss. 42 and 67 of the N.D.P.S. Act, 1985. However, this Government Order

is dated 12-8-1992 and the same will have only prospective effect and not retrospective effect. The date of offence in the instant case is 29-6-

1989 prior to issue of G.O. Ms. No. 161, dated 12-8-1992. During the material time, as rightly stated by the learned Counsel for the Petitioner,

the Inspector of Police had no jurisdiction to investigate offences under the Narcotic Drugs and Psychotropic Substance Act, 1985. The learned

Public Prosecutor was fair in his submission that during the material time, the Inspector of Police was not authorised to investigate the matter under

the N.D.P.S. Act, 1985.

5. In view of the above, the proceedings against the Petitioner in C.C. No. 136 of 1992 on the file of the VI Additional Sessions Judge, Madras is

quashed.