

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, SIVAGANGAI.

Present: N.Senthil Murali,, B.Sc., M.L.,
CHIEF JUDICIAL MAGISTRATE, SIVAGANGAI.

Wednesday, the 11th day of December, 2025.

Crl.M.P No. 13/2025
(CNR No. TNSV02-000025-2025)

in

S.C. No. 14/2025

...

Shanmugan. (A8)

...Petitioner/Accused No.8

/Vs/

State through the Inspector of Police,
PEW Sivagangai Police Station,
in Crime No. 212/2024.

...Respondent/Complainant

This petition coming on this day for final hearing before me in the presence of **Tr.C.Ilangovan, Advocate for the Petitioner/Accused No.8 and Tr.N.Vivekanandan, Learned Additional Public Prosecutor** for the Complainant, and upon hearing the arguments of both sides and perusing the documents, this court delivered the following:-

ORDER

This petition is filed by the Petitioner/Accused No.8, u/s.250 of Bharatiya Nagarik Suraksha Sanhita, 2023 to discharge him from the above said case.

2. The averments contained in the petition in brief as follows:

(i) The Final report filed by the Respondent/Complainant as against the Petitioner/Accused No.8 for the offences u/s.4(1)(aaa)(transport), 4(1)(A) of Tamil Nadu Prohibition Act, 1937 and sections 468, 471 and 420 of Indian Penal Code, 1860 r/w Rules 5, 6, 7, 8 of Tamil Nadu Rectified Spirit Rules, 2000. The FIR has been registered on the basis of the confession given by the 1st accused Muthukumar S/o.Murugesan, to the respondent/complainant on

29.03.2024, the same does not reveal the name of the petitioner. It is alleged in the final report that on 31.03.2024 the petitioner/accused transported the bottles containing spurious liquor in the Omni Van, and it is alleged that the said occurrence was the continuation of the occurrence alleged to have taken place on 29.03.2024. That was the reason why the petitioner has been arrayed as accused by the Additional Deputy Superintendent of Police, in the final report. The case has been filed against the petitioner/accused due to the political pressure. The alleged Omni Van does not belong to the petitioner. He is not related to any of the accused, neither he conspired with them.

(ii) The Respondent/Complainant mentioned in the charge sheet that samples of the seized liquor were taken on 31.03.2024 by the Inspector of Police and she herself issued a certificate to that effect, which is in violation of the 3rd proviso of section 32 (c) of Tamil Nadu Prohibition Act, 1937 which mandates the samples shall be taken in the presence of a Prohibition Officer or any Police Officer not below the rank of Inspector.

(iii) The operation of presumption contemplated u/s.4(2)(a) of TNP Act, 1937 cannot be made operable since the respondent/complainant laid the charge sheet on the basis of the confession statement of the petitioner/accused which is hit by section 25 of Indian evidence Act, 1872.

Hence, no useful purpose would be served keeping the proceedings pending before the court against the petitioner/accused. Thus, the petitioner/accused is sought to be discharged from the case.

3. The averments contained in the Counter filed by the Prosecution in brief as follows:-

The contention raised by the petitioner/accused cannot be looked into at the stage of framing of charges and conducting mini trial as to the veracity of the allegations levelled by the petitioner is not permissible under law. The statements of witnesses and the documents filed by the prosecution shows that there is a prima facie case against the accused. Hence, this petition is sought to be dismissed.

4. The point for determination:-

Whether this application filed u/s. 250 of Bharatiya Nagarik Suraksha Sanhita, 2023 by the petitioner/accused No.8 to discharge him is liable to be allowed?

5. Point:

(i) Both side counsels arguments and case records, were carefully perused. The contention of the Learned counsel for the petitioner/accused would be on the same line as averred in the petition. So, is the case for the learned Additional Public Prosecutor. The petitioner's counsel would rely upon the following decisions,

(i) Kanchan Kumar Vs. The State of Bihar, **2022 LiveLaw (SC) 763**

(ii) Selvi Vs. State Rep. by Inspector of Police, Rasipuram Police Station, Namakkal District **(2011) 2 MWN (Cri) 623**

(iii) Velu Chettiyar Vs. State Rep. by Inspector of Police, PEW Thruchengode Police Station, Namakkal District in **Crl.O.P.No.18761 of 2021** dated **13.06.2023** decided by Hon'ble Madras High Court.

for the propositions that the violation of the 3rd proviso of section 32 (c) of Tamil Nadu Prohibition Act, 1937 which mandates the samples shall be taken in

the presence of a Prohibition Officer or any Police Officer not below the rank of Inspector is vitiates the trial proceedings.

(ii) Similarly, the learned Additional Public prosecutor would rely upon the following decisions,

(i) Dabendrenath Padhi Vs State of Orisha AIR 2005 SC 359

(ii) Rajbir singh Vs. State of U.P. and another (2006) 2 MLJ (Crl) 4 SC

(iii) N.Suresh Rajan Vs. State of Tamil Nadu (2014) 1 MLJ (Crl) 345 SC

(iv) Arunkumar Vs. Inspector of Police, (2015) 1 MLJ (Crl) 12

for the propositions that no roving enquiry/mini trial is warranted at the stage of framing of charges.

6. Discussion:-

Before delving into the issue it is apposite to look into the principles laid down by the Hon'ble Apex Court in **Sajjan Kumar Vs. Central Bureau of Investigation (CDJ 2010 SC 830)** regarding the discharge of the accused, the relevant portion is extracted as below,

“17. Exercise of jurisdiction under Sections 227 and 228 of Cr.P.C. — On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the

Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

6.1. The thrust of the learned counsel for the petitioner/accused is based mainly on technicalities. Firstly, it is alleged that the name of the petitioner was not implicated in the FIR registered on 29.03.2024, and that on 31.03.2024 when the petitioner/accused was travelling in his car, intercepted and was allegedly transported the spurious liquor bottles and confession was allegedly obtained from him and that is how he was implicated in this case and that such confession is hit by the provisions of section 25 of Indian Evidence Act, 1872. Secondly, it is alleged that on 31.03.2024 the samples of the alleged spurious liquors were taken by the Inspector of Police who registered the FIR such an act is in contravention of the provisions of section 32 (c) of TNP Act, 1937.

6.2. On perusal of the records, it is seen that on 31.03.2024 the Inspector of Police and her team were on the prohibition patrol they intercepted the four wheeler bearing registration No.TN 42 Y 2500 Omni Van, found that it was driven by the petitioner/accused along with him the other accused namely Kathiravan(A7) and Saravanan(A9) were also travelled. It is further seen from the records that in the said vehicle there were 944 spurious liquor bottles containing 169.970 litres of liquors were found and the same were seized along with the vehicle. It is further seen that all the said three accused persons were taken to a place where they hidden 2045 spurious liquor bottles containing 368100 litres of liquors, were seized in the presence of police witnesses. It is also seen that the samples of the said liquors were taken by the Inspector of

Police Tmt.Sangeetha, in two bottle and the same was sealed in the presence of the said police witnesses.

6.3. It is further deduced from the records that the said spurious liquor bottles and the liquors do form part of the same transaction which allegedly occurred on 29.03.2024 and on that basis the petitioner/accused was arraigned in the final report.

6.4. It is the said formality of the Inspector of Police while apprehending the petitioner and other accused on 31.03.2024 taken samples in order to send the same for forensic analysis through court, was assailed by the learned counsel for the petitioner. To lend support to his contention he would rely upon the above mentioned citations. On the other hand the learned Additional Public Prosecutor would defy the contention of the petitioner on the strength of the authorities and the records.

6.5. As highlighted above the materials found in the final report would prima facie establish the culpability of the petitioner/accused in the crime. Simply because the petitioner/accused was apprehended on 31.03.2024 two days after the FIR does not mean that the petitioner/accused has got no nexus with the above crime and that just because the said four-wheeler (Omni Van) does not belong to the petitioner which would not entail him discharge from the charges. The technicalities as focused by the petitioner in the opinion of this court could only be testified during trial. It is significant to note that the Inspector of Police Tmt.Sangeetha, who took samples of the alleged spurious liquors attached with Prohibition Enforcement Wing would always be the Prohibition Officer vested with such power as contemplated u/s.32 of TNP Act, 1937. In the said view this court is disinclined to allow this petition.

In the result, this petition is dismissed.

Dictated to the Steno-typist transcribed and typed in computer by her, corrected and pronounced by me in open Court, this the 11th day of December, 2025.

**CHIEF JUDICIAL MAGISTRATE,
SIVAGANGAI.**