



2024:KER:76353

CRL.MC NO. 2114 OF 2024

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 15TH DAY OF OCTOBER 2024 / 23RD ASWINA, 1946

CRL.MC NO. 2114 OF 2024

CRIME NO.208/2024 OF MALAPPURAM POLICE STATION, MALAPPURAM

AGAINST THE ORDER/JUDGMENT DATED IN ST NO.435 OF 2024 OF

JUDICIAL MAGISTRATE OF FIRST CLASS, MALAPPURAM

.....

PETITIONER/ACCUSED :

HAMJITH, AGED 26 YEARS
S/O MAJEED, R/O POOLUR HOUSE,
MANGATTPULAM, KODUR,
MALAPPURAM., PIN - 676 504.

BY ADVS.
NAVANEETH.N.NATH
GAUTHAM KRISHNA E.J.
K.S.STEJO
ABHIRAMI S.

RESPONDENT/COMPLAINANT :

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

SRI. NOUSHAD K. A. (PP)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
15.10.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



BECHU KURIAN THOMAS, J

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Crl.M.C.No.2114 of 2024

.....

Dated this the 15th day of October, 2024

ORDER

Petitioner is the accused in S.T.No.435/2024 on the files of the Judicial First Class Magistrate Court, Malappuram, arising out of Crime No.208/2024 of Malappuram Police Station. Prosecution alleged that on 25.01.2024, petitioner was found smoking a beedi filled with Ganja and thereby committed the offences punishable under Section 27(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short, the Act']. Petitioner challenges the proceedings initiated against him.

2. I have heard Sri.Navaneeth N.Nath, the learned counsel for the petitioner as well as Sri.Noushad K.A., the learned Public Prosecutor.
3. Concededly the beedi allegedly containing ganja has not been subjected to any forensic analysis.
4. This Court has in *Ibnu Shijil v. State of Kerala* 2024 (5) KHC 476 and in *Anurag Shaji v. State of Kerala* 2023 KHC Online 9406; observed that olfactory abilities of a person can only trigger suspicion and identifying the nature of the contraband on the basis of smell cannot be a piece of



acceptable evidence to justify a ³ criminal prosecution. It was also observed that, in the absence of any forensic examination or a report from the expert regarding the nature of the contraband, the prosecution cannot be permitted to continue.

5. An identical situation arises in this case as the beedi that was allegedly being smoked by the petitioner was not subjected to any forensic examination. In the absence of any forensic examination of the beedi, the prosecution against the petitioner for the offence under Section 27(b) of the Act, is without any legal basis.
6. Hence, the proceedings against the petitioner in S.T.No.435/2024 on the files of the Judicial First Class Magistrate Court, Malappuram, is hereby quashed.

The Crl.M.C. is allowed.

sd/-
BECHU KURIAN THOMAS
JUDGE



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APPENDIX OF CRL.MC 2114/2024

PETITIONER ANNEXURES

- ANNEXURE A** **THE TRUE COPY OF THE FIR NO.208/2024 OF MALAPPURAM POLICE STATION, DATED 25.01.2024.**
- ANNEXURE B** **THE TRUE COPY OF THE CHARGESHEET BEARING ST 435/2024 IN THE FILES OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, MALAPPURAM.**
- ANNEXURE C** **THE TRUE COPY OF THE SEIZURE MAHAZAR IN CRIME NO.208/2024.**
- ANNEXURE D** **THE LIST OF PROPERTY SENT TO THE MAGISTRATE.**