

IS PRIMA FACIE CASE or ACCUSATION MADE OUT?

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Remand not mechanical - exercise of care and caution during remand - absence of prima facie case or accusation - ground for refusal of remand - unwarranted deprivation of personal liberty - application of judicial mind.

Remand is not mechanical. In Elumalai -Vs- State of Tamilnadu, 1983 Mad LW (Cri) 121, it was pointed out that remand should not be made mechanically and as a matter of routine and such routine should be deprecated. Magistrates are very often reminded of their onerous duty to apply their mind and to be precautionous in depriving a person of his personal liberty. Is prima facie case made out in all cases of remand?.

Day to day, several remands are made under Section 4(1-A) of Tamil Nadu Prohibition Act without an iota of prima facie case and the accused is deprived of his personal liberty for about 20 - 30 days. Do prosecution really investigate cases under Section 4(1-A) of Tamil Nadu Prohibition Act and file final report/charge sheets?. Once the accused is enlarged on bail, the CD file becomes a file of unwanted papers. Prosecution does not choose to even send the samples for forensic examination in 99% of the cases registered and eventually, alteration reports are filed, after being insisted upon by the Magistrates, leading to the closure of these cases as "ACTION DROPPED", citing breakage of the samples in the police station.

“Prima Facie” in cases under Section 4(1-A) of Tamil Nadu Prohibition Act can only be made out if there is complaint of hospitalisation or death, after having consumed the illicit arrack and in the absence of the same, there can be no remand under Section 4(1-A) of Tamil Nadu Prohibition Act. In the alternative, the prosecuting agency, could register a case for the minor offence made out and then alter the penal provision into that of a major offence, only if the report of the Forensic Department reveals presence of poisonous substance.

Cases under Section 4(1-A) of Tamil Nadu Prohibition Act are suo-motto registered by the police, without any complaint and without any prima facie medical proof. The samples are alone produced before the court and it is only within the knowledge of the police, whether the sample was taken from the arrack seized. In my experience as a Magistrate, for the past 5 years, I have only come across cases, where arrack contains poison, in respect of cases against accused, who are booked under GOONDAS Act.

The Allahabad High court in Gulab Chand Upadhaya -Vs- State of U.P reported in 2002 CriLJ 2907, observed that arrest is no doubt a part of investigation but the Magistrate can place restriction upon the power of arrest of police. If Magistrates' have to find out prima facie cases, under Section 4(1-A) of Tamil Nadu Prohibition Act, then I am confident that police could never get a single order of remand and the accused could only be remanded in respect of a minor offence, under the Tamil Nadu Prohibition Act. The accused remanded for offence under section 4(1-A) of Tamil Nadu Prohibition Act languishes in prison for about a month and on his enlargement on bail, there is no further proceeding on the FIR. Who is to be held responsible for the unwarranted deprivation of personal liberty and the financial burden to which the family of the accused, is subjected? Statistics on pendency of FIR's under Section 4(1-A) of Tamil Nadu Prohibition Act, would account for the huge

pendency of FIR's before Magisterial courts and the pendency cannot be reduced, but for the closure report by the prosecuting agency themselves. In very few cases, offence under Section 4(1-A) of Tamil Nadu Prohibition Act is altered and charge sheets are filed before Magistrate court, for admission.

In Arnesh Kumar -Vs- State of Bihar and Another, reported in AIR 2014 SC 2756, the Hon'ble Apex Court, endeavoured to ensure that police officers do not arrest the accused, unnecessarily and Magistrates do not authorise detention casually and mechanically. Rate of acquittal is higher than the rate of conviction. Why? It is the duty of the investigation officer, to investigate the complaints, examine true witnesses, record their statements, as spoken by them, record confession statement, only if it is voluntary and if it would lead to a recovery, as contemplated under section 27 of the Indian Evidence Act. In cases of theft and robbery, the accused is nabbed after several months of the alleged occurrence and the name of the accused does not figure, either in the complaint or in the FIR, but the so called accused is arrested only on the basis of his confession statement alleged to have been given voluntarily, recorded in the computer in the presence of witnesses, who later depose in court that they have not even seen the accused and that they have signed the seizure mahazer also, in the police station.

Many accused are booked under Goondas Act and all the cases pertain to the same point of time, in different police stations, probably within the jurisdiction of the same Magistrate court. One confession is obtained and the accused is incriminated in different crime numbers of different stations, in respect of FIR with accused "UNKNOWN". In many cases, except for the confession of the accused, there is total absence of incriminating substances against the accused and such vexatious confession, which cannot stand the test of evidence, forms the very basis for the remand of the accused.

If the investigation officers are held responsible for every case of acquittal and subjected to

departmental action, for the period of vexatious incarceration/duress, for the deprivation of personal liberty and reputation of the accused, undergone during the initial period of investigation, then I am confident that there would be no false/put-up cases, foisted cases and unwarranted deprivation of personal liberty.

Police often loose sight off, the proviso to Section 41 (1) of Cr.P.C, inserted by amendment Act 41 of 2010, which gives power to the police officer to abstain from arresting a person, in cases where arrest is not necessary. Recording of reasons is self sufficient, for not making the arrest. But police themselves are mechanical in making arrest, whether they want it or not. Magistrates should be allowed to exercise their judicial mind, freely during remand and be cautious in depriving a person of his life and personal liberty, except where it is warranted and is within the ambit of Section 41(1) (b) (ii) of CRPC.