

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 642/2010**

Decided on 23.11.2010

IN THE MATTER OF :
N TUNKHANKHUP

..... Petitioner

Through: Mr. R.A. Worso Zinik, Advocate

versus

NCB

..... Respondent

Through: Mr. Subhash Bansal, Advocate

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Section 397 read with Sections 401 and 482 Cr.P.C. praying *inter alia* for setting aside the order dated 27.08.2010 passed by the learned ASJ (Special Judge NDPS) framing charges against the petitioner for the offence punishable under Section 21(c) of the NDPS Act.

2. Counsel for the petitioner has based his submission on two incidents which occurred on the relevant dates, i.e., 21/22.04.2010 to state that the charges against the petitioner have been wrongly framed and that he has been unnecessarily involved in the offence.

3. As per the case set up by the NCB, on 21.04.2010 at 15:30

hours, while in the office of Fedex Express Courier situated at Munirka, the petitioner was found in possession of a polythene bag, from which 420 grams of heroin with 2.76% purity was recovered. As per the NCB, the said parcels were sealed at the spot and samples were pasted with paper seal having the date and signatures of the IO, two witnesses and the petitioner. Thereafter, the petitioner signed each page of the panchnama, and the proceedings of the panchnama concluded at 17:30 hours. During the course of search proceedings, the petitioner tried to flee and hurt himself in the process by falling on the divider of the road, thus sustaining minor injury on his left eye as a result. After the recovery, the officers of the respondent duly accompanied by the petitioner proceeded to his residence also situated at Munirka and conducted a search therein. However, nothing incriminating was found there. The search concluded at 18:30 hours and thereafter, summons u/s 57 of the NDPS Act were served on the petitioner. As per the Department, the petitioner appeared on 22.04.2010 in the office of the NCB and during his examination, admitted his guilt by making a voluntary statement that he had received two parcels of heroin from a Nigerian and the same were supposed to be sent on to the Joy Willams, at Amsterdam. On 22.04.2010 itself, the petitioner was arrested at 1100 hours and he was got medically examined at Safdarjung Hospital thereafter.

4. As per the counsel for the petitioner, the story set up by the Department in the complaint is false and the petitioner has been unnecessarily dragged in the present case. He submits that the fact of the matter is that there was no heroin in the container which the petitioner had taken to the office of Fedex Express Courier on 21.04.2010 for dispatching

to Amsterdam. In support of his submission that the case of the NCB is concocted, learned counsel for the petitioner sought to draw the attention of this Court to the medical report of the petitioner. As per the aforesaid document, at page 61 of the paper book, the date on which the MLC of the petitioner was conducted is mentioned as 21.04.2010, but at page 62, it is mentioned as 22.04.2010. Counsel for the petitioner states that the time written in long hand, on the top left of the MLC is "6:00 PM". He submits that if completing of panchnama proceedings itself took place upto 1730 hours i.e. upto 5:30 PM, as contended by NCB, then how could the petitioner have been produced before the doctor at Safdarjung Hospital at 6:00 PM. Furthermore, he submits that as the petitioner was arrested on 22.04.2010, how could he have been produced at the Safdarjung Hospital a day in advance, i.e., on 21.04.2010. He submits that as there are patent contradictions in the story set up by the NCB, the impugned order dated 27.08.2010, is liable to be set aside.

5. Learned counsel for the respondent vehemently opposes the aforesaid arguments addressed by the counsel for the petitioner and states that a perusal of the MLC conducted on the petitioner on 21.04.2010 shows that he was taken for medical examination to Safdarjung Hospital on that day itself on account of an eye injury suffered by him when he had fallen on the divider of the road. He states that even in the complaint filed by the Department, it has been mentioned in para 4 that during the course of the search proceedings, the petitioner tried to flee and in the process he hurt himself and consequently, suffered an injury on his left eyebrow.

6. A perusal of the MLC of the petitioner conducted on 21.04.2010

indicates that the petitioner suffered an injury on his left eyebrow. In so far as the MLC carried out on the next date, i.e., 22.04.2010 is concerned, it also reiterates the fact that the petitioner was brought in for medical examination and that he had no fresh complaints and that he had an injury over the left eyebrow for which he had already received medical attention.

7. On the basis of the aforesaid MLC alone, this Court cannot arrive at a conclusion that the petitioner has been wrongly involved in the present case and the order dated 27.08.2010 framing charges against him ought to be quashed. It is the contention of the counsel for the petitioner that on 21.04.2010, the petitioner could not have been present at two places at the same time i.e. at the office of Fedex Express Courier at 5:30 PM, at his residence at 6:30 PM and for his medical examination at the hospital at 6:00 PM. In support of his submission, he points out the handwritten endorsement of the time on the top left hand of the MLC of the petitioner conducted at the Safdarjung Hospital on 21.04.2010.

8. In response, counsel for the respondent has drawn the attention of this Court to the order dated 27.08.2010 passed by the Special Judge dismissing the application of the petitioner for grant of bail wherein the Court has recorded having perused the MLC and the same revealing the fact that the petitioner was taken to the hospital at "6:50 PM" and not at "6:00 PM". The aforesaid observation is a finding of fact returned by the Special Judge after perusing the original records and at this stage, this Court declines to interfere in the said finding by arriving at a conclusion different from that arrived at by the Court below.

9. Further, the submission of the learned counsel for the petitioner

that the petitioner had not made any of the statements as attributed to him on 22.04.2010 and that he has been framed by the Department, has to be seen in the context of the facts and circumstances of the case. A perusal of the aforesaid statement when read collectively reveals that a lot of personal information was furnished by the petitioner, which was only in his personal knowledge and could not have come within the knowledge of the Department without it having been revealed by the petitioner himself. In his statement, the petitioner had admitted that the packets found in his possession, contained drugs, and that he had agreed to deliver the said consignment containing drugs as handed over by his friend Kevin, a Nigerian, in return for payment of money. The petitioner stated that he had left his job and claimed that he had not operated his bank account ever since. That apart, he had also given the mobile number of one Kevin, his own bank account number with the HDFC bank, as well as the address of the bank. All this information could not have come to the knowledge of the NCB on 22.4.2010, without the same having been furnished by the petitioner himself.

10. It may further be noted that the power of revision vested in the High Court under Sections 397 and 401 is a limited power to be exercised under exceptional circumstances. In the case of T.N. Dhakkal v. James Basnett reported as **(2001) 10 SCC 419**, the Supreme Court has opined that the High Court has revisional jurisdiction under Section 401 of the Code and can exercise its discretionary jurisdiction to correct miscarriage of justice, but whether or not, there is *justification* for the exercise of that discretionary jurisdiction, would depend upon the facts and circumstances of

each case.

11. In Munna Devi v. State of Rajasthan reported as **(2001) 9 SCC 631**, it was held that the revisional power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers, the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged. In the case of Farida Dar v. State reported as **2001 (59) DRJ 94**, it was held that meticulous examination of the material is not to be undertaken at the stage of revision.

12. In the case of Om Wati v. State reported as **(2001) 4 SCC 333** (paras 8 and 12), the Supreme Court had enjoined the High Courts to show self-restraint in cases of revision against framing of charges unless there is a glaring injustice staring the court in the face. It further reminded the High Courts of their statutory obligation to not to interfere at the initial stage of framing of charges merely on a hypothesis, imagination and far-fetched reasons which in law amounts to interdicting the trial against the accused persons. In the case of Rajesh Mehta v. The State reported as **(2001) 60 DRJ 678**, it was held that the Revisional Court must avoid substituting its own view at this stage, if the view taken by the trial Court is neither perverse nor patently unwarranted. In other words, at the stage of revision,

High Court has to only see whether a *prima facie* case exists for the charge to be framed, and not appreciate and weigh all the materials on record for coming to the conclusion that the charge could not have been framed [Ref: State of M.P. v. S.B. Johari **(2000) 2 SCC 57**]. The controlling power of the High Court under Section 401 of the Code being discretionary in nature, is required to be exercised only in the interest of justice, having regard to all the facts and circumstances of each case and not in a mechanical manner.

13. In view of the documents on record and looking at the evidence mentioned in the complaint, it cannot be held that the impugned order framing charges against the petitioner, is so perverse or unwarranted that it deserves interference. Nor can it be concluded that the charges have been framed on mere hypothesis or conjecture. This Court is therefore not inclined to quash the charges framed against the petitioner at this stage. The matter is required to be taken to trial for the petitioner to prove that he is not guilty of the offence mentioned in the charge-sheet.

14. The petition is dismissed.

NOVEMBER 23, 2010
mr

(HIMA KOHLI)
JUDGE