

GAHC010126532022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./598/2022

MD. AITUL ALI
SO MD. SAHANUR ALI
R/O UDIANA
(BALAGAON),P.S. RANGIA,
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SAMARJYOTI DEKA
S/O SRI NARENDRA DEKA
R/O RANGIA
P.S. RANGIA

DIST. KAMRUP (R)
ASSA

Advocate for the Petitioner : MR. N N B CHOUDHURY

Advocate for the Respondent : PP, ASSAM

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing & judgment : 12.09.2023

JUDGMENT & ORDER (ORAL)

Heard Mr. M. Dewan, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State respondent No. 1.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973, *read with* Article 227 of the Constitution of India, praying for quashing of the order dated 19.05.2022, passed by the learned Additional District & Sessions Judge cum Special Judge, Rangia, Kamrup (Assam), in connection with Special NDPS Case No. 12/2022, corresponding to G.R. Case No. 266/2022, arising out of Rangia P.S. Case No. 151/2022, under Sections 21(b)/27/29 with added Sections 25/27(A) of the NDPS Act.

3. It is submitted by the learned counsel for the petitioner that on 21.02.2022, one Samarjyoti Deka lodged an F.I.R. before the Officer-In-Charge, Rangia Police Station, alleging *inter alia* that on 21.02.2022, at about 12.30 p.m., an information was received from a reliable source that a person will go from Nalbari direction to Rangia via NH31 with suspected Brown Sugar in a black colour Mahindra Scorpio car, bearing Registration No. AS-01-ET-7856. Accordingly, the informant was authorized to search and seize the Narcotic Substances by the Superintendent of Police, Kamrup, and the G.D. Entry was

also made on 21.02.2022, and the informant, along with the staff, proceeded to Balagaon NH31 near Army Camp and conducted Naka checking. As per information, the said suspected black colour Mahindra Scorpio car, bearing Registration No. AS-01-ET-7856, was intercepted and the driver- Nurul Hoque was searched by the informant and in presence of witnesses, he recovered suspected brown sugar with pouch which was concealed in the floor mat of middle and opposite side of the driver side. The net weight of the suspected brown sugar was found to be 0.9 grams with plastic pouch. Thereafter the petitioner was also arrested and was produced before the learned SDJM, Rangia, and thereafter he was sent to police remand and then to judicial custody. Initially the case was registered under Sections 21(b)/27/29 of the NDPS Act, but after 1 (one) month from the registration of the case, i.e. on 21.03.2022, the I.O. has made a prayer before the learned Special Judge, Rangia, for adding Section 25/27(A) of the NDPS Act, which was accordingly allowed vide order dated 23.03.2022. But it is the contention of the petitioner that he was not given any chance for hearing before adding Section 25/27(A) of the NDPS Act. He therefore filed a petition before the Court of learned Additional District & Sessions Judge cum Special Judge, Rangia, Kamrup(R), Assam, on 19.05.2022, under Section 227 of the Code of Criminal Procedure, praying for his discharge at the stage of charge hearing. It is also stated that at the time of registration, it was stated that 0.9 grams of suspected heroine was recovered and subsequently, it is stated that 0.9 grams of brown sugar was recovered. Thus, the I.O. himself made a contradictory statement during the investigation of this case. But the said petition was dismissed by the learned Court below.

4. It is further submitted that the statement of the prosecution witnesses

recorded under Section 161 Cr.P.C., does not disclose a case under Section 27(A) of the NDPS Act. But, without giving any opportunity of hearing, the learned Special Judge allowed the prayer made by the I.O. for adding Sections 25/27(A) of the NDPS Act and also framed the charges under the said Section of law rejecting the prayer for discharging of the present petitioner.

5. It is further submitted that Section 27(A) of the NDPS Act relates to punishment for financing illicit traffic and harbouring offenders.

6. For ready reference, Section 27(A) of the NDPS Act is extracted hereinbelow:-

"27A. Punishment for financing illicit traffic and harbouring offenders.—Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of clause (viii-a) of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

7. Thus, it is submitted that the essential ingredients of those offences that prosecution must prove that the accused has financed directly or indirectly any of the activities falling in sub-clauses (i) to (v) of clause (viii-a) of Section 2 of the Act or has harboured any person engaged for the aforesaid activities. But, here in the instant case, there is no evidence of any financing or harbouring

against the present petitioner to add Section 27(A) of the NDPS Act or to frame charge under Section 27(A) of the NDPS Act along with other relevant Sections and hence, the present petition has been filed to set aside and quash the impugned order dated 23.03.2022, passed by the learned District and Sessions Judge cum Special Judge, Rangia, Kamrup(R), Assam, in Rangia P.S. Case No. 151/2022, by which the learned Court below allowed the prayer of the I.O. to add Sections 25/27(A) of the NDPS Act, and also set aside and quash the impugned order dated 19.05.2022, passed by the learned Court below framing charges against the present petitioner under Section 21(b)/27/29/25/27(A) of the NDPS Act.

8. The learned counsel for the petitioner further relied on decisions of Hon'ble Apex Court passed in **Ragini Dwivedi @ Gini @ Rags Vs. State of Karnataka**, reported in **2021 (1) Crimes 198**; and **Mohammed Fasrin Vs. State represented by the Intelligence Officer**, reported in **2019 (8) SCC 811**. The learned counsel further relied on another decision of Hon'ble Allahabad High Court passed in **Jagdamba Prasad Tewari & Anr. Vs. State of U.P. & Ors.**, reported in **1990 SCC OnLine All 723**.

9. Relying on aforesaid decisions, the learned counsel for the petitioner accordingly submitted that the framing of charge under Sections 25/27(A) of the NDPS Act will be an abuse of the process of Court as there is no ingredients at all in the statement of the witnesses recorded under Section 161 Cr.P.C. and thus, the chance of conviction is very bleak and remote and hence, it is a fit case where the jurisdiction under Section 482 Cr.P.C. can be invoked to quash

and set aside the impugned order dated 23.03.2022 as well as the impugned order dated 19.05.2022, passed by the learned Additional District and Sessions Judge cum Special Judge, Rangia, Kamrup(R), Assam, in Rangia P.S. Case No. 151/2022.

10. In this context, the learned Additional Public Prosecutor, Ms. Bora, has submitted that though initially the case was registered under Sections 21(b)/27/29 of the NDPS Act, but during investigation, sufficient incriminating materials have been collected by the I.O. and for which, the prayer has been made to add Sections 25/27(A) of the NDPS Act, which was rightly allowed by the learned Court below. Further she submitted that at the time of framing of charges, the petition was filed before the learned Special Judge, which was accordingly rejected and thereafter the petitioner did not approach any forum and the case was proceeded accordingly. Further, 5-6 numbers of witnesses are already been examined by the learned Court below and hence, at this stage, quashing of the entire proceeding or quashing of Sections 25/27(A) of the NDPS Act does not arise as the case is at the verge of completion of trial. It is further submitted that the conviction will not be based on the statement made under Section 161 Cr.P.C., which may be used for the contradiction and corroboration, but the conviction or acquittal will be based on the evidences recorded during trial by the concerned Court. Accordingly, the learned Additional Public Prosecutor vehemently objected in allowing the petition and submitted that this is not a fit case where the power under Section 482 Cr.P.C. can be invoked for quashing the order dated 23.03.2022 as well as the order dated 19.05.2022, passed by the learned Additional District and Sessions Judge cum Special Judge, Rangia, Kamrup(R), Assam, in Rangia P.S. Case No. 151/2022.

11. After hearing the submissions made by the learned counsels for both sides, I have perused the case record and it is seen that presently the case is at the stage of hearing and till receipt of the scanned copy of the case record, 4-5 numbers of witnesses are already been examined by the learned Court below as the case was proceeded. Further, there is a probability of examining more witnesses and thus, it is seen that the case is at the verge of completion of trial. Further it is seen that the statement of the witnesses under Section 161 Cr.P.C. were recorded on 21.02.2023 and after recording of the statement, the I.O. further collected some evidence and based on which, he made a prayer before the learned SDJM on 21.03.2022 for adding Sections 25/27(A) of the NDPS Act, which was accordingly allowed by the learned Court below vide order dated 23.03.2022. So the materials on the basis of which the prayer for adding of Section 25/27(A) of the NDPS Act was made, may not be available in the statement recorded by the I.O. under Section 161 Cr.P.C. However, considering the prayer of the I.O. and finding materials *prima facie*, the learned Court below allowed the prayer for adding Section 25/27(A) of the NDPS Act and subsequently also, it is seen that prayer for discharge made by the present petitioner was also rejected by the learned Court below and the charge was accordingly framed under Section 25/27(A) of the NDPS Act including the other relevant Sections. Thereafter, the learned Special Judge recorded the evidence of the witnesses and the accused/petitioner duly cross-examined the witnesses and thus, the petitioner got the opportunity to disprove or rebut the evidence of P.Ws. More so, the learned Court below, added the Sections considering the prayer of the I.O. and perusing the Case Diary and subsequently also, the learned Special Judge framed the charge against the present petitioner under

the newly added Sections, i.e. Sections 25/27(A) of the NDPS Act, and thereafter the case proceeded accordingly and the statement of the witnesses are also been recorded by the learned Court below.

12. The Hon'ble Supreme Court in the Case of **Bhajan Lal (supra)** had formulated some guidelines, which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a magistrate within the purview of Section 155(2) of the

Code.

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

13. Here in the instant case, it is seen that *prima facie* there is a case established against the present petitioner and considering the materials available in the Case Diary, the prayer for adding Section 25/27(A) of the NDPS Act was allowed and subsequently the charges were also framed under Section 25/27(A) of the NDPS Act against the present petitioner along with other Section. More so, it is seen that the prayer for discharge was also rejected by the learned Court below as the *prima facie* case was found established against the present petitioner.

14. The Hon'ble Supreme Court in the Case of **Kapil Gupta Vs. State of NCT of Delhi**, reported in **(2022) 0 Supreme (SC) 1108**, has held that "... *it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.*"

15. In view of the entire discussions made above and also in view of the law laid down by the Hon'ble Apex Court in the above referred case, I do not find it a fit case where the power under Section 482 Cr.P.C. can be invoked to quash and set aside the order dated 23.03.2022 as well as the order dated 19.05.2022, passed by the learned Additional District and Sessions Judge cum Special Judge, Rangia, Kamrup(R), Assam, in Rangia P.S. Case No. 151/2022. Consequently, I do not find any merit in this petition and accordingly the same

stands dismissed.

16. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant