



Serial No. 12
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Rev.P. No. 9 of 2023

Date of Decision: 10.06.2024

Md. Haidor Ali,
S/o (L) Hazi Maina Miyan,
R/o Bathakuchi,
PO: Panjabari, P.S. Salgaon,
Dist: Kamrup, Assam

.....Petitioner

—Versus—

State of Meghalaya

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P.K. Borah, Adv.

For the Respondent(s) : Ms. I. Lyngwa, GA with
Ms. A. Thungwa, GA

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No



ORDER (ORAL)

1. Heard Mr. P.K. Borah, learned counsel for the petitioner who has submitted that this application is filed under 397 Cr.P.C with a prayer to set aside and quash the impugned order dated 19.04.2023 passed in Crl. NDPS Case No. 15/2020 under Section 227 Cr.P.C which case is pending before the court of the learned Special Judge (NDPS), Khliehriat, East Jaintia Hills District.

2. Mr. Borah has submitted that the case of the petitioner is that he is the owner of several oil tankers which had been let out to various parties and which he would receive the rental amount as agreed to between the parties. One such vehicles is the oil tanker registered as NL 02 6412, the same being rented out to Shri. Kamal Choudhury of Nayapara of Kamrup District, Assam.

3. A lease agreement to this effect was also executed between the parties which became operation with effect from 01 day of April 2004. The rental amount being ₹ 10,000/- (rupees ten thousand) only per month with advance of ₹ 1,00,000/- (rupees one lakh) only having been received by the petitioner.

4. It is also the case of the petitioner that the said vehicle in question was apprehended by the police suspected of ferrying contraband substance (ganja) upon which the police had apprehended the said vehicle with the driver of the vehicle being arrested.

5. In course of investigation, the co-accused had informed the I/O that the vehicle belonged to the petitioner. Accordingly, the petitioner



was made a co-accused in the case being registered as GR Case No. 329 of 2005 under Section 20(b)/25/29/60 NDPS Act.

6. Again, the learned counsel for the petitioner has submitted that the petitioner is not aware of such investigation being carried out or that his vehicle was also involved in the case since he is residing in Hojai District of Assam. In the meantime, it is learnt that the I/O had declared him an absconder. It is reiterated that no information or summons was ever received by the petitioner. The learned counsel for the petitioner would submit that in due course the petitioner has received summon from the court and on his appearance had obtained court bail.

7. In course of proceeding before the trial court, the petitioner has filed an application under Section 227 Cr.P.C with a prayer for discharge on the ground that the said vehicle in question was not in his possession but it was leased out to the co-accused. However, this piece of information/evidence was not taken into account or cognizance by the court for the reason stated in the impugned order and eventually the trial court had rejected the prayer of the petitioner and had directed that charges to be framed against him. It is also mentioned that till date no charges have been from against the petitioner though charges have been framed against the other two accused.

8. Mr. Borah has laid stress on the fact that the lease agreement is very material and essential as far as his innocence is concerned but for the I/O who has not been made aware of such piece of evidence during his course of investigation. Accordingly, at this stage in the light of the provision of sub-Section 8 of Section 173 Cr.P.C this Court may be



pleased to direct the I/O to reinvestigate the case as far as the petitioner is concerned and to file his findings before the trial court.

9. The learned counsel has also referred to the impugned order and the portion wherein the learned trial court had referred to the case of Satish Mehra v. Delhi Administration & Anr. Reported in (1996) 9 SCC 766 wherein the Hon'ble Supreme Court has held that if the accused produce any convincing material at the state of framing of charge which might drastically affect the sustainability of the case, the court should consider such material at that stage that is, at the stage of consideration of charge.

10. In view of the above, the learned counsel has submitted that this petition may be allowed and the impugned order may be set aside and quash to the extent prayed for.

11. Ms. I. Lyngwa, learned GA appearing for the State respondent has not made any strong objection to the submission made but has however, pointed out that the copy of the lease agreement produced by the petitioner in this petition is not a legible one and prima facie it appears to be forged document. However, the learned GA has left it to the discretion of the Court to direct the I/O to take necessary steps in this regard.

12. This Court on consideration of the submission made by the parties, without going into the details of the merits of the case, would agree that the veracity of the lease agreement and its importance and impact as far as the case of the petitioner is concerned has to be examined and taken



into account by the I/O who though not of his fault, has failed to take such piece of evidence into consideration before filing the final report and charge sheet under Section 173 Cr.P.C.

13. The authority cited that is, the case of Satish Mehra (supra) would also be relevant as far as this case is concerned and it is the opinion of this Court that the material which ought to be taken into account by the I/O has not been done so, perhaps if the same is investigated into it may affect the case of the petitioner to come to a finding if it can be connected to the alleged offence or not.

14. A perusal of the provision of sub-Section 8 of Section 173 Cr.P.C would also show that if the Officer-in-Charge of the police station obtains further evidence oral or documentary he shall forward the same to the Magistrate meaning that further investigation has to be carried out and a report of such investigation is to be produce before the Magistrate concerned. Though in this case, unbeknown to the I/O, the so called evidence has been produced by the petitioner. This Court would consider it fit and proper that this piece of investigation that is, the presence of the lease agreement has to be made known to the I/O for further investigation to be carried out.

15. Accordingly, the I/O is directed to take into consideration the presence of such lease agreement and to embark upon further investigation into the matter as far as the case of the petitioner is concerned and a supplementary charge sheet may be filed before the trial court thereafter.



16. To the extent indicated above, the impugned order is hereby set aside and quashed. The trial court is also directed to take necessary steps as far as the direction to the I/O given herein above is concerned.

17. Petition disposed of. No. costs.

Judge

Meghalaya
10.06.2024
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