GAHC010168972024

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

Case No. : Crl.Pet./1027/2024

RAMVIJOY KUMAR
S/O LOKNATH ROY
R/O VILL- RUSHTAMPUR
P.S. RUSHTAMPUR
DIST. VAISHALI, BIHAR.

VERSUS

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

2:DIPJYOTI MALAKAR
OFFICER IN CHARGE

NILAMBAZAR POLICE STATION

P.O. NILAMBAZAR
DIST. KARIMGAN

Advocate for the Petitioner : MR. M A CHOUDHURY, MR A AHMED,U U KHAN,MR. A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 25.10.2024

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor representing the State of

Assam.

2. By filing this application u/s 482 Cr.P.C., 1973, the accused/petitioner has prayed for quashing of the order dated 23/04/2024, passed by the learned Special Judge, Karimganj in Special (NDPS) Case No. 84 of 2023, wherein charge was framed u/s 20 (b)(ii)(c) of NDPS Act, 1985 against the present petitioner.

3. The brief facts of the case is that an FIR has been lodged before the Officer-in-Charge, Nilambazar P.S. stating *inter alia* that an information has been received by the informant that on 19/07/2023 six persons along with suspected ganja would come by train from Tripura and they would get down at Nilambazar Railway station and proceed by road towards Nilambazar along with 5-6 bags. Accordingly, six persons including the present petitioner was apprehended. On being searched, 33.560 kgs of ganja were recovered from the possession of the apprehended six persons. Thereafter, a case was registered vide Nilambazar P.S. case no. 133/2023.

4. Learned counsel for the petitioner has submitted that though different quantities of ganja were recovered from six different accused persons but the seizing officer had prepared a single seizure list. It is also submitted that nothing was recovered from the possession of the petitioner. In the seizure list, it is also not mentioned that ganja was recovered from the possession of the petitioner. But the learned trial court while framing of charge did not consider the matter that no any contraband item was recovered from the possession of the petitioner and charge was framed against the petitioner along with all the accused persons u/s 20 (b)(ii)(c) of the NDPS Act, which is palpably wrong.

5. It is also contended that though charge sheet was submitted u/s 20(b)(ii)(c)/29 of NDPS Act but the learned trial court having found no prima facie materials had dropped section 29 of the NDPS Act. However, the learned trial court has lost sight of the fact that as per seizure list, nothing was recovered from the possession of the petitioner. Therefore, the accused/petitioner should have been discharged in connection with the instant case. In view of the same, the impugned order dated 23/04/2023 is liable to be set aside.

6. By referring the Judgment of Hon'ble Supreme Court in Amarsingh Ramjibhai Barot vs. State of Gujarat, reported in (2005) 7 SCC 550, learned counsel for the petitioner has pointed out that in a similar factual situation, it was held by the Hon'ble Supreme Court which is reproduced as follows –

> "….It is true that the High court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased Danabhai Virabhai Rabari. In our view, however there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abatement and/or criminal conspiracy within the meaning of section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that section 29 was attracted."

7. Learned counsel for the petitioner has also relied on the order of this court vide criminal petition No. 765/2023 (Mithilesh Kumar vs. State of Assam and another) and Criminal Bail application No. 3636 of 2022 of Bombay High Court (Sagar Nana Borkar vs. State of Maharashtra).

8. In response, learned Additional Public Prosecutor has submitted that all the accused persons were found together at Nilambazar Railway Station and they were carrying their respective bags along with contraband items and total 33. 560 kg of ganja were recovered from their conscious possession. Hence, the learned trial court has rightly framed charge u/s 20(b)(ii)(c) of NDPS Act against all the accused persons including the present petitioner. It is, thus, stated that the present petition be dismissed.

9. Since the petitioner has assailed the impugned order framing charges against him, it will be appropriate to succinctly discuss the relevant provisions and judicial precedents on law on charge.

10. The statutory law with respect to framing of charge and discharge is provided under Sections 227 and 228 of Cr.P.C., and the same has been reproduced as under:

> "227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.
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> 228. Framing of charge. (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which- (a) is not exclusively triable by the Court of Session, he may, frame a

charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report; (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused. (2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried..."

11. In relation to exercise of power under Section 397 or Section 482 of Cr.P.C. by the Courts while deciding a petition seeking discharge or quashing of charge framed by the Trial Court, the Hon'ble Apex Court in ***Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr. 2022 SCC OnLine SC 1057*** has reiterated the well-settled law, with the following observations:

"*21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the Cr.P.C. or a revision application under Section 397 of the Cr.P.C. to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the*

stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 Cr.P.C. or a revision Petition under Section 397 read with Section 401 of the Cr.P.C. seeking for quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed.

Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

22. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr.P.C. at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the

proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.

23. Section 397 Cr.P.C. vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding."

12. The law has been settled that parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under Section 528 of the BNSS (corresponding to Section 482 Cr.P.C.) are limited and the same has to be exercised in rarest of rare cases and not in casual manner. The aforesaid proposition of law is well settled by Apex Court in ***"State of Haryana vs Bhajan Lal"*** reported in ***AIR 1992 SC 604***, wherein a caution has been given to the constitutional courts exercising the powers given under Section 482 of Criminal Procedure Code.

The relevant para is reproduced as follows:

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims or caprice."

13. In ***Prashant Bharti vs State (NCT of Delhi)***, reported in (***2013) 9 SCC 293***, wherein following has been held:

"*22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure, has been dealt with by this Court in (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] wherein this Court inter alia held as under:*

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges.

These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 Cr.P.C., at the stages referred to hereinabove, would have far-reaching consequences, inasmuch as it would negate the

prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection.

To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing raised by an accused by invoking the power

vested in the High Court under Section 482 Cr.P.C.:

30.1. Step one:

one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two:

two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three:

three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be

wasted in holding such a trial (as well as proceedings arising there from) especially when it is clear that the same would not conclude in the conviction of the accused."

14. However, the instant petition does not fall within the aforesaid parameters laid down by the Apex Court, as there was sufficient material on record to frame charges against the petitioner as has been discussed by the trial court in the order impugned, wherein the trial court was to consider the broad probabilities of the case and the total effect of the evidence produced by the prosecution at the stage of framing of charges. Even otherwise, this Court while exercising the powers under Section 528 of the BNSS also cannot go into the question or issue whether recovery, evidence and cash has been recovered from the petitioner or not. All these issues/questions are to be dealt with by the trial Court, where the trial is pending for adjudication. On this count also, the instant petition deserves to be dismissed.

15. The law is well settled that at the stage of framing of charge, the trial court is not to examine and determine in detail the material placed on record by the prosecution, nor it is for the court to consider the sufficiency of the material to establish the offence alleged against the petitioner. At the stage of framing of charge, the trial court is to examine the material only with a view to satisfy itself that a prima facie case for commission of offence alleged has been made against the accused persons. The trial court should not make a roving enquiry into pros and cons of the matter and weigh the evidence as if the trial court is conducting a trial. The trial judge at that stage may sift the evidence for limited purpose but he is not required to marshal the evidence with a view

to separate the grain from the chaff. Thus, if the allegation leveled in the police report under Section 173(2) Cr.P.C., the statement of witnesses of the prosecution, the disclosure statement of accused person and seizure cum recovery memo are to be taken into consideration and prima facie there was sufficient material to frame charge against the petitioner for commission of such offences.

16. Reverting to the case in hand, it is true that as per FIR, 33.560 kgs of ganja were recovered from the possession of five co-accused persons and section 29 was not added with when the charge was framed. Admittedly, no witness is examined in this case. Hence, at this stage, without examining any witness it cannot be said that the accused/ petitioner was no way connected with the other accused persons apprehended along with him.

17. The Hon'ble Supreme Court has considered the cited judgment of Amarsingh (Supra) when the appeal has been preferred i.e., when evidence of the witnesses were before the court.

18. Keeping in view the aforesaid enunciation of law and after perusing the order impugned, this Court is of the considered opinion that the instant petition is not maintainable and deserves to be dismissed. However, the trial court is at liberty to frame/alter charge after examination of some witnesses on requirement either by adding section 29 of NDPS Act or to frame charge on lesser section in accordance with law.

19. The criminal Petitioner is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant