

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE Nos.39, 40 AND 41 of 2015

COMMON ORDER:

These Criminal Revision Cases are filed under Sections 397 and 401 of the Code of Criminal Procedure (Cr.P.C.) aggrieved by the common order dated 10.12.2014 passed in CrI.MP.Nos. 274 of 2014, 263 of 2014 and 262 of 2014 in S.C.No.12 of 2013 on the file of the I Additional Sessions Judge, Khammam, wherein an application for discharge filed by the accused was rejected.

The case of the prosecution is as under:

A charge sheet came to be filed against the petitioners for the offences punishable under Section 20 (b) read with 8 (c) of the N.D.P.S.Act and Section 34 (e) of the A.P.Prohibition and Excise Act, 1968.

On reliable information with regard to transportation of ganja, the Sub-Inspector of Police, Kothagudem I Town Police Station, along with his staff intercepted a lorry bearing No.AP 9X 9499 at Post Office Centre, Kothagudem wherein they found some bags containing Ganja, Black Jaggery and Alum. It is further alleged that the material transported was prohibited by the Government and on the basis of confession cum seizure, the accused and the lorry were taken to the police station. The requisition was submitted to Mandal Executive Officer, who secured the presence of two mediators, interrogated the accused and recorded their statements. Their confessions revealed that A1 was doing business in black jaggery and alum, making liquor and selling the same. Not being satisfied with the earnings, he started procuring Ganja. On 04.01.2012, after purchasing 9 tons of Black Jaggery worth Rs.1,30,000/-, 40 Kgs. of Alum worth Rs.6,000/- and 40 Kgs. of Ganja worth Rs.2,00,000/- at Vijayawada cold storage situated at Gollapudi area from unknown persons without any bills, the same was being transported to Kothagudem to the house of A1 in a lorry driven by A2, along with A3, who was cleaner of the lorry. From the

allegations leveled, it is clear that all the three accused were present in the lorry, at the time of commission of offence and about 40 Kgs. of Ganja was recovered from the lorry.

Learned counsel for the petitioners mainly contended that the news item, which was published pursuant to the said seizure, is totally contrary to the allegations made in the charge sheet. He placed on record the news item in support of his argument.

Learned Public Prosecutor opposed the revision contending that the three accused were present at the time of alleged search and seizure of about 40 Kgs. of Ganja was seized from the lorry. Since a *prima facie* case has been made out against the accused, he submits that the present revision is liable to be dismissed.

Truthfulness of the media report and the contents of the paper publication cannot be looked into at this stage. They cannot be taken as substantive piece of evidence and the accused cannot be discharged on the basis of the said news item. If really the petitioners are relying upon the said document, the same needs to be proved during the course of trial. At this stage, the newspaper clipping and the statement in the news item cannot be considered to prove the variation in the contraband that has been seized.

The next ground urged by the learned counsel for the petitioners is that the investigating agency has not followed the mandatory requirements of Section 50 of the N.D.P.S. Act.

In ***Madan Lal Vs. State of Himachal Pradesh***^[1] the Apex Court held as under:

A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. (See *Kalema Tumba v. State of Maharashtra and Anr.*^[2], *The State of*

Punjab v. Baldev Singh^[3], *Gurbax Singh v. State of Haryana*^[4]). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh's case (supra).

From the judgment referred to above, it is clear that Section 50 would not apply when seizure of the contraband was from a vehicle. The provision can be given effect to only when the contraband is seized from the possession of the accused. As stated earlier, in the instant case the contraband was seized from the lorry. Hence, I am not inclined to consider the request of the petitioners.

Accordingly, all the three Criminal Revision Cases are dismissed.

As a sequel, Miscellaneous Petitions, if any, pending in these revisions shall stand closed.

JUSTICE C. PRAVEEN KUMAR

30.01.2015
vhb

^[1] 2003 CrI.L.J. 3868

^[2] JT 1999 (8) SC 293

^[3] JT 1999 (4) SC 595

^[4] 2001(3) SCC 28