HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.633 of 2013

ORDER:-

The petitioners are A.6, A.7 and A.8 in S.C.No.23 of 2011 on the file of the Metropolitan Sessions Judge, Cyberabad at Ranga Reddy District (Special Court under the NDPS Act). The petitioners and the non-petitioners A.1 to A.5 were charged with offences punishable under Sections 25, 25A, 28, 29, 31 and 38 of the NDPS Act, 1985 (for short 'the Act').

2. The petitioners filed Crl.M.P.No.417 of 2012 under Section 227 Cr.P.C., to discharge them from the case. By order, dated 10-12-2012, the learned Special Judge dismissed the petition holding that there is *prima facie* material which connects the accused with the offences of illegal transportation of Ephedrine weighing about 403 KGs., and hence, they are not entitled to be discharged.

3. Aggrieved by the said orders, the petitioners preferred the present revision contending that the Court below has relied more on the contents of the complaint and charge sheet for which there is no supporting documentary evidence. It was incumbent on the part of the Court below to consider the documents filed in support of the charge sheet meticulously which could have shown that the offences alleged against the petitioners/A.6 to A.8 are not attracted. It is further submitted that the material collected by the investigating agency i.e., the statements of the non-petitioners/accused and the petitioners and the other witnesses do not, in any way, connect the illegal manufacture and sale of Ephedrine and that the Court below has misguided itself in dismissing the petition and hence the revision.

4. Learned Special Public Prosecutor on the other hand submits that at the stage of framing of the charge, a *de nova* or roving enquiry cannot be held by the trial Court. Learned Special Public Prosecutor has reiterated the decisions cited before the trial Court reported in **STATE OF BIHAR v. RAMESH SINGH (AIR 1977 S.C., 2018)** and **STATE OF**

MAHARASTRA v. SOM NATH THAPA (AIR 1996 S.C., 1744). Learned Special Public Prosecutor submits that in both the authorities, it is clearly laid down that at the stage of framing of the charge, strong suspicion against the accused, if it remains in the region of suspicion, cannot take place of proof of his guilt at the conclusion of trial. But at the initial stage, if there is strong suspicion which leads the Court to think that there is a ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. It is also laid down in the authorities cited that the Court should see while considering the question of framing the charge as to whether the material brought on record would reasonably connect the accused with the crime. Learned Special Public Prosecutor submits that the Court below has properly appreciated the material on record and has rightly dismissed the petition and proceeded to frame the charges and it is submitted that the trial in the Sessions Case is at the concluding stage, inasmuch as, all the material witnesses, numbering 10, have been examined and the Investigating Officers remained to be examined.

5. The first petitioner/A.6 is a Company and the petitioners/A.7 and A.8 are its present and former Chief Executive Officers. The petitioners along with non-petitioners are alleged to have conspired in the commission of the offences of illicit manufacture, possession, procuring, abetting, financing and trading of Ephedrine, which is a controlled substance notified under the provisions of the Act in large quantity weighing about 403 KGs. The non-petitioners/A.1 to A.5 were arrested and the contraband was seized. The petitioners had knowledge about the misuse of DL base and has not exercised due diligence to prevent the commission of the offence by A.1 to A.5.

6. The petitioner/A.6 is having two manufacturing units one at Sholapur in Maharashtra State and the other at Siddipet, Medak District. From 2001 onwards, the Sholapur Unit of the accused is in the process of manufacturing of Ephedrine and its salts. In the process of manufacturing Ephedrine, they obtain a residue i.e., DL Ephedrine Base (DL Base) and

it contains Ephedrine to the extent of around 40% and since the petitioner/A.6 had no facility or technology to extract Ephedrine from DL Base, they entrusted the job work to M/s.Khem Krazy Labs.Pvt.Ltd. (A.2) and entered into a Memorandum of Agreement. However, the petitioner Company failed to exercise due diligence to ensure that the DL base is not mis-utilized. It is further alleged that the Company-A.6 had knowledge that yield of Ephedrine from DL base is dependent on factors such as content of Ephedrine in the DL base, presence of impurities, moisture or solvent. It is stated that in the process of extortion, as per the norms fixed by the Company, about 10% can be taken as loss in the process of procuring the final product. The petitioner/accused entrusted the job work to the non-petitioners and were receiving back the end product. They received less than the permissible shortage due to the extraction process and thereby facilitated the other petitioners to convert the left over with them for the illegal purposes.

7. The charge sheet that is laid on the file of the Special Court running into about 80 pages gives the details of the activities of the petitioners and the non-petitioners. The substance of the allegation is that the petitioner/Company had no facility of extracting Ephedrine from DL base and the job was entrusted to the non-petitioner/A.2 Company. The process has been done under the supervision of a technical expert representing the petitioner/accused. A.6 Company had knowledge that the yield of Ephedrine from DL base is dependent on factors such as Ephedrine in the DL base, presence of impurities, moisture or solvent content and it was agreed that if the yield falls between 35% to 43% on wet basis, it would be acceptable to them taking into consideration the loss on drying without ascertaining the correct yield. It is also alleged that A.6 Company has entrusted the job work to the non-petitioner/A.2 without following the procedure contemplated under the Act of informing the competent authorities. The mandatory quarterly reports were not submitted. It is alleged that this act of the petitioner/Company shows that there was criminal conspiracy in between the petitioners and the non-petitioners. The specific allegation is that A.6 being an organization

having complete knowledge of the fact of there being scope of mis-use of DL base has not exercised due diligence to prevent the commission of the offence i.e., illegal manufacture of Ephedrine and its subsequent illegal sale.

8. Upon carefully perusing the voluminous record placed before the Court, at the stage of framing of the charge, what could be *prima facie* established is that there was negligence on the part of A.6 Company, it is represented by A.7 and A.8, in entrusting the job work to the non-petitioners and not maintaining the proper records and submitting the returns to the competent authority and thereby allowed the non-petitioners to mis-use the extract of Ephedrine from DL base, which ultimately was dealt with illegally by the non-petitioners. There is *prima facie* material against the petitioners/accused for framing the charge and the aspect as to whether they had deliberately conspired with the non-petitioners or were grossly negligent in handling the DL base and Ephedrine is a matter which has to be adjudicated during the course of trial. At the stage of framing of the charge, as rightly observed by the trial Court, it cannot be conclusively decided as to whether the acts of the petitioners/accused in handling the controlled substance amounts to criminal conspiracy with the non-petitioners or whether they are not at all responsible for the alleged illegal acts of the non-petitioners. The learned trial Court has therefore rightly dismissed the petition holding that there is *prima facie* material to frame the charges against the petitioners/accused.

9. As stated above, after the charges were framed by the trial Court, the trial proceeded and as at present, it is stated that 10 witnesses have already been examined and only the examination of the Investigating Officers remain. Therefore, while dismissing the revision case, a direction can be issued to the learned Special Judge to expedite the trial of the case and see it to that the same concludes within three months from the date of receipt of a copy of this order.

10. In the result, the Criminal Revision Case is dismissed with a direction to the learned Metropolitan Sessions Judge, Cyberabad, at L.B.Nagar, Ranga Reddy District, to dispose of S.C.No.23 of 2011, as

expeditiously as possible, preferably within a period of three months, from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

September, 2015

smr