

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.178 of 2016**

Prashant Vishwakarma S/o Ashok Vishwakarma, Aged about 25 years, R/o Darripara, Ambikapur, Distt. Surguja (CG).

---- Applicant**Versus**

State of Chhattisgarh through the Police Station Gandhinagar, Ambikapur, Distt. Surguja (CG).

---- Respondent

For Applicant
For Respondent/State

Shri Abhishek Pandey, Advocate.
Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****12/05/2016**

1. By way of this revision, the applicant seeks quashment of charge framed against the applicant under Section 21-B of the NDPS Act by the Special Judge (NDPS Act), Ambikapur, in Special case No.16 of 2015.
2. As per prosecution story, on 02.10.2015 at about 6:30 am the police of Police Station Gandhinagar, Surguja, received information that the present applicant along with co-accused Suraj Yadav were in possession of Brown sugar and were in search of customers. Subsequently, on the information so received, a search was conducted and 12 grams of brown sugar was found in possession of co-accused Suraj Yadav. The applicant and other co-accused were taken into custody and proceedings were initiated under Section 21-B of the NDPS Act.

3. Learned counsel appearing for the applicant submits that in the entire charge-sheet, there is no iota of evidence so as to implicate the applicant for the offence under Section 21-B of the NDPS Act. The recovery of brown sugar was from the possession of co-accused Suraj Yadav and not from the applicant. He further submits that mandatory provisions under Section 50 of the NDPS Act has not been complied with by the prosecution. Therefore, charges framed against the applicant be set aside.
4. On the other hand, opposing the revision counsel for the State submits that taking into consideration the seriousness of the offence and the fact that applicant along with other co-accused were found in possession of 12 grams of brown sugar, prima facie the prosecution has been able to prove the case against the applicant. The prosecution needs to lead evidence to disprove the contentions put-forth by the applicant by leading proper and cogent evidence for proving the case beyond reasonable doubts. It is further submitted that the facts stated by the applicant cannot be accepted at this juncture until and unless the evidence of the prosecution is brought on record.
5. Taking into consideration the facts and circumstances of the case, particularly the fact that the present applicant was found to be in company of one co-accused Suraj Yadav during search and they were found in possession of 12 grams of brown sugar, this court is of the opinion that prima facie sufficient materials has been placed before the court below for framing charge under Section 21-B of the NDPS Act.
6. So far as the exercise of revisional power under Section 482 of Cr.P.C. is concerned the law in the regard is well settled in catena of decisions by the Hon'ble Supreme Court. So far as challenge to the framing of charge is concerned, the Court below at the time of framing of charge only find prima

facie material giving rise to suspicion that the accused has committed the offence. The Court below would not go into the entire investigation threadbare so as to reach the conclusion whether the charge is made out or not .

7. The Hon'ble Supreme Court in the matter of **Amit Kapoor Vs. Ramesh Chander and Anr** reported in (2012) 9 SCC 460 has very clearly laid down the principle that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. At the initial stage of framing of a charge, the court is concerned not with the proof but with strong suspicion that the accused has committed the offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not be applied at that stage.
8. Relying upon the judgment in case of **Amit Kapoor (Supra)** when prima facia a case is made out by the Prosecution, this Court should not interfere with the same at the stage of framing of charge Consequently, the Criminal Revision is dismissed being devoid of merit.

Sd/-
(P.Sam Koshy)
JUDGE