

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2016

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THE HONOURABLE MR. JUSTICE C.T. SELVAM

CRIMINAL REVISION CASE NO.1278 OF 2015

and

M.P.Nos.1 and 2 of 2015

Sanjiv Bhatnagar

... Petitioner

Vs.

State represented by its
Intelligence Officer
Narcotics Control Bureau
Chennai Zonal Unit
Chennai - 77
(R.R.No.7 of 2015)

...Respondent

Revision against the order dated 04.12.2015 made in
Crl.M.P.No.2090 of 2015 in C.C.No.46 of 2015 on the file of the II
Additional Special Judge Court under NDPS Act, Chennai.

For Petitioner : Mr.B.Kumar, Senior Counsel
and
Mr.Abudukumar Rajaratnam
for Mr.S.Ashok kumar

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor

ORDER

Respondent has preferred a complaint informing commission of offence under Section 8(c) r/w. Sections 21(b), 28 and 29 of NDPS Act, 1985, as amended and punishable under Sections 21(b), 28 & 29 of the NDPS Act, 1985. The case is pending trial in C.C.No.46 of 2015 on the file of learned II Additional Special Judge, NDPS Act Cases, Chennai. Petitioner, sole accused in the case, moved a petition seeking discharge in Crl.M.P.No.2090 of 2015. The same was dismissed under order dated 04.12.2015 and such order gave rise to this petition.

2. Heard Mr.B.Kumar, learned senior counsel and Mr.Abudukumar Rajaratnam, learned counsel appearing on behalf of Mr.S.Ashok kumar, learned counsel on record for petitioner as well as Mr.N.P.Kumar, learned Special Public Prosecutor.

3. While dismissing the petition for discharge, the Court below repelled the contention on behalf of petitioner that the statements and signatures were obtained by use of force informing that such was a matter for trial. It also rejected the contention that the weight of

cocaine seized was only 3.18 grams, but the chemical analysis report reveals the same to be 6.8 grams and therefore, the sample had been tampered with. The Court below accepted the submission of the prosecution that the weight informed included also the weight of the plastic cover. The contention is that the chemical analysis report informed that the quantitative analysis of the sample could not be carried out for want of facilities, the prosecution had not taken steps to conduct purity test, and therefore, the offence under section 21(a) of the Act was not attracted. The contraband seized falls under the category of small quantity, possession whereof would not attract offence u/s.21(a) of the Act.

4. Learned counsel for petitioner and learned Special Public Prosecutor have taken opposing stands regards the quantum of drugs seized. It is the contention of the prosecution that the quantum seized is 3.88 grams, while learned counsel for petitioner would submit that the weight of 3.88 grams was not only that of the drug cocaine but included also the weight of other substances mixed with it and therefore, the actual quantum of cocaine involved is below 250 grams, which fact would have been established had the quantum analysis been effected. It is

admitted in the lab report that the same could not be done due to lack of facilities.

5. Learned Special Public Prosecutor, on the other hand, has referred to notification in S.O.2941(E) Ministry of Finance (Department of Revenue) New Delhi, dated 18th November 2009, wherein it had been stipulated thus:-

"(4) The quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution or any one of more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug content."

6. On the facts of the present case, this Court would not go into the rival submissions vis-a-vis the quantum of cocaine seized. Section 27 and Section 64(A) of NDPS Act read as follows:-

"27. Punishment for consumption of any narcotic drug or psychotropic substance:-

Whoever, consumes any narcotic drug or psychotropic substance shall be punishable,-

(a) Where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both; and

(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both."

.....

"64(A). Immunity from prosecution to addicts volunteering for treatment.-

Any addict, who is charged with an offence punishable under Section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognised by the

Government or a local authority and undergoes such treatment shall not be liable to prosecution under Section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction."

7. In the instant case, the total quantum seized from the possession of the petitioner is 3.88 grams. In the arrest memo, the prosecution has informed as follows:-

"Whereas, I have reason to believe that you Sanjiv Bhatnagar (DOB-17/05/1965) Male, Indian, S/o. Late.Hari Mohan Bhatnagar, presently residing at No.4 A, Asvini Abhinata, No.3, Kaveri Road, Besant Nagar, Kalakshetra Colony, Chennai - 600 090, have committed offences under Sections 8(c) read with 21 & 27 punishable under Sections 21(b) & 27 of the NDPS Act, 1985, inasmuch as you have procured, possessed & purchased for consumption of 3.88 grams of white colour powder believed to be Cocaine, a Narcotic Drug covered under NDPS Act, 1985, which came to be seized at S.M.P.K.Transport, No.191, Walltax Road, Chennai 600 003 on 09.06.2015."

8. At paragraph-3, in the application for remand of the petitioner, it has been informed thus:-

"03. Sanjiv Bhatnagar, in his individual voluntary statement dated 09.06.2015 u/s.67 of the NDPS Act 1985, has inter-alia, admitted his individual guilt in the purchase for consumption & possession, of 3.88 grams of Cocaine, a Narcotic Drug, under NDPS Act, 1985, which came to be seized from his possession at S.M.P.K.Transport, No.191, Walltax Road, Chennai 600 003 on 09.06.2015."

9. In the confession statement of the petitioner, it has been informed thus:-

"On asking, I am stating that before six months I attended a party in which I got the telephone contact of Mr.Andrew @ Steve of Bangalore, Mobile No.8904045418 who supplies Cocaine through courier. I bought these drugs for my personal consumption and I am purchasing it from him for last 6 months. I started consuming the drug for recreational purpose only. I purchased at the rate of Rs.5000 per gram. I made Steve to deliver the parcel containing Cocaine through SMPK Transport & Courier which was seized on 09.06.2015 by NCB Chennai Zonal Unit. I usually

contact him through my mobile No.9840700281. I am handing over the mobile phone of Apple make with battery and Sim to the Intelligence Officer M.Saravanan."

10. As informed in the judgment of the Hon'ble Supreme Court in ***Rabindra Kumar Dey v. State of Orissa (AIR 1977 SUPREME COURT 170)***, in a criminal trial, it is not at all obligatory on the accused to produce to produce evidence in support of his defence and for the purpose of proving his version he can rely on the admissions made by the prosecution witnesses or on the documents filed by the prosecution.

11. Given the attendant facts and circumstances, the prosecution in the instant case may at best be able to make out an offence under Section 27 of NDPS Act. The question that arises for consideration would be whether the accused should be required to undergo trial towards his conviction for offence under Section 27 of NDPS Act and would he only thereafter be entitled to seek the benefit of Section 64(A) of NDPS Act. Simply put, Section 64(A) of NDPS Act is one intended to rid an user of drugs from the evil thereof and towards his

rehabilitation, the end object being to facilitate a life free of drugs. This Court is of the view that when the material gathered by the prosecution itself informs the petitioner to be an user of drugs and not in too large a quantity the provision for rehabilitation should be given effect to at the earliest. It is to be noted that in offence under Section 27 of NDPS Act, no distinction is made between small and commercial quantity. This Court may hasten to add that a decision in each case is to be arrived at on the particular facts thereof. Petitioner presently has filed an application dated 21.12.2015 before this Court submitting thus:-

"5. I respectfully submit that without prejudice to my statement, I am willing to undergo Medical Treatment for de-addiction from a hospital recognized by the Government. I further submit that T.T.Ranganathan Clinical Research Foundation (TTK Hospital) in Chennai is a recognized hospital by the Government and is a reputed hospital treating and rehabilitating persons addicted to alcohol and other drugs over the last two decades. I humbly submit that the treatment and rehabilitation services include medical management (detoxification) and psychological therapy (1 month in-house programme) for the patient along with a mandatory 15 days programme for the family. This primary treatment is

followed by after care, follow-up and vocational rehabilitation services.

6.

7. *I respectfully without prejudice submit that I was working as CEO of Jouve India Pvt Ltd., an E-book publishing company. After the incident, I lost my job and now I want to rehabilitate myself in society. Unless the present petition is allowed, I may be put to great hardship and irreparable loss. On other no prejudice will be caused to the respondent. The balance of convenience is in my favour."*

12. Exercising powers under Section 482 Cr.P.C, this Court presently would pass the following order:

(i) Charge in case pending in C.C.No.46 of 2015 on the file of learned II Additional Special Judge under NDPS Act, Chennai, shall be altered to one for offence under Section 27 of the NDPS Act. Further proceedings in the case shall be stayed pending further orders of this Court.

(ii) Petitioner shall be required to undergo treatment towards de-addiction at T.T.Ranganathan Clinical Research Foundation (TTK Hospital), Chennai, which is

informed, to be recognized by Government as a hospital for treating and rehabilitating persons addicted to alcohol and other drugs.

(iii) Upon completion of treatment and related programmes, T.T.Ranganathan Clinical Research Foundation (TTK Hospital), Chennai, is required to file a report regarding the success or otherwise of the treatment afforded to the petitioner and the state of health (mental and physical) as on the date of such report. Such report may be filed before this Court not later than on 10.06.2016.

Post the matter on 15.06.2016.

27.01.2016

Index : yes
Internet: yes
mra

Note : Issue order copy on 14.03.2016

To

- 1.The Special Judge,
II Additional Special Court under NDPS Act,
Chennai.
- 2.The Intelligence Officer
Narcotics Control Bureau

Chennai Zonal Unit
Chennai - 77.

C.T. SELVAM, J.

mra/kpr

3.The Public Prosecutor
High Court, Madras.

Criminal Revision Case No.1278 of 2015

27.01.2016