



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01-09-2016

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Crl.O.P.(MD)No.17298 of 2014 & MP(MD)No.2 of 2014

P.K.Muthukumar

... Petitioner

Versus

The Deputy Superintendent of Police,
Crime Branch, CID,
Tirunelveli,
Cr.No.40 of 2006.

... Respondent

This petition is filed under Section 482 of Criminal Procedure Code 1973 to quash the Final Report for the offences under Sections 22(c), 22(A), 28, 29, 30, r/w. 8 (c) of NDPS Act r/w. 116, 193, 195, 196, 120(b), 417, r/w. 109, 466, 468, 469 and 471 of Indian Penal Code and Rule 63 of NDPS Act filed by the complainant before the Honourable II Additional Sessions Judge for NDPS Act Cases, Madurai.

For Petitioner : Mr.R.Singaravelan
for Mr.S.Sumesh
For Respondent : Mr.P.Kandasamy
Government Advocate (Crl.Side)

Reserved on :

Delivered on:

ORDER

The conspiracy alleged to have been made to foist a false case against one innocent namely, M.A.Easwaramurthy, made the petitioner along with other accused to lant in the case relating to drug.

2. The petitioner is accused No.2, who challenges the final report filed against him and others under Sections 22(c) 27(A), 28, 29, 30 r/w with 8(c) of NDPS Act r/w Sections 116, 193, 195, 196, 120(b), 417 r/w 109, 466, 468, 469 and 471 of Indian Penal Code and Rule 63 of NDPS Act.

3. The case of the prosecution is that on 30.06.2006 NIB CID, Thoothukudi arrested one A.Eswaramoorthy, who was found to be in possession of 400 grams of Amphetamine, a Narcotic Substance and a case was registered in Crime No.40/2006 for the offences punishable under Section 8(c) read with Section 22(c) 27 (A), 28, 29, 30 r/w with 8(c) of NDPS Act.



4. The wife of the said A.Eswaramurthi gave a complaint to the Director General of Police stating that her husband is an innocent and a false case was foisted against him. An enquiry was conducted by Mrs.N.Kamini, the then DSP NIB CID, Chennai, who reported that a false case was foisted against Mr.A.Eswaramurthi. The ADGP by order dated 08.08.2006 transferred the case to CBCID, Thoothukudi. The CBCID conducted an investigation and dropped the case filed against A.Eswaramurthi. 1) Jhon Paul @ J.J.Mannan (A1); 2) P.K.Muthukumar (A2); 3) Nallakani (A3); 4) Babu @ Balavadivel A4; 5) Rajamanickam @ J.T.Rajkumar, Sub Inspector of Police (A5) 6) S.Gandhi, Inspector of Police (A6); 7) Stephen Louis Selvaraj (A7) were roped to the said case.

5. Nallakani (A3) gave a confession including judicial confession under Section 164 Cr.P.C. implicating the other accused, who have conspired to foist the false case against the said A.Eswaramurthy. According to the prosecution, A.Eswaramurthy was working as an employee under John Paul. There was misunderstanding between them. Due to that, John Paul with the help of other accused hatched a conspiracy. Pursuant to that, the substance called "ALPRAZOLAM" was sent to Eswaramurthy through courier so that he could be trapped as if he was in possession of Psychotropic Substance. Consequent to the said trap, A.Eswaramurthi was arrested. After completion of investigation, it was found to be the false case against A.Eswaramurthi and the impugned charge sheet was filed against the conspirators. Challenging the same A2-Muthukumar, who is a practising advocate, has come before this Court.

6. Mr.R.Singaaravelan, learned Counsel appearing for the petitioner would submit that "ALPRAZOLAM" which is alleged to have been possessed by the accused is not a Psychotropic Substance and therefore, NDPS Act is not applicable to the facts of the case. Further he would submit that "ALPRAZOLAM" has been declared as prescriptive drug, which may attract the provisions of Drugs and Cosmetic Act and not NDPS Act and therefore, NDPS Act cannot be invoked against the petitioner. The next point which was canvassed by the learned counsel is that by virtue of amendment dated 9.6.1988 "ALPRAZOLAM" was deleted from the Schedule (1) of the Narcotic Drugs and Psychotropic Substances Rules 1985 and "ALPRAZOLAM" is not included in the Schedule-I appended to the NDPS Act 1985 and Section 8 (c) and 37 of the NDPS Act, would not be applicable to this case.

7. The learned Counsel appearing for the petitioner relied upon an order passed by this Court in bail petition filed by the petitioner and others in CrI.O.P.Nos.6749, 6854 and 6769 of 2007 dated 1.8.2007, wherein this Court, considering the deletion of ALPRAZOLAM from schedule-1 of the NDPS Rule 1985, observed that the provision of NDPS Act cannot be invoked.



8. Learned counsel relied upon judgements of the Hon'ble Supreme Court in State of Uttaranchal v. Rajesh Kumar Gupta reported in 2007 (1) SCC 355; in D.Ramakrishnan vs. Intelligence Officer, Narcotic Control Bureau reported in AIR 2009 (SC) 2404; Sanjay Kumar Kedia alias Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and another reported in AIR 2010 SC (Supp) 744 and also the judgements in Rajinder Gupta vs. The State reported in 2006 Crl.Law Journal 674 and the order in Rachan Singh vs. Directorate of Revenue Intelligence in bail Application No.187/2009 dated 16.2.2009 passed by the Delhi High Court.

9. On the other hand, the learned Public Prosecutor would oppose the argument advanced on behalf of the petitioner stating that due to the conspiracy, an innocent was attempted to be made as an accused and therefore, the accused have to face the trial.

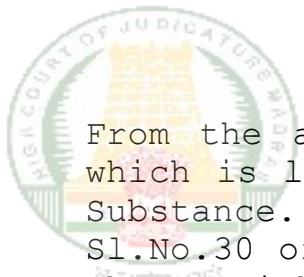
10. This Court paid anxious consideration to the arguments advanced by both the parties. It is very shocking to note that Eswaramurthy of Tuticorin, was sought to be made as a drug offender due to enmity of John Paul @ J.J. Mannan of Emanuel Construction Company and with the help of other accused including two officials of N.I.B.C.I.D of Thoothukudi. On an enquiry by the higher official, the conspiracy was found and the conspirators were arrayed as accused by dropping the Eswaramurthy from the case.

11. The police officials had become paid agents for the sake of money and an innocent was sought to be made as an offender in the drug case. The officials are entrusted with statutory functions who are supposed to act as per law and not at the instance of the persons, who pay the money so as to trap innocent people. The offences alleged against the petitioner and the other accused are very grave in nature.

12. With regard to the contention of the petitioner that "ALPRAZOLAM" has been deleted by virtue of the amendment dated 26.2.2003 from the schedule appended to Narcotic Drugs and Psychotropic Substances Rules as Amended in 2003 and consequently N.D.P.S Act cannot be invoked against the petitioner is concerned, one has to consider both the Act as well as Rule together.

Section 2 (xxiii) of the N.D.P.S Act defines "Psychotropic Substance":

"psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the schedule."
(emphasis supplied)



From the above definition, it is very clear that any substance, which is listed in the schedule to the main Act is a Psychotropic Substance. Psychotropic Substance "ALPRAZOLAM" is included as Sl.No.30 of the schedule annexed to the NDPS Act, which deals with the punishment for contravention in relation to Psychotropic Substances. Section 22 is usefully extracted as follows:

" 22. Punishment for contravention in relation to psychotropic substances. - Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable, -

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees;

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

Section 2 (viia) of the NDPS Act, 1985 reads as follows:

"Commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette."

The schedule to the Parent Act lists "ALPRAZOLAM" in Serial No.30 of the Narcotic Substances. When the Parent Act retains the above drug in the schedule, the deletion of "ALPRAZOLAM" from the NDPS Rule would not have any effect. Therefore, certainly, the provision of NDPS Act, can be invoked against the petitioner. The Rules framed by the Central Government are subordinate legislation and it is trite law that Rules cannot over rule the statute. As long as Alprazolam is listed in the schedule annexed to the NDPS Act, certainly provisions of NDPS Act can be invoked.



license, granted by the Central Government. When the Central Government is empowered by the Act to permit manufacture, import and export of certain Psychotropic Substances like "ALPRAZOLAM", it would not enable anybody to possess and traffic "ALPRAZOLAM", which is prohibited under Section 22 of the Parent Act. Therefore, the earlier order passed by the this Court in CrI.O.P.Nos.6749, 6854 and 6769 of 2007 dated 1.8.2007, is not helpful. Hence, the contention of the petitioner that provisions of NDPS Act could not be invoked, in view of deletion of "ALPRAZOLAM" from the schedule appended to the NDPS Rules, is not sustainable.

14. The charge sheet has been filed after investigation based on the materials and evidence collected during investigation and the materials in this case make out a case for trial. Only at the time of trial, it would be known as to whether the petitioner is an innocent or not. Prima facie materials are available for trial in this case. This is not a fit case which requires quashing of charge sheet. Hence the order relied upon by the petitioner passed by this Court while considering the issue of granting bail is contrary to the statue and therefore, the same cannot be applied to this case.

15. In any event as already found by this Court, the Rule cannot over ride the Main Act, as "ALPRAZOLAM" is included in the schedule of the Act. The deletion of such substance from the Rule cannot prevent the prosecution from invoking NDPS Act. Hence, the petitioner has to face the Trial and the charge sheet cannot be quashed. The petition is dismissed. No costs. Consequently, the connected Miscellaneous petition is also dismissed.

16. The Special Court is directed to conduct the Trial and dispose of the matter within six months from the date of the receipt of a copy of the order.

Sd/
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar.

To

1.The Deputy Superintendent of Police, Crime Branch, CID,
Tirunelveli,

2.The II Additional Sessions Judge for NDPS Act Cases, Madurai.

CrI.O.P. (MD) No.17298 of 2014
01.09.2016

vk