

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.110 OF 2017

Mushtaq Mustakim Shaikh ... **Applicant**

V/s.

The State of Maharashtra & Anr. ... **Respondents**

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Mr.Taraq Sayed i/b. Moinuddin Khan, Advocate for the Applicants.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 16th MARCH 2017.

P.C. :

1 Heard.

2 Admit. By consent, heard finally.

3 According to the prosecution case, as reflected from the FIR, a trap was laid on 06/05/2016 in pursuant to the receipt of secrete information by police to the effect that the present Revision Petitioner along with two associates are coming to Bhakti Park gate for selling a psychotropic substance M.D. (Mephedrone) According to the prosecution case, team of police personnel

accompanied by panch witnesses apprehended the revision petitioner along with two associates. During personal search of the revision petitioner, carried in presence of panch witnesses allegedly 105 grams of Mephedrone came to be seized. Two samples weighing 5 grams were taken out from the seized substance. In a similar way, according to the prosecution case, the Mephedrone came to be recovered from co-accused Tabrej Prarvej Ahmad Shaikh and Shafi Maqbul Ahmad Shaikh. Accordingly, on completion of investigation revision petition along with other accused came to be charge-sheeted for the offence punishable under Section 8(c) read with Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (For short, 'the NDPS Act').

4 Along with the charge-sheet accused persons are served with the copy of Chemical Analysis report. Thereafter, revision petitioner/accused no.1 applied for directing the prosecution to produce and deposit the bulk of alleged seized psychotropic substance before the Special Court for drawing samples and for sending the samples for retesting to the authorized laboratory. After hearing the parties, the learned Special Judge by impugned order dated 27/01/2017 was pleased to reject that application by holding that though samples were containing Ajinomoto, it was also containing Mephedrone and *prima facie*, it is seen that proper procedure has been followed for

drawing samples as well as sealing and seizing them. The learned Special Court came to the conclusion that no extremely exceptional circumstances are brought on record by the revision petitioner.

5 Heard the learned Advocate appearing for the revision petitioner/accused No.1. He argued that accused persons including the revision petitioner were served with the charge-sheet containing the C.A. Report on 26/12/2016 and C.A. Report shows presence of Monosodium Glutamate (Ajinomoto) in allegedly seized samples. He further argued that on 04/01/2017 i.e. within 15 days of receipt of the C.A. Report, as the revision petitioner found that the sample allegedly drawn were containing Ajinomoto, the revision petitioner applied for redrawing samples and retesting the same from the authorized laboratory because in every probability samples drawn from the material allegedly seized from him were laced with psychotropic substance by the police and, therefore, Ajinomoto is found to be present in the seized material. The learned Advocate further argued that in fact, the C.A. Report itself points out the tampering by police and, therefore, case falls under extremely exceptional circumstances warranting redrawing and retesting the samples.

6 The learned Additional Public Prosecutor supported the impugned order passed by the learned Special Court.

7 I have carefully considered the rival submissions and also perused the material available on record including the FIR, as well as, the C.A.Report. According to the prosecution case, after seizure of material from accused persons, samples were drawn, sealed and were sent for testing to the authorized laboratory. The C.A.Report produced with charge-sheet indicates presence of Mephedrone and Monosodium Glutamate (Ajinomoto) in samples allegedly drawn from material seized from accused persons. Ajinomoto (Monosodium Glutamate) is readily available in the market and it is not falling under the N.D.P.S.Act, 1985. However, Mephedrone is a psychotropic substance falling under N.D.P.S.Act, 1985.

8 At this juncture, it is apposite to quote paragraph 25 from the Judgment of the Honourable Apex Court in the matter of *Thana Singh v. Central Bureau of Narcotic Cell* reported in (2013) 2 SCC 590 Paragraph 25 reads thus :

“25. Therefore, keeping in mind the array of factors discussed above, we direct that, after the completion of necessary tests by the concerned laboratories, results of the same must be furnished to all parties concerned with the matter. Any request as to re-testing-re-sampling shall not be entertained under the NDPS Act as a matter of course. These may, however, be permitted, in extremely

exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge. An application in such rare cases must be made within a period of fifteen days of the receipt of the test report; no applications for re-testing/re-sampling shall be entertained thereafter. However, in the absence of any compelling circumstances, any form of re-testing/re-sampling is strictly prohibited under the NDPS Act.”

9 As in the case in hand sample sent to the authorized laboratory was found to be containing Ajinomoto i.e.(Monosodium Glutamate) and considering the drastic penal consequences on proof of the alleged offence under N.D.P.S. Act, 1985, I am of the considered opinion that the petitioner/accused has made out an extremely exceptional case for redrawing and retesting the samples from the material alleged seized from him by police. The learned trial Court has failed to apply ratio of the Judgment of the Honourable Apex Court in the matter of *Thana Singh* to the case in hand as some other substance than the substance covered by N.D.P.S.Act came to be found in the drawn sample.

10 In this view of the matter, the impugned order suffers from perversity as well as error of law. The revision petition, therefore, needs to be allowed and hence, the order :

- (i) The impugned order passed by the learned N.D.P.S. Special Judge, Greater Bombay, Mumbai on 27/01/2017 below application at Exh.12 in N.D.P.S. Case no.187 of 2016 is quashed and set aside.
- (ii) The application at Exh.12 in N.D.P.S. Special Case No.187 of 2016 has been allowed in terms of prayer clause made therein.

11 The revision petition stands disposed of accordingly.

(A.M.BADAR J.)