

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.3247 & 3248 OF 2016

COMMON ORDER:

Impugning the orders of the learned Special Judge for the Trial of Cases under NDPS Act-cum-Metropolitan Sessions Judge, Cyberabad, dated 22.11.2016, in CrI.M.P.No.481 of 2015 in the pending Sessions Case No.57 of 2015, the present two criminal revision cases are maintained, one by A-1, A-4 and A-5 and the other by A-6 showing the Intelligence Officer, Narcotics Central Bureau, Sub-Zone, Hyderabad, as the first respondent (Investigating Agency)/Prosecution Agency, and also the State of Andhra Pradesh, represented by learned Public Prosecutor, as the second respondent.

2. The operative portion of the impugned order reads as follows:

“8.On perusal of the record, it is to be seen that the officials of Narcotic Control Bureau, Hyderabad have seized contraband from the possession of the accused person under the cover of panchanama and also lifted samples, sealed them and forwarded sealed samples to Central Forensic Laboratory through a special messenger and it is very clear that the seizure of the contraband and lifting of samples, sealing the same and forwarding the samples to CFSL was according to the NDPS Act, but at this stage there is nothing to go into the merits as to whether the samples were tampered by the officers. Further considering the submissions of Narcotic Control Bureau officials but the crude of P2P is in liquid and if exposed to atmospheric condition will lose its properties and certainly gives false results, if sent for re-testing, and where the CFSL report shows the presence of psychotropic substance in the samples, this court does not see any merits to consider the request of the petitioner to send seized contraband for re-testing and re-sampling.”

3. It is impugning the same, the present two criminal revision cases are maintained with the contentions in the grounds vis-à-vis, the oral submissions made by the learned counsel for the petitioners by placing reliance on the expression of the Apex Court in **THANA SINGH Vs. CENTRAL BUREAU OF NARCOTICS**¹, particularly the observation at para 27, which reads as follows:

“27. Therefore, keeping in mind the array of factors discussed above, we direct that, after the completion of necessary tests by the laboratories concerned, results of the same must be furnished to all parties concerned with the matter. Any requests 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.”

4. The learned Special Judge ought to have allowed the petition for sending of the samples, at the request of the accused persons, that too in the light of the peculiar and special facts of the case, once by saying there is no narcotic drug or psychotropic substance involved in earlier crime, by closing the same, thereby they already availed the concession of bail and from the chemical analysis report showing as if involved, in filing a fresh complaint for its taking cognizance in allotting the sessions case number and once the sample is required to be sent for second time, that too the mixing of special components in one so-called seized alleged narcotic drug or psychotropic substance is impossible to believe

¹ (2013) 2 Supreme Court Cases 590

and sending of the sample for second time for re-analysis will bring to light the truth and there will be no harm and the contention raised before the lower Court by the Narcotics Control Bureau saying the crude of P2P which is in liquid and if exposed to atmospheric condition will lose its properties and certainly gives false results is baseless and the lower Court should not have been influenced therefrom, but for sending, thereby the impugned order is unsustainable. It is also his submission that from the expression of the learned Single Judge of the Karnataka High Court, dated 03.09.2015, in Crl.A.No.579 of 2015, particularly observations from para 21, following the procedure contemplated by Section 52A of the NDPS Act is mandatory and the mandatory procedure also not followed in the case on hand. Whereas it is the submission of the learned Special Public Prosecutor for Narcotics Control Bureau that even from the expression of the Apex Court in **THANA SINGH's Case (supra 1)**, particularly from para 27 that was also reproduced in the order of this Court in Crl.R.C.Nos.1390 of 2015 & 1406 of 2015, dated 12.04.2016, at last but third para, it is only in extremely exceptional cases, if case is made and not as a matter of course, thereby the learned Special Judge rightly dismissed the application though nothing demonstrated even in filing the application from original panchanama proceedings to the chemical analysis report anything indicating tampering of seals or tampering of the substance to doubt the genuineness of the analysis report for asking and thereby the petition deserves dismissal.

5. Heard. Perused the material on record.

6. The only thing to be considered within the scope of Section 397 Cr.P.C., is the impugned order of the learned Special Judge is outcome of any impropriety or illegality or incorrectness for the Court to sit in revision to interfere. In answering the same what the expression of the Apex Court in **THANA SINGH'S case (supra 1)** reproduced above is very clear of any request for re-testing or re-sampling shall not be entertained under the NDPS Act as a matter of course. What further stressed in the expression is these may (giving option), however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge, leave to the time frame. In the application for sending the sample, nothing demonstrated as extremely exceptional circumstances. There are at least no cogent reasons for sending samples for second time analysis. Thus, against the impugned order of the lower Court, by sitting in revision, there is nothing to interfere, for nothing shown of. The original samples drawn were from the panchanama in what condition and from the analysis report of the samples received in what condition and is there any possibility to suspect about any tampering, otherwise once it is not as a matter of course, the request cannot be entertained.

7. Once such is the case, even ignoring the order of the learned Special Judge from what is observed of crude P2P is in liquid and if exposed to atmospheric condition will lose its properties and certainly gives false results, it is not a case for re-sending, when that is not the only conclusion from reading of the said impugned order of the learned Special Judge, more

particularly, that is reflected in para 8 in dismissing the application of no extremely exceptional case is made out.

8. Having regard to the above, both the Criminal Revision Cases are dismissed by left open all defences available to the petitioners during trial.

Miscellaneous petitions pending, if any, in these criminal revision cases shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 10th February, 2017

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