

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.11091 of 2017

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in Cr.No.577 of 2014-15 dated 14.03.2015 of Prohibition and Excise Police Station, Kuppam, Chittoor District, registered for the offence punishable under Section 8(c) read with Section 20(b)(i) of NDPS Act, 1985 (for short 'the Act') against the petitioner.

2. It is the case of prosecution that on 14.03.2015 at about 4.00 PM., on credible information about stocking of ganja, the Prohibition and Excise Inspector, Kuppam along with the mediators went to the house of petitioner bearing No.3-7, Poduchenlu Village, H/o.Veernamala, Ramakuppam Mandal, and found the house locked, thereupon, affixed the search memo under Section 165 of Cr.P.C., to door, broke open the lock in the presence of mediators, gained entry into the house and found two white colour plastic urea bags containing dry ganja weighing about 30 Kgs each. He seized the said ganja in the presence of mediators, prepared a seizure panchanama and obtained the signatures of mediators and other Officers present at the time of search of the premises and seizure of the contraband from the house of petitioner, and on the strength of the same, the police registered a case in Cr.No.577 of 2014-15 against the petitioner for the offence punishable under Section 8(c) read with Section 20(b)(i) of the Act and issued FIR.

The police, after following necessary procedure, drawn samples and forwarded the same to the Forensic Science Laboratory.

3. The main contention of petitioner before this Court is that the petitioner went to Kerala to eke out his livelihood as coolie in 2014 and he was absent in the village for the period from 2014 to 2017 as certified by the Village Revenue Officer, Veernamala, Ramakuppam Mandal and signed by villagers, by issuing a certificate. Thus, the petitioner's contention is that he was out of State during the period of conducting search and seizure and he is no way concerned with the two ganja bags allegedly found in his house and when he came back to his village in the year 2017, he came to know about pendency of the proceedings against him. Thus, he pleaded the ground of *alibi* and requested this Court to quash the proceedings at this stage.

4. During hearing, learned counsel for petitioner Sri K.V.L.Narasimha Rao, reiterated the same contentions while requesting to call for case diary from the concerned police station to find out the truth or otherwise of the allegations made in the FIR.

5. As seen from the FIR, the Prohibition and Excise Officials found two plastic urea bags containing dry ganja weighing about 30 Kgs each and the same was seized under the cover of panchanama in the presence of mediators by following necessary procedure after issuing proceedings under Section 165 of Cr.P.C. Now, the contention of petitioner before this Court is that he was away from the village and was staying at Kerala in connection with his coolie

work at the time of search and seizure. Thus, he virtually raised the plea of *alibi*, which is relevant under Section 11 of Indian Evidence Act. However, it is a question of fact to be decided based on evidence. Therefore, based on the certificate issued by the Village Revenue Officer of Veernamala, Ramakuppam Mandal, this Court, at this stage, cannot accept the plea of *alibi* since it is a question of fact. Therefore, as seen from the FIR, it discloses the commission of *prima facie* offence punishable under Section 8(c) read with Section 20(b)(i) of the Act and in such case, this Court cannot exercise power under Section 482 of Cr.P.C. to quash the proceedings even by applying the principles laid down by the Apex Court in **State of Haryana v. Ch.Bhajanlal**¹. As the complaint and the panchanama filed along with the seizure panchanama disclose the commission of offence, I find no ground to exercise inherent jurisdiction to quash the proceedings in view of the **specific** plea raised by petitioner i.e., *alibi*, which is a question of fact. Hence, the criminal petition is liable to be dismissed.

6. Though it is contended by learned counsel for petitioner that the petitioner did not involve in any identical or similar offence either prior or after the alleged offence, it is not a ground to quash the proceedings, at best, it is a ground while deciding the application for grant of bail in view of Section 37 of the Act.

7. In the result, the Criminal Petition is dismissed, at the stage of admission. However, it is left open to petitioner to raise such plea during trial.

¹ AIR 1992 SC 604

8 Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

20th November, 2017

sj

