

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.02.2018
CORAM
THE HONOURABLE MR.JUSTICE M.S. RAMESH
Crl.O.P.Nos.6143 and 4908 of 2018
and
Crl.M.P.No.3078 of 2018

The State of Tamilnadu,
Inspector of Police,
NIB CID, Chennai,
Crime No.95 of 2017 ..Petitioner in
Crl.O.P.No.6143 of 2018

E.I.T.A.India Limited
Rep.by Jaisingh Barmecha, ..Petitioner in
Crl.O.P.No.4908 of 2018

Vs.

E.I.T.A.India Limited
Rep.by Jaisingh Barmecha, ..Respondent in
Crl.O.P.No.6143 of 2018

State Rep. by
The Inspector of Police
NIB, Chennai.
Crime No.95 of 2017 ..Respondent in Crl.O.P.No.4908 of 2018

Prayer in Crl.O.P.6143 of 2018: Petition filed under Section 482 Cr.P.C., to set aside the order passed by the Court of the Principal Special Judge, Principal Special Court under E.C & NDPS Act, Chennai, in Crl.M.P.No.3301 of 2017, dated 09.01.2018.

Prayer in Crl.O.P.4908 of 2018: Petition filed under Section 482 Cr.P.C., to modify the conditions imposed in Crl.M.P.No.3301 of 2017 by the Hon'ble Principal Sessions Judge; for NDPS Act cases, Chennai, dated 09.01.2018.

For Petitioner : Mr.K.Senthil Nathan
in Crl.OP.No.4908/2018
in Respondent Crl.OP.No.6143/18

For Respondent : Mrs.Kritika Kamal.P
Government Advocate (Crl.Side)
Respondent in Crl.OP.4908/18
in Crl.OP.No.6143/18

COMMON ORDER

The prayer sought for in Crl.O.P.6143 of 2018 is to set aside the order passed by the learned Principal Special Judge, Principal Special Court under E.C & NDPS Act, Chennai, in Crl.M.P.No.3301 of 2017, dated 09.01.2018 and the prayer sought for in Crl.O.P.4908 of 2018 is to modify the conditions imposed in Crl.M.P.No.3301 of 2017 by the learned Principal Sessions Judge for NDPS Act cases, Chennai, dated 09.01.2018.

2. Heard both sides.

3. The company/petitioner in Crl.O.P.No.4908 of 2018 (herein after referred to as Company) is aggrieved against the condition imposed in the order dated 09.01.2018 in Crl.M.P.No.3301 of 2017 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai 104 insofar as the condition that the property should not be sold or used for any other purpose till the completion of investigation.

4. Admittedly, the Company herein was a Transporter of the "Natural Rubber Field Coagulum", in which the narcotic substance is alleged to have been concealed. * The said raw materials were sold by Mrs.Pabitra Ds, Agia Bazar, Kalok Road, Assam to M/s.Malaya Rub-Tech Industries through the Company herein.

5. The impugned order of the Special Court ordering return of these materials came to be passed on the endorsement of the learned Special Public Prosecutor that the property may be returned to the Company on condition.

6. Today when the matter is called, the learned Government Advocate, on instruction from the Deputy Superintendent of Police, NIB CID, submitted that the department infact has objections in having the raw materials returned to the Company herein and that the Police Constable who had attended the Court duty for NIBCID, Chennai before the Special Court had erroneously instructed the learned Special Public Prosecutor before the trial Court.

7. The learned counsel appearing for the Transport Company submitted that the purchaser of the raw materials had authorized them to take interim custody rubber materials and hence they had made the application seeking for return of the raw materials. The learned counsel further submitted that the raw materials are perishable items and that serious prejudice will be caused, if the materials are not disposed of immediately and that the value of the materials is also deteriorating day by day.

8. I have given careful consideration to the submissions.

9. Under Section 63 of the NDPS Act, 1995, the raw materials which is the subject matter of the present petitions and which were allegedly used for committing the offence, shall be liable for confiscation. Though there is a provision for disposal of the seized property in the Act, there is no provision for granting interim custody of the same.

10. As per proviso (2) to Section 63 of the NDPS Act, 1995, perishable articles can be sold if the trial Court is of the opinion that it would be for the benefit of the owners. It is not in dispute that the seized articles are perishable items. The question as to whether the Company herein would be entitled to make a claim for custody of the seized articles is a question that needs to be determined by the trial Court.

11. It is now brought to my notice that the trial Court after the order passed on 27.11.2017, is yet to initiate the confiscation proceedings. Nevertheless, in view of the fact that the seized articles are perishable items and subject to speedy natural decay, it would not be prudent to permit the trial Court to retain the articles pending confiscation proceedings. By invoking proviso (2) to Section 63 of the NDPS Act, it would be appropriate to direct the trial Court to sell the seized rubber materials and retain the proceeds in deposit. Such sale shall be effected through a public auction.

12. In consideration of the submission of the learned Government Advocate on their stand taken before the trial Court and in view of their objections with regard to return of the seized materials to the Company, the order dated 09.01.2018 passed in CrI.M.P.No.3301 of 2017 on the file of the learned Principal Special Judge, under E.C. & NDPS Act is set aside. It would be pertinent to mention here that had the Special Public Prosecutor not given his consent for allowing the petition for return of the seized materials, the Special Court may not have ordered the same and as such I do not find the order to be a mistake as such. Consequently, the learned Principal Special Judge is directed to conduct public auction for sale of the seized rubber materials by inviting offers from the company herein as well as the purchaser and the seller of the products namely, M/s.Pabitra Ds, Agia Bazar, Kalok Road, Assam and the petitioner herein, after giving due opportunity to them to participate in the public auction. The trial Court shall also ensure that sufficient photographs of the seized materials are taken and a Panchanama be prepared, along with an affidavit of the beneficiary to whom the custody of the raw materials may be given, to the effect that, such custodian shall co-operate at the time of trial by letting in oral and documentary evidence. Such an exercise of public auction shall be done, as expeditiously as possible, by bearing in mind that the value of

the seized materials are deteriorating day by day.

13. Accordingly, the Criminal Original Petitions stand disposed of with the above observations. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)
Dated: 28/01/2018

* Amended as per Order dated
09/03/2018 in CRL.OP.4908
of 2018.

//True Copy//

Sub Assistant Registrar

dna

To

1.The Principal Special judge
Principal Special Court
under EC & NDPS Act
Chennai

2.The Inspector of Police
NIB, Chennai.
Crime No.95 of 2017

3. The Special Public Prosecutor
NDPS Act, High Court, Madras-104.

4.The Public Prosecutor
High Court, Madras

To be substituted to
this Order already
despatched on 01/03/2018

+1cc to Mr.K.Senthil Nathan, Advocate SR.No. 15721

Crl.O.P.Nos.6143 and 4908 of 2018
and
Crl.M.P.No.3078 of 2018

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