

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 25.06.2018]

[Pronounced on : 24.07.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1016 of 2013

and

M.P.No.1 of 2013

Sri.D.Ramesh Kumar Petitioner/A-3

... Vs ...

The Senior Intelligence Officer,
Directorate of Revenue Intelligence
Regional Unit, 1288, Trichy Road,
Coimbatore - 641 018. Respondent/Complainant

PRAYER: Criminal Revision filed under Section 401 of Cr.P.C. to call for the records relating to C.C.No.28 of 2012 on the file of the learned Additional Sessions Judge/Presiding Officer for Essential Commodities and Special Judge for NDPS Act, Coimbatore and set aside the order dated 11.07.2013 in C.M.P.No.648 of 2012 in C.C.No.28 of 2012 on the file of Essential Commodities and Special Judge for NDPS Act, Coimbatore and discharge the petitioner/accused from the complaint.

For Petitioner : Mr.N.Devarajan

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor

ORDER

This Criminal Revision Case is filed against the order dated 11.07.2013 passed by the learned Additional Sessions Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore in C.M.P.No.648 of 2012 in C.C.No.28 of 2012 and to discharge the petitioner herein/A.3 from the case.

2. Learned counsel appearing for the petitioner would submit that the case in C.C.No.28 of 2012 is emerged from the alleged offence said to have been committed at Tiruppur. It is further submitted that the alleged recovery of 29.06 Kgs of charas i.e.,

Hashish, a narcotic drug at Ernakulam from A.1 and A.2, the present petitioner herein in S.C.No.284 of 2010 on the file of the District and Sessions Court (Special Court for NDPS Cases), Ernakulam, is on 23.11.2009 at 8.00 hrs.

3. Based upon the confession statement of one of the accused, the Directorate of Revenue Intelligence, on the hot line news conveyed a message to Tiruppur, wherein, the alleged recovery of 96.7 Kgs of Ephedrin from one K.Selvakumar, who is the first accused in C.C.No.28 of 2012 on the file of the E.C. Court, Coimbatore was recovered. During the investigation, in respect of the seizure at Cochin, the statement of the present petitioner under Section 67 of the NDPS Act, 1955 was recorded by DRI, Cochin. DRI, Coimbatore also recorded the statement under Section 67 of the NDPS Act from A.1 and A.2 in S.C.No.284 of 2010 on the file of the District and Sessions Court (Special Court for NDPS Cases), Ernakulam]. That case was ended in conviction and the present case in C.C.No.28 of 2012 in respect of alleged seizure of Ephedrin at Tiruppur is being continued at Special Court for NDPS Cases at Coimbatore.

4. Based upon the above facts, the learned counsel for the revision petitioner would contend that there was a single conspiracy, in respect of which, two places have been taken place one at Cochin and another at Tiruppur. Since the same is a part of the single transaction, both cases ought to have been clubbed together and tried as C.C.No.28 of 2012 on the file of the Special Court for NDPS Cases, Coimbatore and S.C.No.284 of 2010 on the file of the Special Court for NDPS Cases, Ernakulam. Since the trial in S.C.No.284 of 2010 on the file of the NDPS Court at Ernakulam has been concluded and ended in conviction, the petitioner herein was convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1 lakh, in default, to undergo rigorous imprisonment for one more year for the offence under Section 20(b)(ii)(C) of the NDPS Act, 1985 and he was also convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1 lakh, in default, to undergo rigorous imprisonment for one more year for the offence under Section 29 of the NDPS Act, 1985.

5. Therefore, if the trial is continued in C.C.No.28 of 2012 at Coimbatore Court, it will amounts to double jeopardy. Accordingly, the petitioner herein has filed a petition in C.M.P.No.648 of 2012 before the trial Court for discharge and the said petition was dismissed. As against the said order, the present criminal revision case has been filed by the petitioner praying to set aside the said dismissal order by allowing this criminal revision case and prayed to discharge him from the case.

6. Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the respondent would contend that the two transactions are different and distinct and he could state that not only the nature of the substance that has been seized but also the fact that the persons involved in Ernakulam are totally different from the persons involved in Coimbatore and what was conveyed through the DRI is only with regard to some movement taking place in Tiruppur which led to recovery of 96.7 Kgs of Ephedrin from the first accused herein and it is not a single offence and there is no single conspiracy as projected by the revision petitioner, who is the accused in C.C.No.28 of 2012 on the file of the learned Additional Sessions Judge/Presiding Officer, Special Court for NDPS Cases, Coimbatore as this is not arising out of the same and single transaction. The only contention raised by the learned counsel appearing for the revision petitioner is devoid of merits.

7. After going through the records and also the typed set of papers filed before the proceedings at Ernakulam Court and proceedings at Coimbatore Court and after going through the final report filed in both the cases and also taking note of the fact that the accused persons therein and the criminal conspiracy in that case as compared with this case on factual ground, this Court finds that the nature of the property possessed by the accused viz., in the Cochin case, it is charas i.e. Hashish and in Coimbatore case, it is Ephedrin and the place of recovery are all found to be different. In S.C.No.284 of 2010 before the Ernakulam Court, the present petitioner/second accused therein besides C.Srinivasan @ Chidambaram @ Seenu and Kevin Michael Walsh were absconding. The case has been split up and subsequently ended in conviction. Though two are arrayed as accused in C.C.No.28 of 2012 before the Coimbatore Court so also the accused K.Selvakumar/A.1 in this case is not an accused in S.C.No.284 of on the file of the District and Sessions Court, Special Court for NDPS Cases at Ernakulam.

8. Taking into consideration about the accused persons and the nature of the properties viz., charas i.e., Hashish and Ephedrin and that the contraband involved in both the cases are different and distinct and the accused in both the cases are also not same and accused K.Selvakumar is not arrayed as a party accused in S.C.No.284 of 2010 also the prosecution theory appears to be that they are different and distinct and therefore, this Court finds that there is no merit in accepting the contention raised by the learned counsel for the petitioner.

9. In this view of the matter, this Criminal Revision Case is liable to be dismissed and accordingly, it is dismissed. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Additional Sessions Judge/Presiding Officer,
Special Court for Essential Commodities Act Cases,
Coimbatore.
2. The Special Judge for NDPS Act, Coimbatore.
Essential Commodities.
3. The Senior Intelligence Officer,
Directorate of Revenue Intelligence
Regional Unit, 1288, Trichy Road,
Coimbatore - 641 018.

+1cc to Mr.N.Devarajan, Advocate Sr.49887

Cr1.R.C.No.1016 of 2013

srg 30/08/2018

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