

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.3484 OF 2018

ORDER.

In this petition filed under Section 482 Cr.P.C. the petitioner/A.4 seeks to quash the proceedings against him in N.S.C.No.53 of 2007 on the file of Metropolitan Sessions Judge, Visakhapatnam, registered for the offences under Section 8(c) read with 22 of NDPS Act, 1985 vide PR Nos.392 to 395/96 of Prohibition & Excise Station, Visakhapatnam.

Heard the learned counsel for the learned counsel for petitioner and learned Additional Public Prosecutor.

The Charge Sheet allegations are to the effect that A.1 is a resident of Chepaluppada of Bheemili Mandal, Visakhapatnam; A.2 is the Managing partner of PIBA Enterprises, Seethammapeta, Visakhapatnam; A.3 is the Area Sales Manager of M/s.M.N.Reddy Enterprises, Hyderabad. M/s.Mlten Marketing Private Limited has been marking the beverage of Pep Up Black Label (Non-Alcoholic) drink by A.3 Company in the State of Andhra Pradesh, manufactured by M/s.Somanath Beverages, Vopi of Gujarat State. A.1 and A.2 are having shop in D.No.22-31-16/1 belonging to L.W.3 as tenants.

The further case of prosecution is that on 11-11-1996 at 1.00 P.M., L.Ws.6 and 7 raided premises occupied by A.1 at Bukka Veedhi in the presence of mediators. A.1 was conducting the sale of Pep Up Black Label drink (Non-Alcoholic), when questioned, A.1 disclosed that it was supplied by A.2. On verification, L.W.6 found 80 cardboard boxes containing bottles of Pep Up drink. L.W.6 obtained

two bottles as samples and sent for analysis and it revealed that the samples were with Diazepam positive. Based on the report of L.W.4, L.W.6 again raided the same premises occupied by A.1 on 12-7-1996 at 8.30 P.M. in the presence of L.Ws.1 and 2 and seized 60 cardboard boxes each carton containing 12 bottles of 650 ml with Pep Up Black Label drink. Later, L.W.6 sent A.1 to judicial custody.

It is further case of prosecution that having come to know about the raid made on A.1, A.3 and A.4 approached the High Court and obtained stay orders. The High Court in W.P.M.P.No.21193/96 in W.P.No.14454/96 dated 8-10-96 directed the Excise Department to send second sample bottle deposited in the Magistrate Court to the State Food Laboratory, Nacharam, Hyderabad for second opinion and proceed further in accordance with law only after receipt of report from the said Laboratory after conducting analysis. L.W.5 conducted analysis and opined that the sample contains alprazolam and hence, adulterated. Therefore, charge sheet against A.1 to A.4.

The case was taken on file by the learned Metropolitan Sessions Judge, Visakhapatnam and registered as S.C.No.53 of 2007. Since A.3 and A.4 were in abscondance, N.B.Ws.were issued against them. The main case was split up against A.3 and A.4 and renumbered as N.S.C.No.4 of 2008. In the main case i.e., N.S.C.No.53 of 2007, trial was conducted against A.1 and A.2 and the trial court in its judgment dated 11-12-2008 acquitted A.1 and A.2.

Now, the instant petition is filed by petitioner A.4 seeking to quash proceedings against him in N.S.C.No.4 of 2008.

The submission of learned counsel for the petitioner is that since the main case was ended in acquittal against A.1 and A.2 and as the evidence against all the accused being the same, the findings in the said case would annune to the advantage of petitioner/A.4 also. Drawing the attention of this court on judgment of the trial court, he would submit that the trial court held that prosecution failed to prove the seizure of M.O.1 bottle and other Pep Up Black Label drink cartons and there was no material to connect A.1 and A.2 with the crime. On this main finding, the trial court acquitted A.1 and A.2. Learned counsel for the petitioner would submit that there is no other material produced by the prosecution before the trial court to connect A.3 and A.4 to the offences. Therefore, finding in N.S.C.No.53 of 2007 is applicable to the petitioner also and hence, he deserves quashment of proceedings. Learned counsel places reliance on *SAHADEVAN AND ANOTHER vs. STATE OF TAMIL NADU*⁽¹⁾ and *SUNIL KUMAR vs. STATE OF DELHI*⁽²⁾.

Per contra, learned Additional Public Prosecutor would submit that the petitioner/A.4 and A.3 were the distributors of Pep Up Black Label drink and therefore, they were also part of the offence and that was why they were charge sheeted. It was further submitted that since inception, A.4 absconded and proclamation was issued against him. He, thus, prayed to dismiss the petition.

A perusal of the judgment in N.S.C.No.53 of 2007, a copy of which is produced before this court would show that the trial court after full-fledged trial against A.1 and A.2 recorded finding that

¹ (2012) 6 SCC 403

² 1999 LawSuit(Del)561

seizure of M.O.1 sample and other Pep Up Black Label drink were not proved by the prosecution and therefore, there was no material to connect both the accused with the crime and prosecution failed to prove guilt of both the accused for the charge sheet leveled against him. On such finding, the trial court acquitted A.1 and A.2.

As rightly pointed out by the learned counsel for the petitioner, in the charge sheet, the prosecution has not mentioned any independent evidence to that of A.1 and A.2 against A.3 and A.4 to proceed with the trial to establish their guilt. Therefore, the findings in N.S.C.No.53 of 2007 will apply to the petitioner/A.4 also.

In *SAHADEVAN AND ANOTHER vs. STATE OF TAMIL NADU* (1st cited) , it is observed as follows.

"It is very difficult to set any universal principle which could be applied to all cases irrespective of the facts, circumstances and the findings returned by the court of competent jurisdiction. It will always depend upon the facts and circumstances of a given case. Where the court finds that the prosecution evidence suffers from serious contradictions, is unreliable, is ex facie neither cogent nor true and the prosecution has failed to discharge the established onus of proving the guilt of the accused beyond reasonable doubt, the court will be well within its jurisdiction to return the finding of acquittal and even suo motu extend the benefit to a non-appealing accused as well, more so, where the court even disbelieves the very occurrence of the crime itself. Of course, the role attributed to each of the accused and other attendant circumstances would be relevant considerations for the court to apply its discretion judiciously."

In *SUNIL KUMAR vs. STATE OF DELHI* (2nd cited), it is observed as follows:

"The question thus is as to whether in the face of the judgment of acquittal the petitioner should still be permitted to undergo the ordeal of a trial. In Sat Kumar vs.State of Haryana AIR 1974 SC 294, it was held that there is no rule of law that if the Court acquits some of the accused on the evidence of a

witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness must be acquitted. (See also Har Prasad vs.State of Madhya Pradesh AIR 1971 SC 1450; Makan Jivan vs. State of Gujarat AIR 1971 SC 1779; Mohd Main Uddin Vs.State of Maharashtra 1971 SCC (cri)(617). But where the evidence against all the accused persons is inseparable and indivisible and if some of the accused persons have been acquitted, the remaining accused persons cannot be treated differently on the basis of the same evidence."

Thus, the above rulings would show that when the evidence placed on record is inseparable against different accused and the said evidence did not establish the case against some of the accused, the same could follow in respect of other accused also. Merely because, the accused A.4 is in abscondance that is not a ground to continue the trial against him as it would serve no useful purpose.

Accordingly, this Criminal Petition is allowed and the proceedings against petitioner/A.4 are quashed in N.S.C.No.4 of 2008 on the file of Metropolitan Sessions Judge, Visakhapatnam.

As a sequel, miscellaneous applications pending if any, shall stand closed.

JUSTICE U.DURGA PRASAD RAO

Dated 16th April, 2018.

Dvs

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