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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 30.10.2018

+ CRL.REV. P. 948/2018

IKECHUKWU CHUKWUBUIKEM STANLEY Petitioner

versus

NARCOTIC CONTROL BUREAU Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vikas Gautam, Adv.

For the Respondents : None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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30.10.2018

SANJEEV SACHDEVA, J. (ORAL)

Crl. M.A. 35249/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL. REV. P. 948/2018

1. Petitioner impugns order on charge dated 11.09.2018 whereby the trial court has framed a charge against the petitioner of having contravened the provision of Section 8 of the NDPS Act and accordingly framed charge against the petitioner under Section 21, 23 and 29 of the NDPS Act.

2. A complaint was filed by the respondent contending that secret information was received that a parcel booked with DHL Express Pvt. Ltd. for Spain might contain narcotics substance.

3. Search and seizure were carried out and the parcel was intercepted. The parcel contained 575 gms. of heroine which is a commercial quantity. The allegation is that the petitioner booked the parcel.

4. Learned counsel for the petitioner submits that the prosecution has failed to place any material on record to show that the petitioner was aware that the parcel contained narcotics substance. He submits that the statement of the petitioner was recorded under Section 67 of the NDPS Act wherein specifically the petitioner had stated that he was not aware that the parcel contained narcotics substance.

5. He submits that the petitioner has disclosed the name of the friend – Edwin who had handed over the parcel to the petitioner for booking. He submits that on disclosure of the name of the friend by petitioner, he was apprehended. In his statement under Section 67 of the NDPS Act, Edwin has also stated that the petitioner was not aware that the parcel contained narcotics substance.

6. Learned counsel for the petitioner submits that from the material collected by the prosecution, it is clear that the petitioner was not aware that the parcel contained narcotics substance and as such no charge could have been framed against the petitioner as there wasn't any conscious possession of any narcotics substances by the petitioner. Learned counsel relied on the judgment of the Supreme Court in '*Mohan Lal Vs. State of Rajasthan*' (2015) 6 SCC 222.

7. I am unable to accept the contention of learned counsel for the petitioner. Section 35 of the NDPS Act raises a presumption of culpable

mental state.

8. Section 35 of the NDPS Act reads as under:

“35. Presumption of culpable mental state – (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.— In this section “culpable mental state” includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.”

9. In terms of Section 35 where culpable mental state is required, the court is to presume existence of such mental state, however, it is open to the accused to raise a defence of absence of existence of such mental state and prove the lack thereof, at the stage of the trial.

10. In the present case, the defence of the petitioner is that he was not aware that the parcel contained narcotics substance. The same plea of lack of existence of culpable mental state, is a defence which the petitioner has to raise in trial and thereafter rebut the statutory presumption at the stage of the trial.

11. Even though in the statement under Section 67 of the NDPS Act, the petitioner and the co-accused have both stated that petitioner was not

aware that the parcel contained narcotics substance, same is a matter which would be tested at trial and is not something, based on which the Court can pass an order of discharge.

12. The judgment of the Supreme Court in Mohan Lal (*Supra*) does not help the case of the petitioner. The Supreme Court in *Mohan Lal* (*supra*), was dealing with an appeal arising out of an order of conviction. In this case the petitioner is impugning the very framing of charge.

13. Reference is also drawn to certain paragraph of the judgment in Mohan Lal (*Supra*) which read as under:

“16. Coming to the context of Section 18 of the NDPS Act, it would have a reference to the concept of conscious possession. The legislature while enacting the said law was absolutely aware of the said element and that the word “possession” refers to a mental state as is noticeable from the language employed in Section 35 of the NDPS Act.

17. On a perusal of the aforesaid provision, it is plain as day that it includes knowledge of a fact. That apart, Section 35 raises a presumption as to knowledge and culpable mental state from the possession of illicit articles. The expression “possess or possessed” is often used in connection with statutory offences of being in possession of prohibited drugs and contraband substances. Conscious or mental state of possession is necessary and that is the reason for enacting Section 35 of the NDPS Act.”

(underlining supplied)

14. Supreme Court in Mohan Lal (*Supra*) itself has held that the provision of Section 35 are as plain as day and section 35 raises a presumption as to knowledge and culpable mental state from the possession

of illicit articles.

15. In my view, there is no merit in the petition and the order framing charge does not suffer from any infirmity. In view of the above, the petition is dismissed. There shall be no order as to cost.

16. It is pointed by learned counsel for the petitioner that the petitioner has been declined the relief of bail.

17. Keeping in view the fact that the petitioner has been declined the relief of grant of bail, trial court is directed to endeavour to conclude the trial expeditiously.

18. Order *dasti* under signatures of the Court Master.

OCTOBER 30, 2018
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SANJEEV SACHDEVA, J