

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI. REVISION APPLICATION NO. 476 OF 2018**

Prakhar Ramesh Chandra
Age : 24 years, Occu.: Student
Resident of 705, Siddarth Ganga Towers,
Kalyaninagar, Pune – 411 006. **...Applicant**

Versus

The State of Maharashtra
Through PI, Vimantal Police Station, Pune. **...Respondent**

Mr. Kanhu Bhausahab Katake, a/w Mr. Sachin Keru Hande,
A. A. Jadhvar, S. M. Bhavsar, for the Applicant.
Mr. Vinod Chate, APP for the State.

**CORAM: N. J. JAMADAR, J.
RESERVED ON: 6th DECEMBER, 2019.
PRONOUNCED ON: 13th DECEMBER, 2019.**

JUDGMENT:-

1. With the consent of the learned Counsels for the parties, heard finally at the admission stage.

This revision is directed against an order dated 20th June, 2018, passed by the learned Special Judge on an application for discharge (Exhibit-9) in NDPS Sessions Case No.11 of 2017, whereby the application preferred by accused no.2 – applicant herein came to be rejected.

2. The gravamen of indictment against the applicant is as under:

(a) Pursuant to an information, on 6th November, 2016, the police officers and personnel attached to Anti-dacoity Cell of

Crime Branch, Pune City, laid vigil at CCD Chowk, Konark Nagar, Pune. At about 5.10 pm. a Skoda make car, bearing registration No.MH-06/AL-1190, about which intimation was received, reached thereat. The police party intercepted the said car. The applicant was at the wheel of the said car. Co-accused Mohan Gaudgiri was on the passenger seat thereof. The applicant and co-accused were apprehended. After apprising them of their right to be searched in the presence of the Magistrate or Gazetted officer, the police party conducted the personal search of the applicant and co-accused Mohan. In the personal search of Mohan, a plastic pouch containing white powder was found concealed in the right side pocket of the trouser Mohan wore. On inspection, the said powder appeared to be Mephedrone. The contraband material was thus sealed and seized in the presence of the public witnesses.

(b) As the applicant and co-accused were, thus, found in possession of 18.200 gm. Mephedrone in contravention of the provisions contained in Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act', for short), crime was registered against the applicant and the co-accused for the offences punishable under Section 8(c), 22 and 29 of the Act. After completion of investigation, charge-sheet came to be

lodged against the applicant and co-accused for the said offence.

3. The applicant preferred an application for discharge contending, *inter alia*, that the applicant had no concern with the alleged offence. Neither the contraband material was found in the possession of the applicant nor the car which the applicant drove. The applicant claimed that he had not known the co-accused Mohan. At the time of the occurrence, the applicant had *bona fide* given lift to the co-accused without having known the antecedents of the co-accused. Nor the applicant can be attributed with the knowledge of the possession of the contraband material by the co-accused. Thus, there was no material to connect the accused with the crime. Resultantly, the charge against the applicant was groundless.

4. The prosecution resisted the application.

5. The learned Special Judge, after considering the material on record, was persuaded to reject the application. The learned Special Judge was of the view that since the fact that the co-accused, on whose person the contraband material was found, was travelling in the car driven by the applicant, and the statements of the witnesses indicated that the applicant was aware of contraband material being carried by the co-

accused, a *prima facie* case was made out and, therefore, the application for discharge did not deserve countenance.

6. Being aggrieved by and dissatisfied with the impugned order, the applicant has invoked the revisional jurisdiction of this Court.

7. Heard Mr. Katake, the learned Counsel for the applicant and Mr. Chate the learned APP for the State, at some length. With the assistance of the learned Counsels for the parties I have also perused the material on record, especially the report under Section 173 of the Code and the documents annexed with it.

8. The learned Counsel for the applicant urged, with a degree of vehemence, that there is no shred of material to connect the applicant with the crime. From the own showing of the prosecution, according to the learned Counsel for the applicant, the contraband material was found in the right side pocket of the trouser which co-accused Mohan wore. No contraband material was found either on the person of the applicant or the car which the applicant drove. In the circumstances, according to Mr. Katake, the foundational fact the applicant having been found in possession of the contraband material cannot be said to have been established. In the absence of any material to

indicate constructive possession of the contraband material by the applicant, no charge for the offences punishable under Sections 8(c), 22 and 29 of the Act can be framed against the applicant, urged Mr. Katake. To this end, Mr. Katake took me through the material on record, especially, the first information report and the panchama whereunder the contraband material came to be seized from accused no.2.

9. In contrast to this, the learned APP submitted that the learned Special Judge was justified in rejecting the prayer for discharge as there is adequate material on record to demonstrate that the applicant had full knowledge about the contraband material being carried by the co-accused Mohan. The mere fact that the contraband material was not found on the person of the applicant is not of determinative significance, especially, when it is indisputable that the co-accused Mohan was travelling in the car, being driven by the applicant.

10. To bolster up this submission, the learned APP drew the attention of the Court to the statement of Mr. Pralhad Menon, the roommate of the applicant. In the said statement, Mr. Pralhad Menon has allegedly shed light on the nexus between the applicant, one Gaurav, the drug supplier and the fact that the applicant was purchasing the contraband material from

Gaurav. Therefore, it cannot be said that there is no nexus between the applicant and the crime.

11. It is indubitable that that contraband material was allegedly found in the possession of co-accused Mohan Gaudgiri. Indisputably, co-accused Mohan was then travelling in the car which was being driven by the applicant. Undoubtedly, it is not the prosecution case that the contraband material was found either on the person of the applicant or in the car which the applicant drove. The issue, however, does not rest at that.

12. The term 'possession', in the context of the proscription under, and object of, the Act does not necessarily mean physical possession. The word possession, in legal parlance, takes colour from the context in which it is used. It is elastic enough to subsume in its scope the constructive possession or possession in the sense of control over the object possessed.

13. In the case of *Ramsing vs. Central Bureau of Narcotics*¹, the Supreme Court had observed that the possession is a polymorphous term which carries different meaning in different context and circumstances and, therefore, it is difficult to lay

1 2011(11) SCC 347.

down a completely logical and precise definition uniformly applicable to all situations with reference to all the statutes.

14. In the case of *Mohan Lal vs. State of Rajasthan*², the Supreme Court dealt with the jurisprudential connotation of the term possession and observed that a functional and flexible approach in defining and understanding the possession as a concept is acceptable and thereby emphasis has been laid on different possessory rights according to the commands and justice of the social policy. Thus, the word “possession” in the context of any enactment would depend upon the object and purpose of the enactment and an appropriate meaning has to be assigned to the word to effectuate the said object.

15. In the aforesaid case, in the context of the provisions contained in Section 18 of the Act, it was observed that, the Legislator 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 Act.

16. On the aforesaid touchstone, reverting to the challenge at hand to the prosecution of the applicant, it would be advantageous to note that before the learned Special Judge,

2 (2015) 6 Supreme Court Cases 222.

reliance was placed on the judgment of Supreme Court in the case of *Avtar Singh & ors. vs. State of Punjab*³, to bolster up the submission that an occupant of a vehicle who was not found in possession of the contraband material, cannot be fastened with the criminal liability in the event a fellow traveller is found in possession of the contraband material.

17. In the said case, appellant no.3 therein was driving the truck wherein appellant nos.1 and 2 were sitting on the bags of poppy husk, being transported therein. The appellants were convicted for the offence punishable under Section 15 of the Act for having been found in possession of 640 kg. of poppy husk without a valid permit or license. The Supreme Court, on appraisal of the evidence, held that the fact that appellant nos.1 and 2 were sitting on the bags containing poppy husk was not sufficient to bring home the guilt to them. The persons who were merely sitting on the bags, in the absence of proof of anything more, could not be presumed to be in possession of the goods. Nor the presumption can be drawn of the culpable mental state merely because of their failure to explain circumstances in which they were travelling in the said vehicle.

3 2002(7) SCC 419.

18. It is pertinent to note that in the said case, the material fact which was noted, and stated to be of critical significance, was, two of the persons, who were travelling in the said truck; the one who was sitting in the cabin and another who was sitting at the back of the truck, made themselves scarce after seeing the police and the prosecution could not establish there identity, weighed with the Supreme Court in returning a finding of not guilty against the appellant therein.

19. It would be contextually relevant to note that the aforesaid judgment in the case of *Avtar Singh* (supra) was distinguished by the Supreme Court in a subsequent judgment in the case of *Dharampal Singh vs. State of Punjab*⁴. In the case of *Dharamapal* (supra) also, appellants were found travelling in a car, on the search of which, 65 kg. opium kept in a gunny bag in the dicky of the car was found and seized. It was sought to be urged that the accused *Dharmapal* was merely driving the car and since the contraband material was not found on the person of the applicant, he cannot be fastened with the liability.

20. The Supreme Court, after adverting to the provisions contained in Sections 54 and 35 of the Act, distinguished the judgment in the case of *Avtar Singh*, as under:

4 (2010) 9 SCC 608.

“17. Now, referring to the decision of this Court in *Avtar Singh* the same is clearly distinguishable. In the said case, according to the prosecution itself, the vehicle loaded with bags of poppy husk was a truck and when it was stopped one person sitting in the cabin and another person sitting in the back of the truck fled away. The accused in the said case were not the only occupants and in the said background this Court held that they cannot be presumed to be in the possession of the goods and it is quite probable that one of those who fled away could have been the custodian thereof. However, in the present case the vehicle in question is not a transport vehicle and, therefore, the test applied in the case of public transport vehicles in which several persons travel cannot be applied in the facts of the present case.”

21. From the aforesaid pronouncement, it becomes evident that different considerations come into play depending upon the nature of the vehicle. The test of degree of knowledge to be attributed which may be applied in the case of public transport vehicle cannot be applied to a private car.

22. In the backdrop of the exposition of the legal position, reverting to the facts of the case, it is pertinent to note that the statement of Mr. Pralhad Menon, the roommate of the applicant, has the propensity to thoroughly implicate the applicant. Not only the fact that the applicant used to procure the narcotic drug from one Gaurav, but also the fact that, few days prior to the occurrence, the applicant informed him that the applicant would be visiting the area, from where the applicant was apprehended, allegedly to collect the contraband material from Mohan, the co-accused, were stated by the said Mr.

Pralhad. Thus, it cannot be said that there is no material to show the complicity of the applicant in the crime.

23. In the application for discharge, the applicant had endeavoured to assert that the statement of Mr. Pralhad Menon was recorded under duress. At this stage of the proceedings, where the question of framing of charge against the accused is under consideration, the said aspect cannot be legitimately inquired, as if the Court is to evaluate the veracity of the material from the point of view its sufficiency for conviction. The limited inquiry that is permissible is to examine whether a *prima facie* case for framing of charge is made out against the accused.

24. The upshot of aforesaid consideration is that in the backdrop of the material on record and in view of the provisions contained in Section 35 of the Act, which warrant drawing of a presumption of existence of a culpable mental state, the learned Special Judge cannot be said to have committed any error in rejecting the application for discharge. Resultantly, the revision application deserves to be dismissed. Hence, the following order.

: O r d e r :

The Revision Application Stands dismissed.

[N. J. JAMADAR, J.]