

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.RC.No.927 of 2019
and
CrI.MP.No.13279 of 2019

M.Ravindran

...Petitioner/Accused

Vs.

The Intelligence Officer,
Directorate of Revenue Intelligence,
27, G.N.Chetty Road,
T.Nagar, Chennai - 600 017. ...Respondent /Complainant

Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the order made in CrI.MP.No.1087 of 2019 in C.C.No.33 of 2018 on the file of the Special Judge, I Additional Special Court of Exclusive Trial of cases under NDPS Act, Chennai dated 03.09.2019 and acquitting the petitioner / accused-11 in C.C.No.33 of 2018 on the file of the Special Judge, I Additional Special Court for Exclusive trial of cases under NDPS Act, Chennai.

For Petitioner : Mr.G.Murugendran

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor [for DRI]

O R D E R

This revision has been filed against the order passed by the Special Judge, I Additional Special Court for Exclusive trial of cases under NDPS Act, Chennai in CrI.M.P.No.1087 of 2019 in C.C.No.33 of 2018 dated 03.09.2019 dismissing the petition filed under Section 227 Cr.P.C. seeking discharge of the petitioner.

2. The brief facts of the case. The petitioner is arrayed as A-11 in this case. Initially the respondent had filed a final report against the 10 other accused in C.C.No.33 of 2018 for offences punishable under Sections 8(c), 22(c), 23, 25, 27 A, 28, 29 and 9 A, r/w. Section 25A of the NDPS Act, 1985 r/w. Section 8(c), 9 (a), IBID, Narcotic Drugs Psychotropic Substances (Regulation of controlled substances) order, 1993 and notification vide S.O 1296 (E) dated 02.02.1999 and r/w. Section 135A of the Customs Act, 1962. The final report was filed on 27.03.2018. While so, the respondent had received information from their counterparts in Mumbai with regard to the involvement of the petitioner herein viz; Ravindiran @ Praveen alias Rex, that he had facilitated the syndicate for the illicit manufacture of Narcotics at Mumbai and was involved in the illicit manufacture of narcotic drug at Budur, Redhills, Chennai and had exported it from Mangadu, Chennai which was busted by DRI Chennai in June 2017. Based on the information, the respondent has summoned the petitioner and that the petitioner had appeared before the respondent on 03.08.2018 and 04.08.2018. During the enquiry, the petitioner had given an elaborate statement admitting his active role in the case relating to seizure of Ketamine and Pseudo Ephedrine 15.06.2017 and 19.06.2017, he had specifically admitted to have indulged in arranging persons for Shri Raj of Malaysia for illicit manufacture and trade of narcotic drugs in India and Malaysia and that he used to arrange the meeting of Shri Rehman @ Abang, Shri Kesavan, Shri Aravinth Kumar and Shri Tamilselvan at Koyambedu near KFC shop at the behest of Shri Amir for exchanging Pseudo Ephedrine and that he was aware of manufacture of narcotic drugs in the godown premises at M/s. JSM Warehouse, Budur, Redhills, Chennai and at M/s.Star Exports, Mangadu, Chennai and further he had admitted to have helped in the said activity by providing manpower as directed by Shri Raj, namely Shri AravinthKumar (A-8), Ranjith Kumar (A-10), Tamilselvan (A-9) at M/s.Star Exports, Mangadu and Shri Praveen Kumar (A-3), Shri Panidan (A-4) and Shri Muthuraman (A-7) at Budur, Redhills and had also disclosed that he knew Shri Rahman @ Abang (A-1) since 2014 and had met him at his residence and arranged meeting for clandestine exchange of pseudo ephedrine. Further, during the enquiry, the photographs of the accused A1, A3, A4, A7, A8, A9 and A10 were shown to the petitioner and he had identified the persons by name and also made an endorsement in the photographs. Further, the petitioner had admitted that he is also known as Praveen @ Alex. During the enquiry, the petitioner had admitted to his role in illicit manufacture of about 256 kgs of white coloured powdery substance believed to be Ketamine, a psychotropic substance covered under NDPS Act, 1985 and about 12 kgs of substance believed to be Methamphetamine which came to be seized by DRI, Mumbai Zonal Unit on 03.04.2018. Further, he had also admitted to having pursued the customs clearance work in

relation to a consignment consigned from M/s.Expert Chemical services, Malaysia to M/s. MGM Traders, Chennai, consisting of glass apparatus and laboratory equipment and that he was also aware that the consignment was intended for installation in a godown premises at Mumbai for the illicit manufacture of narcotics. Further, the petitioner had inter alia mentioned in his statement about one Shri Sam Devprakash @ Stephen of Madurai, who was involved in arranging the documentation work, movement of goods between godown, export clearance, taking godown on rent etc., at Mumbai and he had also admitted to having contacted Shri Sam on previous occasions to convey certain messages from Shri Raj. He had also admitted to knowing and recruiting few persons who worked in the manufacture. Further, one Shri Arumugam, Proprietor of M/s. Techsil Laboratory Products, Chennai had also identified the petitioner who used to buy the instruments in connection with the case. Yet another person S.G.Narayanan, owner of the godown had also identified the petitioner. Thereafter, the petitioner was placed under arrest on 04.08.2018 and the petitioner was originally produced along with remand application before the Additional Chief Metropolitan Magistrate, E.O.I, Egmore. The Additional Chief Metropolitan Magistrate, E.O.I, Egmore finding that the case was pending on the file of the Special Judge for NDPS at Chennai had returned the remand application to be presented before the concerned Court. Thereafter, the petitioner was produced before the Special Court/Trial Court. In the remand application, the respondent has also informed about further investigation in the case being in progress and had stated that to facilitate further investigation, it is imperative that the petitioner to be placed in judicial custody. Based on the remand application, the petitioner was remanded to judicial custody. Thereafter, the respondent has filed a petition in CrI.M.P.No.578 of 2018 to permit them to investigate further in this case to find out the involvement of the petitioner and other persons in this case and to file supplementary complaint under Section 173 (8) Cr.P.C. The Special Judge, by order dated 21.08.2018 considering the facts and circumstances of the case and taking note of the fact that the role alleged to have been played by the accused, accepted the request of the respondent and permitted to conduct further investigation in the interest of justice. After conducting further investigation, the respondent has filed supplementary complaint against the present petitioner on 01.02.2019. The supplementary complaint was taken on file. At this stage, the petitioner has filed a petition under Section 227 Cr.P.C for discharge. The trial Court had dismissed the same, against which the present revision has been filed.

3. Mr.G.Murugendran, learned counsel for the petitioner would submit that the procedure adopted by the respondent investigating agency in arresting the petitioner and thereafter, seeking for further investigation is illegal. The trial Court after having taken cognizance of the earlier final report filed by the respondent committed an error by permitting the respondent to conduct further investigation. After filing final report as per Section 173(8) Cr.P.C, the police have power in respect of further investigation of an offence only after a report under Section 173(2) Cr.P.C but not for including further accused. When cognizance had been taken on the initial complaint, the procedure for proceeding against additional accused could only be done by invoking Section 319(1) Cr.P.C. to proceed against other persons appearing to be guilty of offences. Though the police has got powers to conduct further investigation, when fresh facts come to light ,the police should inform the court and seek for further investigation. Taking into consideration, the entire materials on record excepting the statement recorded from the petitioner under Section 67 of NDPS Act, no other material is available to frame charges against the petitioner and thereby, the petitioner is entitled for discharge. He would submit that the trial Court without looking into the materials properly had committed an error by dismissing the petition for discharge. In support of his contention the counsel for the petitioner would rely on the following judgments:-

- State of W.B. Vs. Salap Service Station and Others
1994 Supp (3) Supreme Court Cases 318
- Hemant Dhasmana Vs. Central Bureau of Investigation and Others
(2001) 7 Supreme Court Cases 536
- State of Orissa Vs. Mahima alias Mahimananda Mishra and Others
(2007) 15 Supreme Court Cases 580
- Rama Chaudhary Vs. State of Bihar
(2009) 6 Supreme Court Cases 346
- Vipul Shital Prasad Agarwal Vs. State of Gujarat and another
(2013) 1 Supreme Court Cases 197
- Vinay Tyagi Vs. Irshad Ali alias Deepak and others
(2013) 5 Supreme Court Cases 762
- Gulab Chand Vs. Pradeep Kumar Dehalwal and another
(2014) 14 Supreme Court Cases 472
- Babubhai Bhimabhai Bokhiria and another Vs. State of Gujarat and another
(2014) 5 Supreme Court Cases 568
- Hardeep Singh Vs. State of Punjab and another
(2014) 3 Supreme Court Cases 92

4. Per contra, Mr. N.P.Kumar, learned Special Public Prosecutor for DRI would submit that what was done by the respondent in this case is nothing but further investigation based on discovery of fresh evidence in continuation of the same offence and chain of events relating to the same occurrence incidental thereto and it was not a case of a fresh investigation, re investigation or de nova investigation. He would further submit that the law does not mandate taking prior permission from the Magistrate for further investigation. Carrying out further investigation, even after filing of the charge sheet is a statutory right/power conferred and vested with the police authorities/executive and the investigation done by the respondent in this case is not a fresh investigation which had altered the nature of the case and it was only further investigation done in accordance with law. Even at the time of filing the earlier final report it had been specifically stated that the respondents, after taking suitable permission from the Court, will file further complaints with the permission of the Court as and when further materials are available regarding the involvement of other persons named by the accused and also against others whose involvement may come to light in future. He would submit that on receiving information from their counterparts, in Mumbai, that the petitioner has played an active role in the offences, the respondent had summoned the petitioner for interrogation and during the course interrogation, the petitioner has specifically confessed about his involvement in the case and he has also identified the other accused involved in this case and thereafter, his statement under Section 67 of NDPS Act was recorded and he was arrested based on concrete material. Further, though permission is not required for conducting further investigation, the respondent at the time of producing him before the Special Court for remand, permission sought for permission to do further investigation and thereafter, further investigation has been conducted in accordance with law and supplementary final complaint was filed on 01.02.2019. During course of further investigation the other witnesses have also spoken about the role and involvement of the petitioner. He would re-iterate that when materials were available warranting further investigation and after having collected the materials it is the prerogative of the investigating agency to file an additional/supplementary complaint and it is incorrect to say that the respondent investigation agency can add additional accused only by way of invoking Section 319 Cr.P.C. It is duty of the respondent to investigate and submit a report to the Magistrate upon the involvement of the other persons and in this case, the Magistrate had granted permission, though there is no strict requirement to seek for permission to conduct further investigation. In this case, the respondent has obtained permission for further investigation and after completing

investigation has filed the supplementary complaint and the learned trial Judge had accepted the same and has also taken cognizance of the complaint and at this stage, the petitioner cannot canvas against the further investigation done and taking of cognizance of the supplementary complaint by the Magistrate. He would further submit that where involvement of persons, who are not already accused comes to the notice of the investigating agency, it cannot keep quiet and refuse to investigate the fresh information leading to involvement of additional accused. The stage of invoking Section 319 Cr.P.C. will come into play when additional complaint has been refused to be taken cognizance by the trial Court and thereafter, during the course of trial while examining the witnesses fresh materials against the accused persons involved in this case (who are left out in this case) have been gathered. In this case, the trial Judge, taking into consideration, the materials collected by the respondent in the further investigation and having accepted the same has also taken cognizance. Apart from the statement of the petitioner u/s 67 of the NDPS Act, the other witnesses have also spoken about the role and involvement of the petitioner. And thereby the trial court finding that there are prima facie materials available for framing charges has rightly dismissed the application for discharge and later has framed charges against the petitioner.

5. In support of his contention the learned Special Public Prosecutor, would rely on the decision of the Hon'ble Apex Court reported in (2004) 5 SCC 347 [Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Others], (2009) 6 SCC 346 [Rama Chaudhary Vs. State of Bihar], (2013) 5 Supreme Court Cases 762 [Vinay Tyagi Vs. Irshad Ali alias Deepak and others] and Vinubhai Haribhai Malaviya and others vs. State of Gujarat and others reported in 2019 SCC Online Sc 1346.

6. Further in support of the reliability of the materials for framing charges, the learned Special Public Prosecutor would submit that while considering the case of discharge, the Court cannot become an Appellate Court and appreciate the evidence by conducting a roving enquiry or mini trial which is not legally permissible. The Court has to see if only any prima facie case has been made out by the accused for discharge. He would rely on the judgment of the Apex Court reported in 2019 (4) SCC 149 [State represented by the Deputy Superintendent of Police Vigilance and Anti Corruption, Tamil Nadu Vs. J.Doraisway etc,] and State vs. Selvi and others reported in 2018(13)SCC 455 and ASIM Shariff vs National Investigation Agency reported in 2019 (7) SCC 148.

7. The learned counsel for the petitioner would reiterate that in this case earlier complaint had been filed and

cognizance had been taken and additional accused could be added only by invoking Section 319 Cr.P.C, by letting in evidence.

8. Heard both sides counsel and gone through the materials on record. Before going to the legal aspect in the case, it would be appropriate to go through the facts of the case. The prosecution case is that based on information received by the respondent on 14.06.2017 that A1 in conspiracy with his associates was involved in manufacturing of huge quantity Methamphetamine at Chennai and that the activity was being disguised under the cover of soap manufacturing activity. The respondents along with independent witness conducted simultaneous searches at two places in Chennai and seized huge quantity of narcotic drugs and cash. During the course of investigation statements were recorded on 15.06.2017 and 16.06.2017 under section 67 of the NDPS Act on the basis of summons issued on 15.06.2017 and 16.06.2017, A1 to A10 were arrested on 16.06.2017. After completion of investigation, the respondent filed the complaint against A1 to A10 on 27.03.2018 for offences punishable under section 8(c), 22(c), 23, 25, 27A, 28, 29 and 9A read with section 25A of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Sections 8(c) and 9 (a) *ibid*, The Narcotic Drugs & Psychotropic Substances (Regulation of Controlled Substances) Order, 1993 and Notification vide S.O 1296 (E) dated 02.02.1999 and r/w. Section 135A of the Customs Act, 1962. Thereafter based on specific information received on 02.08.2018 that a syndicate is being involved in illicit manufacture of narcotic drug at various premises in and near by Mumbai for the purpose of export and that the petitioner was indulging in illicit manufacture of Narcotic Drugs the respondent officers conducted a search on 03.08.2018 at the premises belonging to the petitioner and recovered certain incriminating documents along with the passports of A3 and A7. Thereafter the petitioner in his voluntary statement dated 03.08.2018 and 04.08.2018 had elaborately admitted to his role in the case relating to seizure of Narcotic Drugs on 15.06.2017 and 16.07.2017 wherein he has specifically admitted that he was aware of manufacturing of narcotic drugs and that he had been indulging in arranging manpower to work at the place of manufacturing illicit drugs, by procuring raw materials like chemicals, apparatus etc., in pretext of school scientific projects and that he also facilitated renting the premises and that he used to closely work with one Shri. Prathap @ Mike. During the course of further investigation one Arumugam proprietor of M/s. Tchsil Laboratory products identified the petitioner as the person who used to buy the instruments in connection with case relating to seizure of narcotic drugs on 15.06.2017 and 16.06.2017. Further one S.G.Narayanan owner of the premises had identified the petitioner as a facilitator while renting out his godown. Later,

shri. Prathap @ Mike was apprehended and he had also in his voluntary statement spoken about the involvement of the petitioner. Thereafter by order dated 21.08.2018 the special court had permitted the respondents to conduct further investigation and after due investigation supplementary complaint had been filled on 01.02.2019 wherein the petitioner and the said shri. Prathap @ Mike were arrayed as A11 and A12.

9. In this regard, it is appropriate to refer to the judgment of the Apex Court reported in (2004) 5 SCC 347 [Hasanbhai Valibhai Qureshi Vs. State of Gujarat and others]:-

" In Ram Lal Narang and Anr. v State (Delhi Admn.) it was observed by this Court that further investigation is not altogether ruled out merely because cognizance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the Courts. In view of the aforesaid position in law, if there is necessity for further investigation the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the Court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case."

10. In the judgment reported in 1997 (4) SCALE 156 [State through CBI Vs. Dawood Ibrahim Kaskar and others], it has been held

" Though under the old Code there was no express provision - like sub-section (8) of Section 173 of the Code - statutorily empowering in Police to further investigate into an offence in respect of which a charge-sheet has already been filed and cognizance taken under Section 190(1)(b), such a power was recognised by this Court in Ram Lal Narang vs. State [AIR 1979 SC 1791]. In exemplifying the situation which may prevail upon the

police to take up further investigation and the procedure the Court may have to follow on receipt of the supplemental report of such investigation, this Court observed:

"It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry of not proceeded with the enquiry of trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry of trial. If the case of which he has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the Code of Criminal Procedure in such situations is a matter best left to the discretion of the Magistrate."

11. Further, the judgment reported in (2009) 6 SCC 346 [Ramachaudhary Vs. State of Bihar], which reads as under:-

"15. Among 6 other sub-sections, we are very much concerned about sub-section (8) which reads as under:-

"173. (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer

in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

A mere reading of the above provision makes it clear that irrespective of report under sub-section (2) forwarded to the Magistrate, if the officer in-charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. The above said provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited.

16. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.

17. From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right to "further" investigation under sub-section (8) of Section 173 but not "fresh investigation" or "reinvestigation". The meaning of "Further" is additional; more; or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether.

18. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation.

19. As observed in *Hasanbhai Valibhai Qureshi vs. State of Gujarat and Others*, (2004) 5 SCC 347, the prime consideration for further investigation is

to arrive at the truth and do real and substantial justice. The hands of investigating agency for further investigation should not be tied down on the ground of mere delay. In other words,

"the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice."

20. If we consider the above legal principles, the order dated 19.02.2008 of the trial Court summoning the witnesses named in the supplementary charge-sheet cannot be faulted with.

21. It is true that after enquiry and investigation charges were framed on 11.03.2004 and thereafter in the course of trial about 21 witnesses were examined. In the meantime, Police submitted supplementary charge-sheet with certain new materials and on the basis of supplementary charge-sheet, the prosecution filed an application on 12.01.2008 in a pending Sessions Trial No. 63 of 2004 to the trial Court for summoning the persons named in the charge-sheet for their examination as prosecution witnesses. On a careful perusal of the application, the trial Court, by order dated 19.02.2008, allowed the same and has summoned those witnesses named in the supplementary charge-sheet.

22. The law does not mandate taking prior permission from the Magistrate for further investigation. It is settled law that carrying out further investigation even after filing of the charge-sheet is a statutory right of the Police. [vide K. Chandrasekhar vs. State of Kerala and Others, (1998) 5 SCC 223.] The material collected in further investigation cannot be rejected only because it has been filed at the stage of trial. The facts and circumstances show that the trial Court is fully justified to summon witnesses examined in the course of further investigation. It is also clear from Section 231 of the Cr.P.C. that the prosecution is entitled to produce any person as witness even though such person is not named in the earlier charge-sheet.

12. Further, in Vinubhai Haribhai Malaviya and others vs. State of Gujarat and others reported in 2019 SCC Online Sc 1346, it has been held hereunder:-

"38. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to

order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgements of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgements of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173 (8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156 (1), Section 2(h), and Section 173(8) of the Cr.PC, as has been noticed herein above, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpatory or exculpatory certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgements in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to

add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled.

43. We, therefore, set aside the impugned High Court judgement insofar as it states that post-cognizance the Magistrate is denuded of power to order further investigation. ..."

13. Admittedly, this case based on fresh materials available the respondent though not required had obtained permission from the learned Judge before whom earlier final report was filed and after obtaining permission had conducted further investigation and based on the further materials collected during further investigation had filed the supplementary complaint. Perusal of the records show it was only a further investigation contemplated under section 173(8) of Cr.P.C and it is neither fresh investigation or reinvestigation wiping out the earlier investigation altogether abinitio. It is in the nature of a supplemental charge sheet. Though there is no requirement for the respondent to take prior permission from the magistrate for further investigation, the respondents have obtained permission and thereafter only based on the judicial order continued the investigation and have filed the supplementary complaint which is proper in law. In such circumstances there is no reason for the respondent to wait till the stage to invoke section 319 of Cr.P.C., to add additional accused, when especially there are sufficient materials available to rope him in the case.

14. In the facts and circumstances of the case, the judgements relied on by the petitioner are not applicable to the facts on hand and thereby this Court had refrained from referring to them. This Court is of the clear opinion that there is no error in the order of the learned trial judge granting permission for further investigation and further the learned trial judge after filing of the supplemental charge sheet had also taken cognizance of the supplementary complaint.

15. Now coming to the next contention of the learned counsel for the petitioner that there is no material against the petitioner for framing charges, this Court finds that during the investigation, the petitioner has given a statement under Section 67 of NDPS Act and the statement recorded under Section 69 of NDPS Act is admissible in evidence and a sufficient material to frame charge against the petitioner. Apart from the statement of the petitioner, there are also other statements of the other witnesses connecting the petitioner to the crime.

16. In the case of State vs. Selvi and others reported in 2018(13)SCC 455, the Hon'ble Apex Court has held that if based on the material on record, the Court could prima facie form an opinion that the accused might have committed offence, it can frame charges, though for conviction the conclusion of accused beyond the reasonable doubt is required to be proved. Further, at the time of framing charges, probative value of the material on record cannot be gone into which prejudice that the presumption that the material produced by the prosecution is true, but the Court is not accepted to go deep into the matter and hold that the material produced does not warrant conviction. Further, in Asim Shariff vs National Investigation Agency reported in 2019(7) SCC 148, the Honourable Apex Court has held that though the Judge while considering the question of framing the charges has the undoubted power to sift and weigh the evidence, it can be only for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the material placed before the Court discloses grave suspicion against the accused, the Court will be fully justified in framing the charge. In the opinion of this Court, there are prima facie material for framing of charge against the accused. Further, after dismissal of the discharge petition, the trial Court has also framed charges against the accused and the trial is on the progress. In the conclusive opinion of this Court, there is no infirmity or illegality in the order passed by the trial Court.

17. In view of the same, the revision stand dismissed. However, it is made clear that the findings of this Court are in respect of deciding the revision petition and it will not have a bearing on the trial Court. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

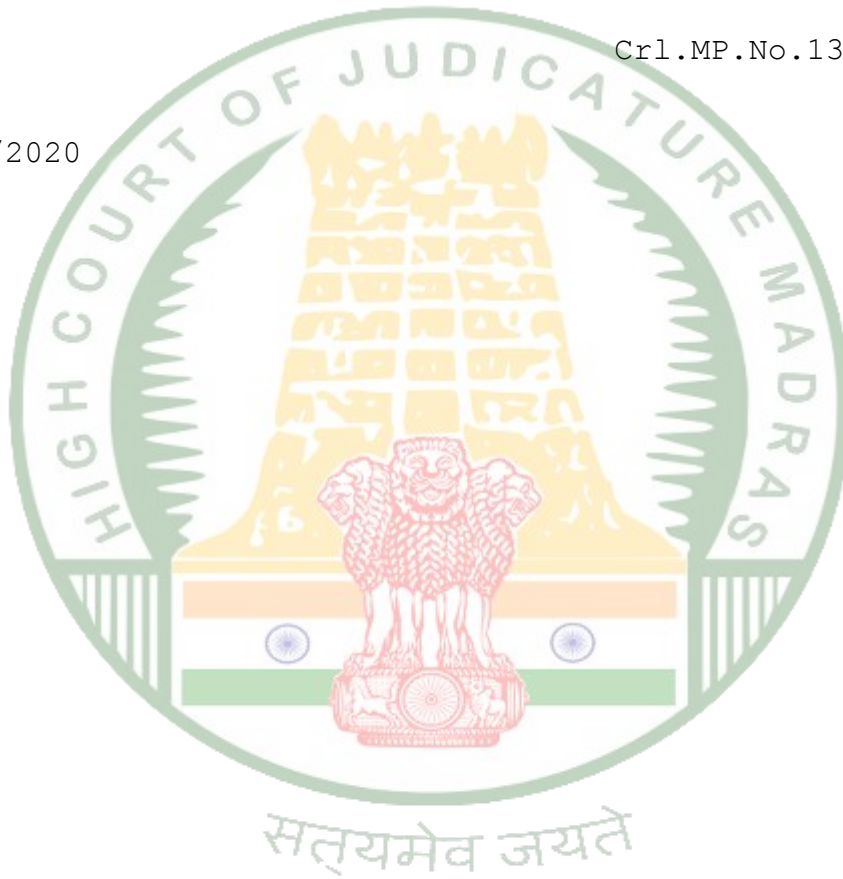
1. The Intelligence Officer,
Directorate of Revenue Intelligency,
27, G.N.Chetty Road,
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2.The I Additional Special Judge,
Special Court for Exclusive Trial Cases,
NDPS Court, Chennai.

+lcc to Mr.G.Murugendran, Advocate Sr.98884

CrI.RC.No.927 of 2019
and
CrI.MP.No.13279 of 2019

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