

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.814 of 2017

Wasib Khan Liaquat Ali

...Petitioner

Vs.

State by:

The Intelligence Officer,
Narcotics Control Bureau,
Chennai Zonal Unit,
Chennai - 600 090.

...Respondent

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records and set aside the order passed in Crl.M.P.No.1379 of 2017, dated 05.06.2017, pending on the file of the Learned I Additional Special Court Under NDPS Act, Chennai.

For Petitioner : Mr.M.S.Charles

For Respondent : Mr.N.P.Kumar

O R D E R

This Criminal Revision is filed by the revision petitioner against the order passed in Crl.M.P.No.1379 of 2017, dated 05.06.2017, pending on the file of the learned I Additional Special Court Under NDPS Act, Chennai.

2. The revision petitioner was arrested by the respondent on 12.02.2016 for the alleged offences under Section 8 (c) read with 22, 23, 27 (A), 28 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (as amended) for the alleged possession of 10450 tablets of Alprazolam 1 mg. each. The revision petitioner was shown as the first accused in the said case.

3. After completion of the fag end of the trial, the revision petitioner has filed two petitions, one of which is for altering the charge from Section 22 (c) to Section 22 (b) of

NDPS Act. The learned I Additional Special Judge, after considering the facts and the stage of the case, dismissed the petition vide order dated 05.06.2017.

4. As against the above order of the trial court, the revision petitioner filed the present revision.

5. The learned counsel appearing for the revision petitioner would submit that as per the Judgment of the Hon'ble Supreme Court in the case of Hira singh & Another vs. Union of India & Another reported in CDJ 2017 SC 741 it has been held that the notification would require a determination of small or commercial quantity on the basis of the content of the psychotropic substance of that particular drug in dosage form. In this case also, if it is so done, it will be seen that the petitioner was in possession of only 'intermediate quantity' instead of 'commercial quantity'. He would further contend that depending upon quantity of the substance, the quantity of punishment will differ. In these circumstances, taking into consideration that the quantity involved in this present case is only 'intermediate quantity', charge cannot be framed against the revision petitioner under the 'commercial quantity' and therefore, the charges already framed for 'commercial quantity' has to be altered.

6. The learned counsel for the respondent would submit that after completion of trial, at the time of posting for arguments, the revision petitioner cannot approach this Court at the fag end and seek for alteration of charges.

7. Heard both sides. Perused the records.

8. There is no quarrel in the settled principles laid down by the Supreme Court and also on the defence of the learned counsel appearing for the petitioner. However, the decision laid down in the case of Hira singh & Another vs. Union of India & Another (cited supra) cannot be applied to the present case, especially, when the case is posted for arguments after completion of trial. It is not in dispute that the charge can be framed and altered at any stage of the case if so warrant. Admittedly, the prosecution evidence was completed and the proceedings under Section 313 of Cr.P.C was also completed. Now, the case is at the stage for the defence arguments. The charges have been framed on the materials available on records. In these circumstances, when all the materials have been placed before the trial court, the learned counsel for the revision petitioner can establish his case before the trial court in the manner known to law. The trial court after appreciating the evidence available on records, if it is satisfied that the prosecution has proved its case beyond reasonable doubt, then,

would convict for the proved quantity. Therefore, under these circumstances, this Court feels that altering of charges, is not necessary at this stage.

9. However, the revision petitioner is at liberty to take any kind of defence before the trial Court at the time of arguments. The trial court can also dispose of the case in accordance with law.

10. Accordingly, the Criminal Revision is dismissed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The I Additional Special Court,
Under NDPS Act,
Chennai.
- 2.The Special Public Prosecutor for NDPS,
High Court of Madras.

Cr1.R.C.No.814 of 2017

MP (CO)
GN (25/03/2019)

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