IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 11TH DAY OF MARCH 2020 / 21ST PHALGUNA, 1941

Crl.MC.No.9299 OF 2019(B)

AGAINST THE ORDER/JUDGMENT IN SC 36/2019 OF SPECIAL COURT (NDPS ACT CASES), THODUPUZHA

CRIME NO.30/2016 OF Peerumedu Excise Circle Office , Idukki

PETITIONER/ACCUSED NO.2:

ULRIKE RICHTER,
AGED 37 YEARS
D/O.FRANK DIETHER RICHTER, RESIDING AT CHRISSIES RESORTS, JUNGLE DREAM TOURS INDIA PVT.LTD., BYPASS ROAD, KUMILY P.O., KUMILY KARA, PEERMADE TALUK - 685 509.

BY ADVS.
SRI.V.JOHN MANI
SRI.S.JAYANT
SHRI.VARGHESE SABU
SMT.MANJU ELSA ISAC

RESPONDENT/COMPLAINANT/STATE:

1 **STATE OF KERALA,**
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERANAKULAM, PIN - 682 031.

2 **EXCISE CIRCLE INSPECTOR,**
EXCISE CIRCLE OFFICE PEERMADE, PEERMADE - 685 531.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 2.3.2020, THE COURT ON 11.03.2020, PASSED THE FOLLOWING:

R.NARAYANA PISHARADI, J

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Crl.M.C. No.9299 of 2019

Dated this the 11th day of March, 2020

O R D E R

The petitioner is the second accused in the case S.C. No. 36/19 on the file of the Special Court for the trial of NDPS Act Cases, Thodupuzha.

2. The offences alleged against the accused in the case are punishable under Sections 20(a), 20(b)(ii)(A) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act').

3. On 30.12.2016, at about 17.30 hours, the Excise Circle Inspector, Peermade conducted search of the hotel by name Chrissies Resort at Kumily, after obtaining search warrant from the Magistrate concerned. It was a hotel conducted by the first accused, who is a citizen of Egypt. The first and the second accused were residing in a room in the third floor of the hotel. The Excise Circle Inspector seized 90 grams of ganja and 90 grams of hashish oil from the room in which the accused were

residing. Five ganja plants, which were seen cultivated at the balcony of the aforesaid room, were also seized. The Excise Circle Inspector arrested both the accused from the spot.

4. After completing the investigation, the Assistant Excise Commissioner, Idukki filed complaint against both the accused for the offences mentioned above. The Special Court has taken cognizance of the offences and the case is pending in that court as S.C.No.36/19.

5. This petition is filed under Section 482 Cr.P.C by the second accused for quashing the proceedings against her in the case, on the ground that no contraband article was seized from her possession.

6. Heard the learned counsel for the petitioner and also the learned Public Prosecutor.

7. The petitioner, who is the second accused in the case, is a German citizen. Both the accused in the case had got residential permit to stay in India.

8. The prosecution has produced materials to show that an agreement had been entered into between the first and the

second accused for conducting a travel agency. The prosecution has also produced materials to show that the petitioner was residing in the hotel room from which the ganja and the hashish oil were seized.

9. Learned Public Prosecutor submitted that, the balcony where the ganja plants were seen cultivated, had only a single door opening from the room in which the accused were residing.

10. In the aforesaid circumstances, whether the petitioner was in conscious possession of the ganja and the hashish oil which were seized from the room in which she was found and whether she had any role in cultivating the ganja plants at the balcony of the room, are matters of evidence and proof. They are not matters which can be decided in a petition filed under Section 482 Cr.P.C.

11. The petitioner has also got a contention that there was violation of the mandatory provisions of the Act in conducting the search and seizure. This is also a matter of proof and evidence. In this context, it is relevant to note that the search was conducted by the Excise Circle Inspector after obtaining search

warrant from the Magistrate concerned.

12. Along with the complaint, the prosecution has produced sufficient materials, which *prima facie,* establish the involvement of the petitioner in the commission of the offences alleged against her. In such circumstances, the prayer for quashing the proceedings against her in the case cannot be allowed. The petition is liable to be dismissed.

Consequently, the petition is dismissed.

Sd/-
R.NARAYANA PISHARADI, JUDGE

al/-

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A1	**A CERTIFIED COPY OF FINAL REPORT IN NDPS CRIME NO.30/2016 OF EXCISE CIRCLE OFFICE, PEERMADE AS SC 36/19 OF NDPS COURT, THODUPUZHA.**
RESPONDENTS EXHIBITS	NIL

TRUE COPY

P.S TO JUDGE

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