

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

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THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.29530 of 2019

Dias Coimbra Lourenco Armando Rui ... Petitioner

Vs

The Intelligence Officer,
Directorate of Revenue Intelligence,
No.27, G.N. Chetty Road, T. Nagar,
Chennai. ... Respondent

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying, to call for records in connection with C.C.No.101 of 2018 on the file of the I Additional Special Court for NDPS and EC Act Cases at Chennai and quash the same.

For Petitioner : Ms.Mamta Pandey

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor

ORDER

This petition has been filed to call for records in connection with C.C.No.101 of 2018 on the file of the I Additional Special Court for NDPS and EC Act Cases at Chennai and quash the same.

2. The following points have been raised by the learned counsel appearing for the petitioner,

" (i) Information also, in which no I.O. C.A. Venkatesan has received the information, not mentioned in information. A person who has seen the information is not a Gazetted Officer, DRI official Seal is also not available there. It shows that they are fabricated this also. It is in computer print, not by hand written violated Section 42 of NDPS Act.

(ii) Mahazar - S.Kesavakumar,
I.O./DRI/CZU has arrange mahazar witnesses

viz., M.Srinivasan and N.Madhusudanan, in that, first mahazar witness is that statement top 4 lines in page No.173 is type by I.O. and his statement also written by I.O. but in 1st para itself home address is not tally with top 4 lines. It's shows all the pages has typed by I.O. not written by Srinivasan and at last page only 7 lines was written by only Srinivasan. He is an Engineer and he know very well computer typing and in 1st para itself mentioned that, he know English well, then also only I.O./DRI/CZU has written in his own manner not allowed to write in his own handwriting. It shows that I.O. himself has written the statement by his own style and made forged statement on behalf of M. Srinivasan only fill up the loophole of prosecution. Summon it is not issued by the Magistrate Court, Seal is not available there. In page No.171 'summon' being a I.O. without knowledge of the authorities of his superior or Magistrate he issued a summon, like wise 2nd Mahazar witness also summon as it is like 1st mahazar witness. 2nd witness viz., N.Madusudhan. He is also an Engineer, knowing well English, I.O. not allowed to him to write by his own truth. It is typed in computed by I.O. and page No.183 and as same like 1st one, one witness last six line written by him only, not fully because I.O. not allowed to write correct thing in statement as an 1st one.

(iii) Hotel Booking, Page No.95 viz., Pearl international, his General Manager has given his statement in page No.155 to 157 in that also, it is in computer print form and written and summoned by I.O., T.Lenin, not allowed him to write his statement and fill up a full gap of prosecution, not by him. Hotel has booked by whom prosecution failed on that part, even though Hotel Manager, has received one call in the name of one Mrs.Lizzy, but when they enquire the number. It is come in the name of one Sivakumar, who don't know about this lady. On conspiracy part also on behalf of petitioner not proved by prosecution in Page No.299 in complaint book.

(iv) Arrest Memo - There is no DRI seal in arrest memo also. Page No.107.

(v) Remand application - 1st page No.109 it is endorse as dated 27.04.2018, 0025 hours here is no such time available in all world. In Page No.111 handwritten by Magistrate again 0025 hours, it is clearly shows it is fully put up case not in original case false case has foisted against him. Property seized on 26.04.2018 itself but from that day onward seized article was not submitted before the I Additional NDPS Court. On 27.04.2018 at 03.10 p.m. only P-3 trolly bag shown to Hon'ble I Additional NDPS Judge by DRI, I.O. S.Kesava Kumar, CZU, no other properties were submitted to the Court. On 28.04.2018 at 1.10 p.m. Page No.125 in complaint book, memo of submission of properties along with 8 properties (P-128) submitted to the Court by I.O. S.Kesava Kumar.

At 03.10 p.m. After two hours the Learned NDPS Court Judge has returned all the properties to I.O. S.Kesava Kumar, directing him to all property produce before him on dated 02.05.2018 (page No.130)

At 4.00 p.m. (Page 145) after 45 minutes all 8 properties were deposited to Customs Dare House by above said I.O. As per deposit memo (P-145), but there is no warehouse S.L.No. was allotted by warehouse, without this no. the warehouse computer system will not allow to make entry of the properties in the system. No warehouse seal affixed on the deposit memo also. Within 45 minutes how they managed. It shows that Deposit Memo is fabricated one and it has received by viz., Pallab Shamanta on dated 28.04.2018 at 4.00 p.m. From 26.04.2018 at 8.00 a.m. To 28.04.2018 before depositing to warehouse around 54 hours property was not in the hand of Court, where it was kept, no explanation for that before the Court. No paper with respect of handing over the same article was prepared by I.O. S.Kesava Kumar.

(vi) The petitioner further submits that 2.900 kg. of white rocks/lumps were brought to Special Court, instead of Homogenous white powder allegedly seized in the Airport.

As per complaint in Page No.27 they mentioned 3.015 kg of homogeneous white powder was seized on dated 26.04.2018 in

Chennai International Airport, as per DRI claims.

When they brought property in I Additional Special Court it was dated 01.09.2018 and has measured as 2.974 kg. It is seen in the photo sample taken by DRI was not taken in the presence of petitioner/accused as per notification, they have violated the rules.

Hence as per the above document and fact, the DRI story is 3kg. of homogeneous powder (6 witnesses) was seized in Airport. From dated 26.04.2018, this homogeneous white powder was kept in DRI office from 4 months and they only 2.900 kg. of rocks/lumps/(not powder) was brought in the Special Court on dated 01.09.2019 not only Special Court, by same person will understand that it is absolutely two different materials and whatever was seized in Airport was not brought in the Special Court but something other."

3. Heard Ms.Mamta Pandey, learned counsel appearing for the petitioner and Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the respondent.

4. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the

aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

5. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in Crl.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

6. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in Crl.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the

complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

7. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.101 of 2018 on the file of the I Additional Special Court for NDPS and EC Act Cases at Chennai. The Trial Court is directed to complete the trial within a period of nine months from the date of receipt of copy of this Order.

8. Accordingly, this criminal original petition is dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Intelligence Officer,
Directorate of Revenue Intelligence,
No.27, G.N. Chetty Road, T. Nagar,
Chennai.
2. The I Additional Special Court NDPS and EC Act Case,
Chennai.
3. The Special Public Prosecutor,
High Court of Madras.

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KS(CO)
EU 24.6.2020