

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL REVISION CASE No.1403 of 2019

ORDER:

The present Criminal Revision Case is filed by the revision petitioner/A-5, under Sections 397 and 401 Cr.P.C., questioning the order, dated 06.11.2019, passed in CrI.M.P.No.1012 of 2019 in NDPS S.C.No.102 of 2018 on the file of the I-Additional District and Sessions Judge, Medak at Sangareddy, wherein and whereunder the application for discharge filed by the revision petitioner/A-5 in S.C.No.102 of 2018, was dismissed.

A charge sheet came to be filed against the revision petitioner/A-5 and others for the offences punishable under Sections 22, 28 and 29 of the N.D.P.S. Act, 1985. The allegations in the charge sheet are that on 26.07.2017 on reliable information that Alprazolam, a Psychotropic substance, was manufactured and secreted in the shed at Sy.No.353/AA, Kazipet (V), Narsapur Mandal, Medak District, the Intelligence Officer and staff conducted search in the presence of independent witnesses and found a cow-shed and a plastic cover, stitched out of HDPE sacks, on which the material relating to the Alprazolam is spread in the open sky. The Officers also found accused No.1, who is known to the revision petitioner/A-5, in the Real Estate business and the revision petitioner/A-5 informed him that the shed

belongs to his family, as such accused No.1 took shed from accused No.4 on rental basis at Rs.20,000/- per month for the purpose of illegal manufacturing drugs. Thereafter, accused No.1 took the Officers to the adjacent portion of the shed, where they found a glass flask/reactor. Accused No.1 introduced accused No.2 in the Reactor shed. The Officers enquired accused No.1 about the material, which was spread on the plastic sheet, for which he replied that the material is a chemical illegally manufacturing by them by using the glass flask/reactor available in the shed. He further informed that he manufactured the Alprazolam with the help of accused No.2 in the above said premises and for the purpose of manufacturing the contraband, accused No.1 had purchased the intermediary chemical stage material from one Harnath Reddy of Miyapur and he brought 30 Kgs. of fourth stage material for manufacturing Alprazolam. Accused No.4 informed them that he is well aware of the nature of Alprazolam and its use and he is also having knowledge that his land is used for construction of the shed to manufacture the above said contraband.

During the pendency of the aforesaid Sessions Case., the revision petitioner/ A-5 filed discharge application under Section 227 of Cr.P.C. By an order, dated 06.11.2019, the learned I-Additional District and Sessions Judge, Medak at Sangareddy,

dismissed the said application. Challenging the same, the present Criminal Revision Case is filed.

On 09.12.2019, when the matter was taken up for hearing, there was no representation on behalf of the revision petitioner/A-5 and again on 05.02.2020 there was no representation on behalf of the revision petitioner/A-5 and thus it shows that the revision petitioner/A-5 did not evince any interest to proceed with the matter. Hence, heard the learned Counsel for the respondent and perused the record.

It has been stated in the grounds of revision that the learned trial Judge erred in dismissing the petition without appreciating the provision of Section 227 of Cr.P.C., and also the provisions of N.D.P.S. Act and even if the complaint is taken as a whole, there is no legally sustainable evidence against the revision petitioner/A-5 to frame any charge against him for any offence, much less the offences under the N.D.P.S. Act. It is also stated that the learned trial Judge should have seen that the ingredients that constitute the said offences are not met with by the prosecution inasmuch as the statement tendered by the revision petitioner/A-5 clearly established that he did not contravene any provisions of the N.D.P.S. Act and that the learned trial Judge dismissed the petition without appreciating

the law laid down by the Apex Court in *Surinder Kumar Khanna v. Intelligence Officer, DRI*¹. It is also stated that the learned trial Judge failed to appreciate the scope, object and legislative policy of the N.D.P.S. Act and construed it narrowly, which is contrary to law and established practice. The learned trial Judge ought to have considered the explanatory statement tendered by the revision petitioner/A-5 that he was not found in possession of contraband and that the complaint filed by the respondent does not attract the provisions of Sections 28 or 29 of the N.D.P.S. Act, and having regard to the facts and circumstances of the case, dismissal of the discharge petition filed under Section 227 of Cr.P.C., is legally not sustainable and against the provisions of N.D.P.S. Act and rules of criminal jurisprudence.

Learned Special Public Prosecutor appearing for the respondent would submit that there is ample evidence against the revision petitioner/A-5 to establish his involvement in the commission of offence in view of his continuous telephonic conversation with the other accused, as such, the revision petitioner/A-5 is not entitled for discharge.

While considering an application for discharge under Section 227 of Cr.P.C., the Court is required to consider the "record of the case" to form an opinion whether there is a ground

¹ (2018) 8 SCC 271

for presumption and strong suspicion that the accused has committed an offence. After considering the material if the trial Court is of the opinion that there is strong/grave suspicion of involvement of the accused in commission of the offence, the accused cannot be discharged. At the stage of discharge under Section 227 of Cr.P.C., the Court is only required to see that the material on record and the facts of the case are enough to raise grave suspicion that the accused has committed the offence.

The Apex Court in its judgment in the case of *Amit Kapoor v. Ramesh Chander*² has explained the scope of the power under Section 397 Cr.P.C. as under:-

"20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the

² (2012) 9 SCC 460

decision is completely erroneous or where the judicial discretion is exercised arbitrarily".

In the instant case, a perusal of the voluntary statement of accused No.1 would show that he took the land of accused No.4 for Rs.20,000/- per month and raised two rooms in the said land, he purchased glass flask reactor along with other apparatus and all the equipment got established in the land, started the manufacturing of Alprazolam at the shed. He further stated that the revision petitioner/A-5, who was known to him in Real Estate business, himself introduced accused No.4 as he is the brother-in-law of the revision petitioner/A-5. It is further stated in the statement that he sold Alprazolam to local toddy vendors and the revision petitioner/A-5, Naveen Goud and Anand of Sholapur.

Further, the statement of accused No.2 would show that accused No.1 introduced him to accused No.3, from whom he intend to get raw material for manufacture of Alprazolam and that he also introduced the revision petitioner/A-5, who is his childhood friend and also doing toddy business. Accused No.1 also told to Accused No.2 that the revision petitioner/A5 would help them to setup a shed in the agriculture land, which belongs to his brother-in-law (accused No.4). Accused No.2 further stated in his statement that the manufactured Alprazolam was

sold to the revision petitioner/A-5, Naveen Goud and Anand of Sholapur, for an amount of Rs.1,50,000/- per kg.

That apart, though the revision petitioner/A-5 stated in his statement that he does not know accused No.1 and he knows only accused No.2, but a perusal of the complaint would show that as per the Call Data Records provided by M/s. Idea Cellular Company, accused No.1 called the revision petitioner/A-5 through his phone number for 110 times during the period from January, 2017 to 4th July, 2018. Hence, the trial Court, after considering the telephonic conversations collected by the respondent and the confession statements of the accused, held that there are frequent conversations between the revision petitioner/A-5 and other accused and there is a *prima facie* case to proceed against the revision petitioner/A-5. It is well settled that once the trial Court forms an opinion on the basis of material available on record about the *prima facie* case of grave suspicion against the accused, the revisional Court ordinarily should not interfere with such an order inasmuch as the jurisdiction of the Court under Section 397 Cr.P.C. is to be exercised so as to examine the correctness, legality or propriety of order passed by the lower Court. Therefore, I see no illegality or irregularity in the order passed by the trial Court.

Accordingly, the Criminal Revision Case is dismissed at the admission stage.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE G. SRI DEVI

11.02.2020
gkv/Gsn



