

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CRL.M.C. 660/2018

Reserved on : 06.02.2020

Date of Decision : 04.03.2020

IN THE MATTER OF:

THE STATE GOVT OF NCT OF DELHI Petitioner
Through: Mr. Mukesh Kumar, APP for State
Versus

PUNEET KUMAR & ANR. Respondents
Through: Mr. S.S. Das, Advocate for
Respondent No. 1
Mr. Satish Aggarwala, Senior Standing
Counsel alongwith Mr. Vaswani, Advocate for
DRI/Respondent No. 2

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present petition is directed against the order dated 10.08.2017 passed by the Special Judge (NDPS) in FIR No.44/2016 registered under Section 22/29 NDPS Act P.S. Special Cell, New Delhi.
2. Vide the aforementioned order, learned Special Judge dismissed the application filed on behalf of State whereby direction was sought from DRI and Custom Preventive Department to provide samples from the case property of another case bearing no. DRI F.No.338/XVIII/28/2013-GI.
3. Briefly, the facts leading to the filing of the present case are that on 23.07.2016, on the basis of a secret information, Special Cell, New Delhi arrested one Faizan, a resident of Mumbai in FIR No.44/2016. In all, 8 accused persons were arrested and from their possession, a total of

14.2 kg of Mephedrone (commonly known as meow-meow) was recovered. During interrogation, one of the accused namely, Mahender Singh Rana disclosed that the recovered contraband was sourced from Puneet Kumar (respondent No.1 herein) who was serving as an Inspector at the Preventive Commissionerate, New Customs House, IGI Airport, New Delhi. On interrogation, Puneet Kumar disclosed that he was incharge of Godown Nos.1, 2, 3, 4 and 5 and the VIP/valuable Godown at the New Customs House, IGI Airport and that he stole the seized narcotics substance from two metal trunks lying inside Godown No.4, which was the case property in Case No. DRI F.No.338/XVIII/28/2013-GI. The two metal trunks were exhibited as Ex. D and E in the aforesaid DRI case. However, the seal on the aforesaid boxes were found broken. In the present case, respondent No. 1 was also arrayed as an accused although, no recovery was effected from him.

4. The trial court while passing the impugned order noted that vide earlier order dated 04.07.2017, it had directed the production of the case property in court, however, when the same was produced, the boxes were found in open condition without any seal and the contents were found scattered in the iron boxes.

5. Learned counsel for respondent No.1 submitted that the case property in the aforesaid DRI case was Methamphetamine, whereas in the present case, an entirely different substance was seized i.e., Mephedrone. The aforesaid aspect was also highlighted in the testimony of ML Meena, Sr. Scientific Officer (Chemistry), FSL, Rohini Delhi, who was examined as PW1. During investigation, co-accused Mahender Singh Rana was arrested and from his possession a recovery of 9.090 kg

of contraband was effected and the same was also sent to FSL for analysis. Even as per this FSL report, the substance was opined to be Mephedrone. In support of his contention that samples ought not to be sent for repeated analysis, learned counsel for respondent No. 1 has placed reliance on the decision in Thana Singh v. Central Bureau of Narcotics reported as **(2013) 2 SCC 590**.

6. In the reply filed on behalf of respondent No.2/DRI it has been stated that the DRI had seized 124.600 kg of white crystalline powder suspected to be Methaqualone from five bags recovered from a truck through a seizure memo dated 10/11.04.2013. The samples were tested at CFSL, Hyderabad which vide its report dated 28.03.2014 opined the samples to contain Methamphetamine. As the driver of the truck was not found to have conscious knowledge of the contents, no prosecution was filed before the competent authority. Learned counsel for respondent No.2/DRI submitted that the case property has been tampered with and replaced by some other substance. However, it is submitted that DRI has no objection if the samples are drawn and sent for testing.

7. In Thana Singh (Supra), the Supreme Court held that any request for re-testing/re-sampling should not be entertained under the NDPS Act, as a matter of course. However, under exceptional circumstances, the same can be permitted for cogent reasons to be recorded. It was also held that only in a rare case, the application should be made within 15 days of the receipt of the test report and no application should be permitted thereafter. It was further held that in the absence of compelling circumstances, any form of re-sampling is strictly prohibited under the NDPS Act.

8. In the present case, on 23.07.2016, a FIR was registered with respect to one Faizan, a carrier of drug named Meow-Meow. On being apprehended, the accused admitted the substance to be Mephedrone. The samples were drawn and sent for analysis to the FSL. As per the FSL report dated 21.09.2016, the samples were tested positive for Mephedrone. The respondent No. 1/Puneet Kumar was arrested in pursuance to the disclosure statement of the co-accused Mahender Singh Rana. The respondent No. 1 is alleged to be the incharge of the Godown where the case property in the DRI case was kept.

9. By way of present petition, the prosecution has sought to establish the link between the case property in the present case with the case property of the DRI case. The case set up is that the seized substance is in fact the case property of the DRI case. On the contrary, it has come on record that the case property in the case registered by DRI was an entirely different substance. It is relevant to note that as per the FSL reports, the substance in the present case is Mephedrone whereas the substance seized in the DRI case is Methamphetamine. ML Meena in his cross-examination has stated that “The substance Mephedrone and Methamphetamine are two different substances”. Further, the trial court has observed that when the case property of the DRI case was produced by the custom department in the present case, the same was found to be in open condition without any seal and was lying scattered in the iron boxes, which were covered with knotted cloth.

10. In the facts and circumstances of the case, this Court is of the opinion that no useful purpose will be served if the case property of the DRI case is allowed to be tested.

11. I find no infirmity in the impugned order passed by the trial court.
The present petition is dismissed.

12. A copy of this order be communicated to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

MARCH 04, 2020

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