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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2021

PRONOUNCED ON: 08.12.2021

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.574 of 2021
and Crl.M.P.No.9568 of 2021

Kurella Bhanu Chandar ..Petitioner/Petitioner/Accused
Vs.

Union of India,
Rep by the Superintendent of Customs
RSI AIR, New Custom House,
Meenambakkam,
Chennai-600 002.

..Respondent/Respondent/Complainant

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C., to set aside the order dated 23.08.2021 made in Crl.M.P.No.1826 of 2021 in C.C.6/21 by the learned I Additional Special Judge cum District and Sessions Judge, Special Courts under NDPS Act, Chennai.

For Petitioner : Mr.V.Ramamurthy

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

O R D E R

This Criminal Revision Case is filed to set aside the order dated 23.08.2021 made in Crl.M.P.No.1826 of 2021 by the learned I Additional Special Judge cum District and Sessions Judge, Special Courts under NDPS Act, Chennai.

2.The case of the petitioner is that the materials, which have been filed in this case, does not link the petitioner with the commission of crime and no recovery was effected from the petitioner. In the absence of recovery, the presumption under Sections 35 and 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act, in short) cannot be drawn. Without any search warrant, the search was carried out in the premises of the petitioner, is in utter violation of the mandatory procedures prescribed under Section 42 of the NDPS Act. The prosecution, without any basis, has filed charge sheet against the petitioner under Sections 22, 23, 28 and 29 of NDPS Act and there is no evidence to show that the contraband was imported from the other Country for sale. The prosecution have not produced any materials to show that Section



23 of NDPS Act, is attracted. Since there is no prima facie case made out and there is no incriminating materials, the accused has to be discharged.

3.The case of the respondent is that on an specific intelligence, on 15.06.2020 at about 11.00 hrs, in the presence of the respondent witness at the Foreign Post Office, Meenambakkam, Chennai-16, a foreign post parcel consignment bearing tracking number CL138871818NL arrived from Netherland and the same was found to be addressed to Krishna Kanth, Mr.Residency, RH Road 406, 534201 Bhimavaram, AP, India. The said parcel was sent for examination by the officer, the same was weighed and found 300 grams in total. Upon opening the said parcel, it was found to contain a tin box of an educational game from company viz., "Toy universe" with making LEREN MET MAGNEETJES. Upon opening the tin box, it was found to contain a transparent polythene packet. Upon opening the transparent polythene packet, it was found to contain 10 paper sheets of children educational game and a black colour polythene packet concealed in between them. Upon opening the back colour polythene packet, it was found to contain another black colour ploythene packet.Upon opening the black colour ploythene packet, it was found to contain a transparent polythene packet containing two types of tablet as visible from outside. Upon opening the transparent polythene packet, it was found to contain two transparent polythene bags, one polythene bag was containing tablets with yellow colour on one side and green colour on the other side and second polythene bag was containing pink colour tablets. The said contraband was seized and sent it for chemical analysis. On enquiry, it was brought to the knowledge of the prosecution that the petitioner booked the parcel in the name of Krishna Kanth, using his personal computer and the CPU was recovered under search mahazar of the premises viz., MR Residency, Flat No.302, RH Road, Bhimavaram, West Godavai, Andrapradesh-534 201, dated 15.06.2020 and voluntary confession statement was also recorded. Subsequently, a case has been registered.

4.The respondent, after completing the investigation and formalities, laid a charge sheet before the Special Judge, I Additional Special Court for exclusive trial of cases under NDPS Act, Chennai. After completing the formalities, the Special Judge taken cognizance of the charge sheet in C.C.No.6 of 2021. During the pendency of the said case, the petitioner filed discharge petition invoking Section 239 Cr.P.C. The learned Special Judge found that the petitioner has no grounds to discharge him from the charge and dismissed the petition. Challenging the said order, the petitioner is before this Court.

5.The learned counsel appearing for the petitioner would



WEB COURT

submit that though there is no recovery from the petitioner, he was charge sheeted under Sections 8(c) r/w 22(c), 23, 28 and 29 of the NDPS Act. He would further submit that the CPU of the personal computer of the accused has been seized and sent it for forensic analysis by the trial Court and without obtaining report, the charge cannot be framed. The learned trial Judge failed to consider the fact that there is no recovery of the contraband from the petitioner and the mandatory procedures like Section 42 of the NDPS Act has not been complied with in this case and there is no prima facie case made against the petitioner that he only transported prohibited drugs and there is no incriminating materials against this petitioner to proceed the case further. Hence, he prays for allowing this Criminal Revision Case.

6.The learned Special Public Prosecutor appearing for the respondent would submit that though there is no recovery from the petitioner, prima facie case made out and incriminating materials against the petitioner are available. The learned Special Public Prosecutor would further submit that all the incriminating materials clearly shows that the petitioner has involved in this case and the defence taken by the petitioner can be answered only after the trial and not at this stage. Therefore, the trial Court has rightly dismissed the discharge petition filed by the petitioner. Hence, there is no merit in the revision and the same is liable to be dismissed.

7.Heard Mr.V.Ramamurthy, learned counsel appearing for the petitioner and Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the respondent and perused the materials available on record.

8.Admittedly, the respondent police after completing the investigation and formalities, laid a charge sheet before the Special Judge. The trial Judge taken cognizance of the charge sheet in C.C.No.6 of 2021 on the file of the Special Judge, I Additional Special Court for exclusive trial of cases under NDPS Act, Chennai. During the pendency of the said Calender Case, the petitioner approached the Court invoking Section 239 Cr.P.C., filed a petition to discharge him from the said case. After hearing the submissions made on either side and after perusing the entire materials, the trial Court dismissed the discharge petition filed by the petitioner.

9.On a perusal of the entire materials, it reveals that there is prima facie case made out and there is incriminating circumstances against the petitioner, are available. It is well settled proposition of law that at the time of deciding the petition under Section 239 Cr.P.C, the trial Court has to see a prima facie case and the materials from the charge sheet filed



by the prosecution and the documents annexed therewith. Equally, it is settled proposition of law that at the time of deciding the petition under Section 239 Cr.P.C, the defence taken by the accused need not be considered by the trial Court and it can be considered only after the trial and not at this stage. Further, the Court cannot conduct a roving enquiry on the materials produced by the prosecution. Therefore, at this stage, the Court has to see only as to whether prima facie case is made out and incriminating materials are available against the petitioner to frame the charges and proceed the case further. In this case, this Court finds that there is a prima facie case and incriminating materials are available against the petitioner to proceed the case further. This Court does not find any perversity or infirmity or illegality in the order passed by the learned trial Judge.

10. In view of the above, this Court does not find any merit in the revision and the same is liable to be dismissed. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. I Additional Special Judge cum
District and Sessions Judge,
Special Courts under NDPS Act,
Chennai.

2. The Superintendent of Customs
RSI AIR New customs House,
Meenambakkam, Chennai - 2.

3. The Special Public Prosecutor for Customs,
High Court, Madras.

Copy To

The Section Officer, Criminal Section, High Court, Madras.

+1cc to M/s.V.Ramamoorthy, Advocate, S.R.No.50294

CrI.R.C.No.574 of 2021
and CrI.M.P.No.9568 of 2021

PMK(CO)

RGA(27/12/2021)