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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2021

PRONOUNCED ON : 25.06.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case No.1375 of 2019
and
Crl.M.P.No.18195 of 2019

K.Saran Kumar
S/o. R.Krishna Samy

... Petitioner

..vs..

Represented by
The Intelligence Officer
Narcotics Control Bureau
Chennai Zonal Unit
Chennai.

... Respondent

Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C to set aside the order passed in Crl.M.P.No.1720/2019 in C.C.No.7 of 2019 on the file of the Special Judge, I Additional Special Court for Exclusive trial of cases under NDPS Act, Chennai dated 24.10.2019 is liable to be set aside and discharging the petitioner/accused No.2 in C.C.No.7 of 2019 on the file of the Special Judge, I Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai.

For Petitioner : Mr.G.Murugendran

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor (NDPS)

O R D E R

The Criminal Revision Case has been filed against the order dated 24.10.2019 passed in Crl.M.P.No.1720/2019 in C.C.No.7 of



2019 on the file of the Special Judge, I Additional Special Court for Exclusive trial of cases under NDPS Act, Chennai and to discharge the petitioner/accused No.2 in C.C.No.7 of 2019 on the file of the Special Judge, I Additional Special Court for Exclusive Trial of cases under NDPS Act, Chennai.

2.The respondent registered a case against the petitioner and another for the offence under Section 8(c) r/w Sections 20 (B) (II) (C), 28 and 29 of 'the Narcotic Drugs and Psychotropic Substances Act, 1985' [hereinafter 'NDPS Act' for the sake of convenience]. After investigation, the respondent laid a charge sheet before the learned Special Judge, I Additional Special Court for Exclusive trial of cases under NDPS Act, Chennai. The learned Special Judge, has taken the case on file in C.C.No.7 of 2019. During pendency of the case, the petitioner/A2 filed a petition in CrI.M.P.No.1720 of 2019 under Section 227 of the Code of Criminal Procedure, 1973, to discharge the petitioner from the case. The learned Special Judge, after enquiry, dismissed the petition, against which, the petitioner filed the present revision before this Court.

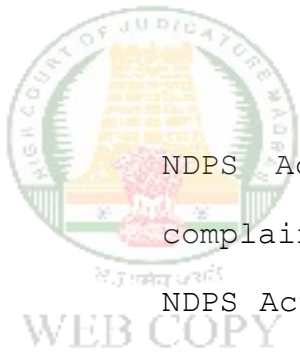
3.The case of the petitioner is that the petitioner has been arrayed as accused No.2 in the above case for the alleged offences under Section 8(c) r/w Sections 20(B) (II) (C), 28 and 29 of the NDPS Act. The respondent alleged that on 18.07.2018



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'Narcotics Control Bureau' ['NCB' for the sake of brevity] officials received a phone from reliable source that the accused are indulged in trafficking Ganja and they have procured around 150 kgs of Ganjas from Andhra Pradesh and transporting Ganja in Volkswagen car bearing Reg.No.TN-02-A-9959 to Nagapattinam via Chennai and while crossing Karanodai Toll Plaza, Chennai at around 21.00 hours, based on that information, the respondent went to the spot and recovered the contraband and brought the accused to the NCB office Chennai. After completion of all the formalities, the accused was arrested and remanded to judicial custody on 19.12.2018. After completion of the investigation, the complaint was filed before the learned Principal Sessions Judge for NDPS Act cases on 11.01.2019 and the said complaint was filed by Intelligence Officer one Mr.Akshay Hunurkar, Narcotics Control Bureau, Chennai Zonal Unit and he is the complainant in the above said case and he is the competent person to file this complaint under Section 36A of NDPS Act.

4. After the case was taken on file, the petitioner filed a petition under Section 227 of Cr.P.C to discharge him from the case in C.C.No.7 of 2019, on the ground that the complainant is not a gazetted officer and he is not a competent person or competent authority to conduct search, to file the complaint against him and also to arrest a person. In this case, there is a violation of mandatory provisions of Sections 41 & 42 of the



NDPS Act. It is stated that the officer, who filed the complaint is not a competent officer under Section 36A of the NDPS Act to file the said complaint. The learned Special Judge, failed to consider the violation of mandatory provisions and competency of the complaint filed by the officer and dismissed the petition which warrants interference of this Court.

5. The learned counsel for the petitioner would submit that the trial Court failed to see that the charge sheet filed by the respondent did not contain enough materials to hold that there is sufficient ground for proceeding the case and to issue process to the petitioner. He would further submit that mere suspicious cannot serve as a sufficient ground for framing the charges in the absence of any material. He would further submit that the trial Court failed to see that the entire materials forming part of charge sheet even if it goes unrebutted, such materials will not be sufficient to hold that the petitioner is guilty under Section 8(c) r/w Section 20(B) (II) (C), 28 and 29 of the NDPS Act and the material on record does not prima facie establish any physical manifestation on the part of the petitioner/A2 in any part of the conspiracy or its execution. He would further submit that there is no materials to show that the petitioner is a party to the criminal conspiracy and also there is no materials to show that the role of the petitioner is specifically reflected in the final report. The trial Court



failed to appreciate the same and therefore, the order passed by the learned Special Judge is liable to be set aside.

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6. The learned Special Public Prosecutor appearing for the respondent would submit that the complainant has got the power to conduct search and he is a competent person to file a complaint. In support of his contention, he also produced a gazette notification which was perused by the trial Court and rightly dismissed the petition stating that there is no merits in the petition.

7. Heard both sides and perused the materials on record.

8. Admittedly, the respondent registered a case against the petitioner and another in C.C.No.7 of 2019. The petitioner herein has been arrayed as A2 in the above said case and after investigation, the charge sheet was laid against the petitioner for the alleged offences under Sections 8(c) r/w Sections 20(B) (II)(C), 28 and 29 of the NDPS Act. From the perusal of the charge sheet, it reveals that the petitioner and another accused indulged in trafficking Ganja and they have procured around 150 kgs of Ganjas from Andhra Pradesh and transporting Ganja in Volkswagen car bearing Reg.No.TN-02-A-9959 to Nagapattinam via Chennai and while crossing Karanodai Toll Plaza, Chennai at around 21.00 hours, based on that information, the respondent



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went to the spot and recovered the contraband and brought the accused to the NCB office Chennai. After completion of all the procedures, the petitioner was arrested and remanded to judicial custody on 19.12.2018. After completion of the investigation, the complaint was filed before the learned Principal Sessions Judge for NDPS Act cases on 11.01.2019. During pendency of the case, the petitioner has filed a petition under Section 227 Cr.P.C to discharge him from the above case. The learned Special Judge dismissed the petition stating that there is no merits in the case.

9. At the stage of framing charge, the Court has to consider the materials with a view to find out if there is sufficient grounds for prosecuting that the accused has committed the offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. Only prima facie case is to be seen and strict standard of proof while evaluating the material to ascertain whether there is prima facie case against the accused is not to be applied. In this case, prima facie materials are available and therefore, whether such materials are sufficient to convict the petitioner or not can be decided after the trial not at this stage and therefore, there is sufficient grounds to proceed further. Insofar as the competency of the complainant is concerned, the complainant is Intelligence Officer and as per the notification produced by the



Special Public Prosecutor, it clearly shows that certainly the respondent has got powers to file the complaint and further whether the provisions of Sections 41 & 42 of NDPS Act have been complied with or not can be decided only at the time of trial and not at this stage. The trial Court rightly appreciated the entire materials on record and considered the submissions made by both counsel and dismissed the petition. This Court finds that there is no perversity in the order passed by the learned Special Judge and there is no merits in the revision. Further, at the time of deciding the petition for discharging, the Court has to see the materials produced by the prosecution and not defence taken by the accused.

10. The learned Special Public Prosecutor produced a copy of Circular dated 21.08.2013, in which, it reveals that the Intelligence Officer has got power to file the complaint after completion of investigation. In this case, a reading of the complaint reveals that it was filed by the Intelligence Officer and therefore, the contention raised by the learned counsel for the petitioner is not acceptable.

11. Though the learned counsel for the petitioner would submit that the officer who had filed complaint is not an authorized officer. It is seen that the Officer, who has filed the complaint is an Intelligence Officer, who is a competent



person to file the complaint and therefore, the reason stated by the learned counsel for the petitioner, is not acceptable.

Therefore, this Court finds that the respondent has got power to file the complaint and there is no merits in the revision. Hence, the present criminal revision case is liable to be dismissed.

12. Accordingly, this Criminal Revision case is dismissed. The petitioner is at liberty to take all his defence before the trial Court during trial. The learned Special Judge is also directed to complete the trial and dispose of the case within a period of six months. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mk

To

1. The Special Judge,
I Additional Special Court for Exclusive Trial of Cases
Under NDPS Act, Chennai.
2. The Intelligence Officer
Narcotics Control Bureau
Chennai Zonal Unit
Chennai.



3. The Public Prosecutor
High Court, Madras.

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+1cc to Mr.G.Murugendran, Advocate, S.R.No.29481

Crl.R.C.No.1375 of 2019
and
Crl.M.P.No.18195 of 2019

VSN-II (CO)
SU(19/07/2021)