



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.06.2021

Pronounced on : 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.R.C. (MD)No.810 of 2017

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The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone,
Madurai.
(F.No.48/1/14/2004-NCB/MDS)

... Petitioner

Vs.

Muthu Maheswaran arrayed as an accused
in the name of
Saravanakumar @ Saravanan @ Setty,
S/o.M.Muthu,
Skarpburnnavagen 165,
TR 1101 Postkord 14564,
Norsborg Stockham,
Sweden.

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C, to call for the records of the impugned order dated 11.10.2017 in Crl.M.P.No.1166 of 2017 in C.C.N.174 of 2007 passed by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai and set aside the same as illegal.

For Petitioner : Mr.C.Arulvadivel @ Sekar
Special Public Prosecutor
For Respondents : Mr.G.Ganesh Kumar
Legal Aid Counsel

O R D E R

This is a revision filed by Narcotics Control Bureau, Madurai through its Intelligence Officer, seeking revision against the orders passed in Crl.M.P.No.1166 of 2017 in C.C.No.174 of 2007 by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai, discharging the respondent herein who is arrayed as Accused No.8.

2.The Criminal Revision is filed in the year 2017 till 2021 it was not taken up. When the matter was taken up on 07.04.2021, there was no representation for the respondent and hence, the Registry was directed to post the matter on 26.04.2021 for appearance of the respondent Counsel and advance his arguments. Even on 26.04.2021 when the matter was listed there was no



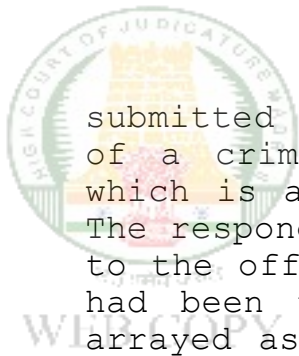
representation for the respondent and this Court passed the following orders:-

"On earlier occasion, when the case came up for hearing on 07.04.2021, the learned Special Public Prosecutor had made his submission. Only to hear the learned Counsel for the respondent/accused, the case was adjourned. Since there was no representation for the respondent, this Court had requested the Additional Public Prosecutor to inform the learned Counsel for the respondent, so that he can make his submission today.

2. When the matter taken up for hearing today, the learned Special Public Prosecutor for Narcotics Control Bureau filed a memo, reporting intimation to the learned Counsel for the respondent/accused through e-mail on 16.04.2021, as proof. The said memo is recorded. Even today, there is no representation for the respondent/accused. Therefore, it is taken that the Counsel for the respondent had withdrawn their appearance for the respondent/accused. Hence, the High Court Legal Service Committee is directed to nominate a Counsel to defend the respondent/accused so as to enable this Court to dispose of the revision case at the earliest."

3.The learned Legal Services Committee attached to the Madurai Bench of Madras High Court nominated Thiru.G.Ganesh Kumar, Panel Lawyer to appear for the respondent/accused and he was furnished typed set of papers from the Court. Accordingly he had made submissions. The learned Counsel appearing for the respondent/accused invited the attention of this Court to page 1 of the typed set of papers wherein there is a mention that, based on information, the respondent herein viz., Saravanan @ Shetty was arrested. The respondent was arrayed as accused No.8 in C.C.No.167 of 2005 before the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai. The case in C.C.No.167 of 2005 pending on the file of the Court of learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai, was split up since the respondent/accused and other accused remained absconding and new C.C.No.174 of 2007 was assigned. The petitioner was arrested on the basis of his statement given voluntarily under Section 67 of NDPS Act admitting *inter alia* his guilt in possession, concealment, transportation, attempt to commit an offence for the illicit drug trafficking and entering into criminal conspiracy for illicit trafficking of 12.780 Kgs of Heroin.

4.The learned Counsel for the respondent/accused invited the attention of this Court to the voluntary statement made by the respondent. The learned Counsel for the respondent/accused



submitted that as per the Constitution of India, a person accused of a crime is prevented from giving evidence incriminating him which is a guaranteed right given to the citizen of this country. The respondent herein is alleged to have made a voluntary statement to the officer of Narcotic Control Bureau incriminating him. This had been used against him and he was arrested and subsequently arrayed as accused No.8 and he is facing trial before the Special Court for EC and NDPS Act Cases, Pudukkottai. Therefore, the respondent himself had filed a petition in Crl.M.P.No.1166 of 2017 in C.C.No.174 of 2007 to discharge him. After hearing the prosecution and the defence, the Criminal Miscellaneous Petition filed by the respondent herein was admitted by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai and thereby discharging this respondent from the case pending before him in C.C.No.174 of 2007. Aggrieved by the order of discharge in Crl.M.P.No.1166 of 2017, the Narcotic Control Bureau had filed this Criminal Revision Case.

5.Point for consideration:

Whether the discharge ordered by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai, is perverse and is to be set aside?

6.Mr.C.Arul Vadivel @ Sekar, learned Special Public Prosecutor appearing for the petitioner urged that the petition for discharge shall not be allowed on technicalities of law. While considering the discharge petition, the Court shall not consider as to whether there is evidence to convict the accused which has to be decided later at the stage of trial. Whereas during framing of charges, the *prima facie* case alone shall be considered. The learned trial Judge had discharged the respondent stating that there is no sufficient material against the respondent/accused. Therefore, the Investigation Officer, Narcotic Control Bureau had filed this revision to set aside the same. Also the learned Special Public Prosecutor relied upon the ruling of the Hon'ble Supreme Court in the case of **Kanhaiyalal -vs- Union of India** reported in **(2008) 4 SCC 668** and based on which, the petition to discharge filed by the accused cannot be considered. It is during evidence that the trial Court can consider whether there are sufficient materials to convict the accused and not at the stage of framing of charges.

7.The ruling relied on by the learned Special Public Prosecutor is found acceptable to the facts involved in this case that the voluntary statement made by the Accused No.8 to the Officers of Narcotic Control Bureau cannot be treated as hit by Article 20 and 21 of the Constitution of India. The NDPS Act is a special enactment wherein constitutional safeguard had been granted



exempting Sections 42 and 67. The Hon'ble Supreme Court had distinguished the same from the statements made by the accused under Section 161 of Cr.P.C.

8. On consideration of the rival submissions and in the light of the ruling relied upon by the learned Special Public Prosecutor, the decision in **Kanhaiyalal -vs- Union of India** reported in **(2008) 4 SCC 668** is aptly applicable to the facts agitated in this revision case. Therefore, as rightly pointed out by the learned Special Public Prosecutor, the order passed by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai, is contrary to the rulings of the Hon'ble Supreme Court. Considering the same, the order passed in Crl.M.P.No.1166 of 2017 in C.C.No.174 of 2007 is to be set aside.

9. The point for consideration is answered in favour of the petitioner and against the respondent.

In the result, the Criminal Revision Petition is allowed.

The order passed by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai, in Crl.M.P.No.1166 of 2017 in C.C.No.174 of 2007 discharging the accused from the case is set aside. The respondent is directed to appear before the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai, and cooperate with the proceedings of the Court in C.C.No.174 of 2007.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar (CS)

SRM

To:

1. The Additional District and Sessions Judge/Presiding Officer,
Special Court for EC and NDPS Act Cases,
Pudukkottai.
2. The Intelligence Officer,
Narcotics Control Bureau,
Madurai Sub Zone,
Madurai.



3.Mr.G.Ganesh Kumar,
Legal Aid Counsel,
Madurai Bench of Madras High Court,
Madurai.

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