

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No.722 of 2021

Gurprit @ Prit Singh & Anr. *Petitioners*

Mr. Jugal Kishore Panda, Adv.

-versus-

State of Orissa *Respondents*

Mr. G.R. Mohapatra, ASC

CORAM:
DR. JUSTICE S.K. PANIGRAHI

ORDER
22.12.2022

Order
No.
06.

1. This matter is taken up through hybrid mode.
2. The present petition has been filed challenging the order dated 17.02.2021 passed by the learned Sessions Judge-cum- Special Judge, Malkangiri, in extending the time-period for filing of charge-sheet by 30 days beyond the stipulated period of 180 days without giving opportunity of hearing to the Petitioners.

I. FACTS OF THE CASE

3. The case of the prosecution in brief is that on 25.08.2020 at about 1.00 A.M. as per direction of IIC, Orkel P.S, the S.I of Police along with P.S staff proceeded to Hatiamba

village chowk for blocking duty and M.V checking on luggage of suspected persons. At 2.00 A.M, the police persons noticed one 12-wheeler truck bearing Regd. No. CG- 07-CA-9049 coming from Balimela side. The police officers stopped the said truck at Hatiamba police chowk and found that one person was driving the said truck and three other persons were seated in the cabin. On verification of the dala of the said truck, the police officers found 15 numbers of plastic gunny bags.

4. One police officer asked the driver and other three persons seated in the cabin regarding the contents of plastic gunny bags; however, they remained silent. On being asked, the driver of the said truck disclosed the name as Gurprit Singh. The police officer informed this fact to the IIC over phone. The police S.I directed constable Mahadev Hembram to arrange two independent witnesses from the locality. Subsequently, the said constable arranged two independent witnesses from the locality. In presence of the independent witnesses, the S.I of police opened the plastic gunny bags and found the footing and flowering tops of cannabis plants locally known as ganja, in semi-wet condition.

5. The plastic gunny bags were weighed and 449 kg 250 gms of ganja (net weight) was seized from the dala of the said truck. It is alleged that the accused persons were transporting ganja to Raipur, Chhattisgarh for selling at high rate. Based on the aforesaid report, a case U/s. 20(b)(ii)(c) of N.D.P.S Act and under Section 27-A/29 of N.D.P.S Act bearing Orkel P.S case No. 142 of 2020 corresponding to T.R case No. 84 of 2020 was registered against the accused persons.
6. As per FIR, the accused petitioners were arrested on 25.08.2020. The period of 180 days would have expired on 20.02.2021 which was also the last date for filing of charge sheet. Since the investigation could not be completed by 20.02.2021, the Investigating Officer, on 15.02.2021, filed a petition before the court of learned Sessions Judge- cum-Special Judge, Malkangiri for extension of time for submission of prosecution report / final form for the interest of prosecution. Pursuant to the petition filed by the Investigating Officer for extension of time, the Learned Special Judge, Malkangiri vide order dated 17.02.2021, extended the time period by 30 days beyond the stipulated period of 180 days.

II. SUBMISSION ON BEHALF OF THE PETITIONER

7. It is submitted by Learned Counsel for the Petitioner that nowhere the Learned Special Judge has held that the copy of the petition filed by the I.O and Special P.P were served on the accused persons. Moreover, the Special P.P has not given cogent reasons as to why there was a delay in filing of chargesheet and thus, there was no specific reason behind detaining the Petitioners beyond the statutory period of 180 days.
8. Furthermore, it is contended by Learned Counsel for the Petitioner that the petition filed by the I.O and Special P.P for extension of time beyond the statutory limit were not similar as the Special P.P had raised new grounds which was contrary to that of the I.O.

III. SUBMISSION ON BEHALF OF THE OPPOSITE PARTY

9. Per Contra, it is submitted by Learned Counsel for the State that challenging the impugned order of the Trial Court, one of the co-accused, Surendra Gadava, had approached this Court in CRLMC No.2278 of 2021. However, this Court vide judgement dated 13.05.2022 dismissed the said CRLMC and confirmed the order passed by the Learned Trial Court on the ground that the notice for extension petition need not be served on

the accused in-person, and is deemed to have been served if the filing of the said petition is within the knowledge of the Learned Counsel for the Petitioner.

IV. COURT'S REASON AND ANALYSIS

10. The NDPS Act is a special enactment under which subsection (4) of Section 36A has modified the period of 90 days stipulated in sub section (2) of Section 167 to 180 days for certain categories of offences and has further empowered the Court to extend such period for further maximum period up to one year. In *Sanjay Kumar Kedia v. Narcotics Control Bureau*¹, while dealing with the provisions of NDPS Act, the Supreme Court has observed as under:

"Section 167 of the Code deals with the procedure wherein investigation cannot be completed in 24 hours and the various sub-sections provide for the maximum period beyond which a person cannot be detained and this period varies between 60 and 90 days keeping in view the gravity of the offence - the maximum period of 90 days being provided with respect to offences punishable with death etc. and 60 days for other offences, and if the investigation is not completed within this period, the accused is entitled to bail under Section 167 sub-section (2) if he makes an application for that

¹ (2009) 17 SCC 631

purpose and is prepared to furnish bail. It will be seen that Section 167 does not envisage an extension of the period of detention of an accused in custody beyond the specified periods. The legislature, however, thought in its wisdom, that certain special categories or situations required that the investigating agencies should be given more time to investigate a matter and to file their complaint or charge-sheets and such provisions have been made under special statutes."

11. There is no dispute that the ganja seized in the case comes under 'commercial quantity' as defined under section 2(viia) of the N.D.P.S. Act. In view of sub-section (4) of section 36-A of the N.D.P.S. Act, for offences involving commercial quantity, the references in sub-section (2) of section 167 of Cr.P.C. to 'ninety days' shall be construed as reference to 'one hundred and eighty days', in other words, if the investigation of the case is not completed within one hundred and eighty days from the date of first remand of an accused to custody, he would ordinarily be entitled to default bail in view of the proviso to subsection (2) of section 167 of Cr.P.C. The proviso to subsection (4) of section 36-A of the N.D.P.S. Act states that if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said

period up to one year on the report of the Public Prosecutor indicating the progress of investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

12. In the instant case, the records indicate that the Petitioners were arrested on 25.08.2020. The statutory period of 180 days, as prescribed in Section 36A of the NDPS Act was to expire on 20.02.2021. Even before expiry of the said period, an application was filed as per Section 36A(4) of the NDPS Act for extension of period to complete the investigation. It is seen that the Petitioners were not produced before the court and were not informed of the grounds of extension in-person. However, it is pertinent to mention that in the case at hand, the petition seeking extension was served on the learned counsel for the Petitioners as noted in the impugned order:

“The case is put up today on receipt of the prayer of the I.O regarding extension of time to submit the chargesheet. Learned Special P.P has also filed a petition to grant time for a period of 180 days to submit the chargesheet on the ground stated therein. Copy served. Heard”

13. It is clear from the order that the petition regarding extension for filing of charge-sheet was served on the

Learned Counsel for the Petitioner and the prayer for such extension was also objected by him. After due consideration, an extension of 30 days was granted beyond the statutory period of 180 days. Therefore, it is factually incorrect to contend that the Petitioners were not given an opportunity of hearing before the order approving extension was passed. On a thorough analysis of the decisions of the Supreme Court on the relevant subject-matter, it is evident that the notice regarding extension of time for submitting of charge-sheet need not be served to the accused in-person. Since, the accused person is represented through a counsel, the service of notice to the learned counsel is deemed as adequate and does not constitute a violation of principles of natural justice.

14. The petition regarding extension of time-period for filing of charge-sheet was made on 15.02.2021. Pursuant to the petition filed the I.O, the Learned Sessions Judge-cum-Special Judge, Malkangiri vide order dated 17.02.2021 extended the time period for another 30 days. It can be ascertained from the aforesaid fact that the Petitioners were served the prayer for extension dated 15.02.2021, to which the Learned Counsel for Petitioners objected as the extension was being sought for 180 days.

Thereafter, the order dated 17.02.2021 was passed by the Learned Sessions Judge- cum-Special Judge, Malkangiri, wherein the period of extension that was sought for, was revised to 30 days. Thus, it can be construed that the Petitioners were given the opportunity to object the grant of extension of time period and a decision to that effect was taken only after complying to this statutory and legal requirement. Even though sub-section (4) of section 36-A of the N.D.P.S. Act does not specifically provide for issuance of notice to the accused on the report of the Public Prosecutor before granting extension, but it must be read into the provision both in the interest of the accused and the prosecution as well as for doing complete justice between the parties and since there is no prohibition to the issuance of such a notice to the accused, no extension shall be granted by the Special Court without such notice. In the present case, the issuance of the notice to the Petitioners was complied with and the decision revising the time period was taken after due deliberation and discussion.

15. Furthermore, this Court in *Lambodar Bag v. State of Odisha* observed that the service of notice to the accused persons is imperative whenever a prayer is made for extension of time period for filing of chargesheet. This

Court further iterated that if the notice regarding prayer for extension of time period is not served on the accused persons, then the filing of such petition must be brought into the notice of Learned Counsel for the accused. It can be reasonably ascertained from the above-mentioned statement that the notice is deemed to be served on accused persons, if the same is within the knowledge of the Learned Counsel representing them. In the present case, the Learned Counsel for the Petitioner has contended that mere serving of copy of extension petition is not sufficient to assume that the opportunity was provided to the Petitioner. However, this Court is of the opinion that the serving of notice is essentially the most important part of hearing or providing an opportunity for being heard, as it accords the affected party a reasonable opportunity to defend its case. Whether the service of notice is equivalent to providing an opportunity to the affected party to defend its stance or file its objection, would depend upon the type of proceeding that has been initiated against the concerned party. In the present case, the extension petition was filed on 15.02.2021 and the decision on the said petition was taken on 17.02.2021. Therefore, the Petitioners were accorded the opportunity to file their objections as the

decision pertaining to the extension petition was not taken on the day it was filed; rather it was taken after a gap of one day. The service of notice of the extension petition has not been disputed by the Learned Counsel for the Petitioner.

16. In the case of *Surendra Gadaba v. State of Odisha*², this Court observed:

“Insistence on issuance of personal notice to the accused even when he is represented by a counsel and the counsel has participated in the proceeding relating to consideration of petition under Section 36-A (4) of NDPS Act would amount to legislation and rewriting the provisions contained in Section 36-A(4) of NDPS Act which is beyond the powers of this Court. It is settled principle of law which stood the test of time that Courts cannot legislate or interpret the provisions of statute so as to render the intention of the legislature otiose.”

17. Insofar as the inconsistency between the prayers of I.O and Special P.P is concerned, this Court is of the view that those do not suffer from any infirmity as they must be interpreted in conjunction and not on a standalone basis. The I.O had prayed for extension of time period for filing of charge-sheet as the investigation was not completed. On the other hand, the Special P.P had

² (2022) 87 OCR 362

contended that the investigation could not be completed due to lockdown/shutdown for Covid-19. There is no reason to disbelieve the statements of I.O and Special P.P as there is no material irregularity or inconsistency in their statements and therefore, it cannot be stated as untrue or devoid of merits.

18.In conspectus of the facts and precedents cited hereinabove, this Court is of the opinion that the rights of the accused as guaranteed under Section 167(2) of Cr.P.C. read with Section 36-A(4) of the NDPS Act, have not been infringed.

19.In the final evaluation, the CRLMC is, accordingly, dismissed, being devoid of merit. There shall be no order as to costs.

(*Dr. S.K. Panigrahi*)
Judge

B.Jhankar