

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1239 of 2022

Pradeep Kanhar & another ***Petitioners***

-versus-

State of Odisha ***Opposite Party***

CORAM: JUSTICE S.PUJAHARI

ORDER

22.06.2022

Order
No.

01. 1. This matter is taken up through Hybrid mode.
2. This application under Section 482 Cr.P.C. has been filed by the Petitioners for quashment of the order dated 18.08.2021 passed by the learned Addl. Sessions Judge-cum-Special Judge, Nayagarh in T.R No.22/50 of 2021 framing the charge under Section 20(b)(ii)(C) of the N.D.P.S Act against them.
3. The case of the prosecution is that while the Petitioners were traveling in the car, contraband Ganja more than commercial quantity was found in the dicky of the car. Hence, they were proceeded in this case.
4. It is submitted by the learned counsel for the Petitioners that the Petitioners could not have been proceeded in this case in the absence of physical possession of the Ganja, which is a sine qua non to proceed against them, as such charge framed

against them for the aforesaid offence is bad in the eye of law and the same is liable to be quashed, more so when there was non-compliance of Section 42 of the N.D.P.S. Act.

5. Learned counsel for the State submits that physical possession is not a sine qua non to come to a conclusion with regard to conscious possession of the contraband article. Since in the dicky of the car, where the Petitioners were occupants, the Ganja was being transported and the same was not a public transport, it can be presumed that they were in conscious possession of the same and carrying the same consciously. Hence, there being materials to proceed against them for the offence alleged, the impugned order cannot be found fault with. So, for non-compliance of Section 42 of the NDPS Act is concerned, the same is subject to proof and the accused cannot be discharged on the ground of non-compliance of the same.

6. It is a well settled position of law that in a case triable by warrant procedure, at the time of framing of a charge, what the trial court is required to do and can consider are only the Police report referred to Section 173 Cr.P.C. and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. No doubt, besides the same the power has also been conferred on the Court to examine the accused before framing the charge but that is the prerogative of the Court, the accused cannot claim the same to be a matter of right and used only in exceptional cases. The aforesaid is the settled position of law. So also the trial court

under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceeding instituted against the accused are required to be dropped and quashed.

7. In the case of **Om Parkash Sharma vrs. CBI** reported in (2000) 5 SCC 679, the apex Court have held, as follows:

“It is trite law that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same. The Supreme Court has already cautioned against undertaking a roving inquiry into the pros and cons of the case by weighing the evidence or collecting materials, as if during the course or after trial. Ultimately, this would always depend upon the facts of each case and it would be difficult to lay down a rule of universal application and for all times. The fact that in one case the Court thought fit to exercise such powers is no compelling circumstance to do so in all and every case before it, as a matter of course and for the mere asking. The Court concerned must be allowed a large latitude in the matter of exercise of discretion and unless in a given case the Court was found to have conducted itself in so demonstrably an unreasonable manner unbecoming of a judicial authority, the Court superior to that Court cannot intervene very lightly or in a routine fashion to interpose or impose itself even at that stage. The reason being, at that stage, the question is one of mere proprieties involved in the exercise of judicial discretion by the Court and not of any rights concretised in favour of the accused.”

8. Keeping in mind the aforesaid law laid down by the apex Court in the case of Om Parkash Sharma (supra) and the contention raised assailing the order of the court refused to discharge the Petitioners, it appears to this Court that the impugned order suffers from no illegality or infirmity inasmuch as the physical possession is not a sine qua non for conscious possession of the contraband article, has since been well settled. If from the materials available on record, it can be presumed that the accused had the knowledge of the contraband articles being kept there and he had control over the articles, the same can be said to be in his possession even if the same was not in his physical possession. Therefore, the same is enough to invite the criminal liability to proceed against a person in a case under the N.D.P.S. Act. As it appears in this case, the Petitioners while travelling in a private car, Ganja of more than commercial quantity was seized. No doubt, it was in the dicky of the car but the same is sufficient to prima facie presume that they were conscious possession of the contraband article i.e. Ganja as it is not the case of the Petitioners that while they were travelling in a public transport and occupants of the public transport, ganja was recovered from the same and they are prosecuted. Furthermore, on a conjoint reading of Sections 35 and 55 of the N.D.P.S. Act the presumption is there with regard to conscious possession. No doubt, those are rebuttable by adducing evidence. When there is nothing in the record indicating the fact that the accused/Petitioners had no knowledge that contraband article was there in the car, in such premises, sufficient materials are there to proceed against them.

9. So far as non-compliance of the mandatory provision is concerned, the same is also a factual one and subject to proof by adducing evidence and on that ground an accused/Petitioners are not entitled to discharge.

10. For the aforesaid reason, I am not inclined to interfere with the impugned order and accordingly, the CRLMC stands dismissed being devoid of merit.

(S. Pujahari)
Judge

PKS

