

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1164 of 2021

Naren Sarkar and another

....

Petitioner

Mr. Jugala Kishore Panda, Advocate

-Versus-

State of Orissa

....

Opposite Party

Mr. T.K. Praharaj, S.C.

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

15.11.2022

Order No.

- 11.
1. Heard Mr. J.K. Panda, learned counsel for the petitioners and Mr. T.K. Praharaj, learned Standing Counsel for the State.
 2. Instant petition under Section 482 Cr.P.C. is filed by the petitioners assailing the impugned order 3rd November, 2020 passed by the learned Special Judge-cum-Sessions Judge, Malkangiri in T.R. Case No.53 of 2020 on the grounds inter alia that before extending the period to file chargesheet in terms of Section 36-A(4) of the Narcotic Drugs and Psychotropic Substance Act (in short 'N.D.P.S. Act') no any opportunity was provided to the petitioners and without assigning any reason, such extension was allowed.
 3. A copy of the FIR which is at Annexure-1 is perused by the Court. In fact, pursuant to the written report, Orkel P.S. Case No.91 of 2020 for commission of alleged offence under Sections 20(b)(ii)(c), 27-A and 29 of N.D.P.S. Act was registered against the petitioners.

4. Learned counsel for the petitioners submits that learned Special P.P. moved an application dated 2nd November, 2020 for extension of time for a period of six months to file chargesheet which is at Annexure-3 but then without any reason assigned therein, the same was accepted due to the reason that for the lock down/shut down, the investigation could not be completed. It is further submitted that said application was considered and the impugned order under Annexure-4 dated 3rd November, 2020 was passed by the learned court below by not assigning any specific reason and without providing opportunity to the petitioners, allowed the extension of time to submit chargesheet, which is not tenable in law and thus, is liable to be set aside with a consequential direction to provide opportunity to the petitioners to file objection to such extension.

5. Mr. Praharaj, learned Standing Counsel on the other hand strongly objects to the contention of Mr. Panda, learned counsel for the petitioners and submits that on a bare reading of Annexure-3, the reason for extension of time to file chargesheet is evident as it was on account of lock down/shut down as claimed therein. It is further submitted by Mr. Praharaj, learned counsel for the State that opportunity was provided to file objection and thereafter, the court below passed the impugned order under Annexure-4 and extended the period to file chargesheet, which is justified and in accordance with law, therefore, it does not deserve to be interfered with.

6. Mr. Panda, learned counsel for the petitioners submits that lock down/shut down cannot be a ground to seek extension of time to file chargesheet and in support of his contention, he cited **S.Kasi Vrs. State Through The Inspector of Police Samaynallur Police Station, Madurai District** reported in 2020 SCC OnLine SC 529. That apart, Mr. Panda placed reliance on decisions of the Apex

Court as well as High Courts more prominently **Lambodar Bag Vrs. State** reported in **(2018) 71 OCR 31** to contend that there is no reason assigned by the Special P.P. while seeking extension to file chargesheet and there has been no independent application of judicial mind by the court as well while granting extension in terms of Section 36(A)(4) of N.D.P.S. Act.

7. Of course, lock down/shut down cannot be a ground for the prosecution to seek extension of time to file chargesheet. In **S. Kasi** (supra), the Apex Court held that even during the lock down/shut down period, chargesheet could have been filed. In the present case, learned Special P.P. sought for extension on the above ground with additional ground, such as, arrest of another accused was pending by then as is made to appear from Annexure-3. In **Lambodar Bag** (supra), this Court had the occasion to examine point in law involved vis-a-vis Section 36(A)(4) of N.D.P.S Act and therein it has been held and observed that if any such request is made from the side of the prosecution, the court should apply its judicial mind. This Court in the aforesaid decision referred to the decision of the Apex Court in the case of **Hussainara Khatoon and others Vrs. Home Secretary, State of Bihar, Patna** reported in **AIR 1979 SC 1370**. The accused has invaluable right to be considered as against the plea for extension of time to file chargesheet and for that all the materials are to be examined and the court is to apply its judicial mind while granting extension. In the present case, as it appears no doubt application for extension under Annexure-3 was moved by the learned Special P.P. and objection was invited by the petitioner, however, there is nothing on record to show that the petitioner did ever had the real occasion to file the objection since the case was posted to a day after i.e. on 3rd November, 2020, on which date, the impugned order under Annexure-4 was passed. That apart,

considering the impugned order under Annexure-4, the Court does find that the learned court below without assigning any reason extended the time to file chargesheet. In view of the above, the Court is of the logical conclusion that learned court below while considering the request of the prosecution did not examine it keeping in view the settled position of law as discussed in **Lambodar Bag**(supra).

8. Accordingly, it is ordered.

9. In the result, the impugned order dated 3rd November, 2020 passed by the learned Sessions Judge-cum-Special Judge, Malkangiri in T.R. No.53 of 2020 arising out of Orkel P.S. Case No.91 of 2020 under Annexure-4 is hereby set aside with a direction to the learned court below to reconsider the prayer of prosecution under Annexure-3 with regard to extension of time to file chargesheet after receiving objection from the defence and pass appropriate order thereon as per and in accordance with the settled position of law as enunciated in **Lambodar Bag**(supra).

10. Consequently, the CRLMC stands allowed.

11. Urgent certified copy of this order be issued as per rules.

12. A free copy of this order be handed over to the learned counsel for the State for compliance.

(R.K. Pattanaik)
Judge