

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLMC NO.2373 of 2021**

(This is an application under Section 482 of the Code of Criminal Procedure, 1973 for challenging the order dated 09.04.2021 passed by the learned Sessions Judge-cum-Special Judge, Malkangiri in T.R. No.98 of 2022 arising out of Mathili P.S. Case No.129 of 2020).

Pradeep Biswas

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Petitioner***-versus-******State of Odisha***

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Opposite Party**Advocates appeared in the case through Hybrid Mode:*****For Petitioner***

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Mr. Sanjeev Udgata, Adv.***-versus-******For Opposite Party***

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Ms. S. Mishra, ASC**CORAM:****JUSTICE V. NARASINGH****DATE OF HEARING :20.04.2022****DATE OF JUDGMENT:20.04.2022*****V. Narasingh, J.***

1. Invoking power of this Court under Section 482 of Cr.P.C. (hereinafter referred to the Code of Criminal Procedure) petitioner seeks to assail the order dated 09.04.2021 passed by the Learned Sessions Judge-cum-Special Judge,

Malkangiri in T.R. No.98 of 2022, taking cognizance of offence under Sections 20(b)(ii)(C)/27A/29 of the NDPS Act, 1985. Petitioner is one of the accused being charge sheeted. And the contraband seized is to the tune of 1318.250 kgs.

2. It is submitted by the learned counsel for the petitioner that entire allegation against the petitioner, accepting the charge sheet at its face value is one made under Section 29 of the NDPS Act and the sole basis of implication being co-accused statement and since there is no other credible material to connect accused with the offence the proceeding is liable to be quashed qua the petitioner. And, its continuance is an abuse of process of law.

3. In support of his contention learned counsel for the petitioner relied on the following judgment:

Jyotiranjana Mohapatra v. State of Odisha - 2014 (I) OLR 761, judgment of the Apex Court in the much-celebrated case of ***Tofan Singh v. State of Tamil Nadu - (2020) Vol.80 OCR (SC) 641*** and the Apex Court's decision reported in ***M/s. Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others - AIR 1998 SC 128*** and the judgment of the Madras High Court in the case of ***Mohammed Ashan v. The Senior Intelligence Officer, Directorate of Revenue Intelligence, Chennai-17 - 2007 SCC online Mad 978***.

4. Learned counsel for the State opposing the prayer relies on the recitals in the case diary which is on record. Contents of

the Case Diary relevant for adjudication is extracted hereunder;

“The investigation of the case is not yet complete and the prima facie U/s-20(b)(ii)(C) NDPS Act against the accused persons Sanjay Ray (45) S/o-Lt. Shyamakanta Ray of Vill-Bhagabanpur Jarldhi, P.s.-Bustamnagar Dist-Malda (West Bengal) and U/S-20(b)(ii)(C)/27(A)/29 NDPS Act against the accused persons (i) Shymal Ray S/o-Kiran Ray of Village MV-83, P.S-Malkangiri (ii) Nishikanta Mandal S/o-Dayal Mandal, (iii) Ranjan Biswas S/o-Upen Biswas (iv) Pradeep Biswas, S/o-Bijaya Biswas all are of village MV-84, P.s/Dist-Malkangiri, and Bhiku Sekh S/o-Kurban Sekh of Kalia Chawk, P.S-Kalia Chawk, Dist-Malda (W.B) showing as absconder with keeping investigation of the case open. Submitted C.S. vide No.53 Dt.-

09.04.2021 with keeping
investigation open.”

5. The learned counsel for the State relied on the following Judgments in support of his submission that the case does not merit interference;

i). *State of Karnataka Vrs. M. Devendrappa & another - (2002) 3 SCC 89*

ii). *Sonu Gupta Vrs. Deepak Gupta - (2015) 3 SCC 424*

iii). *Sau Kamal Shivaji Pokarnekar vrs. State of Maharashtra & others - (2019) 74 OCR (SC) 131*

iv). *Mohd. Allauddin Khan vrs. State of Bihar - (2019) 6 SCC 107*

6. The above judgments relied on by the State have categorically out lined the duty cast on the Court while examining an order of cognizance while exercising inherent power under Section 482 Cr.P.C.. It is trite law that such power is to be exercised sparingly, and the High Court exercising such power should not embark upon a detailed enquiry.

7. In the judgment *Sau Kamal Shivaji Pokarnekar (Supra)* the Apex Court has sounded a caution that while scrutinizing an order of cognizance, the Court is not required to evaluate the merits of the materials or evidence in support of the accusation because the Court must not

undertake that exercise to find out whether the materials would lead to a conviction or not.

8. Keeping the contours fixed by the Apex Court, while exercising the power of the Court under Section 482 of the Cr.P.C. in dealing with an order of cognizance, the grounds advanced by the learned counsel for the petitioner have to be examined.
9. On the bare perusal of the charge sheet which have been extracted herein above, it can be seen that the investigation in the case at hand has been kept open and petitioner has been charged under Sections 20(b)(ii)(c)/27A/29 of the NDPS Act.
10. The learned counsel for the petitioner has relied on the judgments which has been referred to hereinabove to fortify his submission that in the case at hand the order of cognizance and the proceeding vis-a-vis the petitioner is to be quashed on the basis of law laid down in the judgments cited.
11. In **2014 (1) OLR 761** relied on by the petitioner, this Court quashed the proceeding while exercising the power under Section 482 Cr.P.C. as two of the accused persons who had faced trial and on the basis of whose statement the petitioner was being implicated therein, have been acquitted of the charge under Sections 20(b)(ii)(c) of the NDPS Act.
12. Second judgment relied upon **AIR 1998 SC 128** deals with the powers of the High Court in dealing with an order of cognizance under Section 482 Cr.P.C of the Code without

relegating one to prove innocence in the trial or to seek discharge. There cannot be two opinions relating to the power conferred on this Court under Section 482 Cr.P.C. It bears no repetition that wider the power greater should be the circumspection in exercising the same.

13. The judgment reported in **(2020) vol.80 OCR 641 Tofan Singh V. State**, has no application in the case at hand, at the present juncture.
14. The last judgment on which reliance is placed by the learned counsel for the petitioner is of the Hon'ble Madras High Court. It is seen that the said judgment is at the stage of framing of charge.
15. It is trite law as decided by the Apex Court in the Case of State of **Haryana Financial Corporation V. Jagdamba Oil Mills (2002) 3 SCC 496**, a judgment is not to be read as Euclid's Theorem. Judgment has to be applied in the given facts and cannot have universal mechanical appreciation. This salutary principle is lost sight of by the learned counsel for the petitioner in relying on the aforesaid judgments. In as much as, this Court at the stage of cognizance is called upon to make an elaborate microscopic examination of the materials on record.
16. As held by the apex Court in the cases cited by the prosecution at the stage of evaluation of an order of cognizance the Court does not function as an Appellate Court or a Revisional Authority and it is not open to the Court to "embark upon enquiry whether the evidence of

question is reliable or not, or whether on a reasonable appreciation of its accusation would not be sustained that is the function of the Trial Judge”.

17. In the case of ***Sonu Gupta vrs. Deepak Gupta (Supra)***, Apex Court has held thus;

“9. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicate above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case”.

18. On prima facie consideration of the materials on record vis-à-vis the accusation relating to the petitioner this Court finds that the allegation of petitioner’s involvement does not appear to be frivolous and vexatious.
19. On a conspectus of materials on record this Court does not find any infirmity in the order of cognizance and accordingly the CRLMC is dismissed. There shall be no order as to cost.

However, it is made clear that the opinion expressed in the case at hand relating to the petitioner should not be

considered as expressing any conclusive opinion relating to the complicity of the petitioner which has to be considered by the Court concerned on its own merits at an appropriate stage.

(V.Narasingh)
Judge

*Orissa High Court, Cuttack,
Dated the 20th of April, 2022/Santoshi*

