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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P.NO.1794 OF 2019

AND

CRL.M.P.NO.1083 OF 2019

R.Sivaraj

... Petitioner/Accused

.Vs.

The Assistant Commissioner of Customs,
Prosecution Unit (AIR),
New Customs House,
Meenambakkam,
Chennai - 600 027.
(R.R.No.13 of 2018)

... Respondent/Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and quash the complaint filed by the respondent against the petitioner in C.C.No.138 of 2018 pending on the file of the 1st Additional Special Court for NDPS Act, Chennai.

For Petitioner : Mr.S.Senthil

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor
for Customs

O R D E R

This Criminal Original Petition is filed to quash the complaint dated 19.11.2018, by the Assistant Commissioner of Customs, Prosecution Unit (AIR), Chennai.

2. The short point is that on the date of alleged commission of crime namely export of Tramadol drug to foreign country, the said drug though notified as Psychotropic Substance in the notification in S.O.1761(E) dated 26.04.2018, the



notification came into effect only after 120 days i.e., on 26.08.2018, whereas, the petitioner herein was arrested on 25.05.2018 alleging that 1000x10 strips of Tramadol Hydrochloride tablets were exported by him through Air Mail on 28.04.2018 and the said drug covered under the schedule of NDPS Act, vide notification dated 26.04.2018.

3. The learned counsel for the petitioner for the attention of this Court submitted the Gazette notification of the Ministry of Finance (Department of Revenue) dated 26.04.2018 notifying Tramadol as a psychotropic substance is incorporating in serial No.110Y in the schedule to the NDPS Act, 1985. Thereafter the Ministry has issued a public notice No.73 of 2018 dated 08.05.2018 drawing attention of the Exporters/Importers, Custom brokers and all concerned, to the notification dated 26.04.2018 issued by the Ministry of Finance (Department of Revenue) and in view of the amendment in the list of psychotropic substance specified in the schedule to the NDPS Act, Tramadol is included and hereinafter any person dealing with Tramadol drug shall be governed by the provisions of Sections 8 and 9 of NDPS Act, which reads as below:

"8.Prohibition of certain operations:- No person shall

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import in India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorization also in accordance with the terms and conditions of such licence, permit or authorization.

9. Power of Central Government to permit, control and regulate -(1) Subject to the provisions of Section 8, the Central Government may, by rules:-

(a) permit and regulate-



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(i) the cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport, import inter-State. Export inter-State, use or cultivation of coca leaves;

(ii) the cultivation (such cultivation being only on account of Central Government) of the opium poppy;

(iii) the production and manufacture of opium and production of poppy straw;

(iiia) the possession, transport, import inter-State. Export inter-State, warehousing, sale, purchase, consumption and use of poppy straw produced from plants from which no juice has been extracted through lancing

(iv) the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists;

(v) the manufacture of manufactured drugs (other, than prepared opium) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;

(va) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of essential narcotic drugs;

Provided that where, in respect of an essential narcotic drug, the State Government has granted licence or permit under the provisions of Section 10 prior to the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, such licence or permit shall continue to be valid till the date of its expiry or for a period of twelve months from such commencement, whichever is earlier

(vi) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;



(b) prescribe any other matter requisite to render effective the control of the Central Government over any of the matters specified in clause (a) "

6. Prima facie material placed before this Court would clearly indicate that the petitioner herein has exported Tramadol Hydrochloride tablets by Air Mail to USA on 28.04.2018. The said drug notified as Psychotropic Substance and incorporated in the schedule to the NDPS Act by insertion of serial 110Y only two days prior to the export. When the stakeholders made representation to the Government expressing their difficulty due to sudden notification of the drug without providing breathing time for the manufacturers, dealers and exporters to take appropriate steps and avoid prosecution, the State has considered the representation and has deferred the implementation of the amendment for 120 days, so that the supply chain of the said drug does not offend the provisions of NDPS Act. While so, the records on the face clearly prove that any prosecution for transport, export of Tramadol drug will fall



within the scope of ambit of NDPS Act only after 26.08.2018 and not prior to that date.

7. In this case, admittedly the occurrence has taken place on 28.04.2018 and therefore, there cannot be any prosecution against the petitioner based on the inclusion of the Tramadol within the purview of NDPS Act on 26.04.2018 but with effect from 26.08.2018. Even if the petitioner is put to the trial, the petitioner cannot be convicted for the act which was not an offence on the date of commission. Hence the Criminal Original Petition to quash is allowed. Consequently, the connected Criminal Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rpl

To

1. The Judge,
The 1st Additional Special Court for NDPS Act,
Chennai.
2. The Assistant Commissioner of Customs,
Prosecution Unit (AIR),
New Customs House,
Meenambakkam,
Chennai - 600 027.
3. The Special Public Prosecutor (Customs),
High Court, Madras.

+1cc to Mr.S.Senthil, Advocate, S.R.No.35398

CRL.O.P.NO.1794 OF 2019 AND
CRL.M.P.NO.1083 OF 2019

AK-II(CO)
PBS/30/06/2022