

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 3959 of 2022

**Pamela Goswami
Vs.
The State of West Bengal**

Mr. Milon Mukherjee
Mr. Avik Ghatak
Ms. Afreen Begum
...for the petitioner

Mr. Rudradipta Nandy, Id. APP
Mr. Ranadeb Sengupta
..for the State

Item No. 63

Heard & Judgment on: 16.03.2023

Bibek Chaudhuri, J.

An order dated 3rd June, 2021 passed by the learned 4th
Additional Sessions Judge-cum- Judge Special Court under NDPS Act,

Alipore, South 24 Parganas in NDPS Case No. 17 of 2021 is under challenge in the instant revision.

The petitioner was travelling in a Honda BR-V car on 19th February, 2021 along with two other persons. The said car was intercepted by police attached to Alipore Police Station and narcotic substances, viz., cocaine weighing about 76 Gms was recovered from the rear zip cover of the front seat and under driver's seat of the said vehicle. With the recovery and seizure of narcotic substance police registered a case under Section 21(b)/29 of the NDPS Act, 1985 against the present petitioner and two other persons. Subsequently, investigation of the case was taken over by the detective department constituting a Special Investigating Team (SIT). After investigation it was found that one Rakesh Kumar Singh along with others out of animosity against the present petitioner and other two travellers of the said car planted narcotic substances in the said car. The petitioner had no knowledge about such plantation of narcotic substances and she was neither in physical or constructive possession of the said contraband articles. On such finding the Investigating Officer prayed for discharging the present petitioner on the ground that no evidence could be collected against her and two others.

The final report was produced before the learned Special Judge for acceptance. Vide order dated 3rd June, 2021 the learned Sessions

Judge rejected the prayer of the de facto complainant mainly on the ground that "Sections 35 and 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985 raise presumption with regard to culpable mental state on the part of the accused as also place burden of proof in his behalf on the accused, but a bare perusal of the said provision would clearly show that the presumption would operate in the trial of the accused only in the event of circumstances contained therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, the legal burden would shift..."

I have heard Mr. Mukherjee, learned senior counsel on behalf of the petitioner as well as Mr. Nandy, learned advocate for the State.

On careful perusal of the impugned order dated 3rd June, 2021 it appears to this Court that the learned trial Judge formed his opinion after going through the first two lines of paragraph 58 of **Noor Aga's** case reported in **(2008) 16 SCC 417**. In brief **Noor Aga** establishes a ratio that even if in certain special statutes the principle of reverse burden as regards presumption of culpable mental state are codified against the general jurisprudence of criminal administration of justice. It is the primary duty of the prosecution to prove the foundational fact of the prosecution case. Therefore, Section 35 starts with the words "in any prosecution for an offence under this Act...." Similarly,

presumption under Section 54 of the NDPS Act is available only in course of trial on the question of possession of illicit articles.

It is needless to say that prosecution starts on a police report on submission of charge sheet. In the instant case no charge sheet has been filed by the Investigating Officer against the present petitioner on the ground that no evidence could be collected against her.

I am not unmindful to note that even if a final report is filed against the accused before accepting such final report it is necessary for the trial Court to consider the case diary and to come to a finding as to whether the materials contained in the case diary constitutes offence against the accused.

I have carefully gone through the impugned order. The learned Special Judge did not refer to any specific materials from the case diary, which might implicate the accused. He took cognizance against the petitioner on the basis of presumption of law under Sections 35 and 54 of the NDPS Act. Such presumption is not available at the initial stage of taking cognizance of investigation.

In view of such circumstances, this Court is not in a position to agree with the finding made by the learned Special Judge in the order impugned.

Accordingly, the order dated 3rd June, 2021 is set aside.

The instant revision is, thus, allowed on contest.

(Bibek Chaudhuri, J.)