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Crl.R.C.No.550 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.06.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.550 of 2023

1. S. Johnson
 2. V. Durga Giri Venkata Saiprasanth
- ... Petitioners

Vs.

State, represented by
Inspector of Police,
NIB CID, Chennai
Cr.No.13 of 2021
Respondent

...

Criminal Revision filed under Section 397 and 401 of Cr.P.C., to call for the records and papers relating to Cr.M.P.No.3422 of 2021 on the file of the Principal Special Judge, Principal Special Court under EC and NDPS Act, Chennai and set aside the impugned order dated 25.11.2021.

For Petitioners : Mr. S. Apunu

For Respondent : Mr.R.Vinoth Raja, GA, (crl.side)

ORDER

This criminal revision has been filed challenging the order passed in Crl.M.P.No.3422 of 2021, dated 25.11.2021 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, in and by



which, the learned Principal Special Judge has dismissed the bail application filed by the petitioner under section 167(2) Cr.P.C.

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2. The facts of the case leading to filing of this Criminal Revision Case are as follows;

(i) The petitioners/A1 and A2 were prosecuted by the respondent police for the offences punishable under sections 8(c) r/w.20(b) (ii) (C), 25 & 29 (i) of NDPS Act, 1985 in Cr.No.13 of 2021 on the allegation that they were found in illegal possession of 150 kgs. of Ganja.

(ii) Pursuant to which, they were arrested and remanded to judicial custody on 26.03.2021.

(iii) The 180 days contemplated under the provisions of NDPS Act, to file final report expires on 22.09.2021, within which date, since the respondent police has not filed final report, the petitioners filed petition under section 167(2) Cr.P.C. in Crl.M.P. No.3422 of 2021 before the Principal Special Court under EC & NDPS Act, Chennai 104, seeking statutory bail.

(iv) The learned Special Judge dismissed the petition filed under section 167(2) Cr.P.C., as not maintainable on the ground that charge sheet was already filed by the respondent police on 17.09.2021 and the same



remained unscrutinised and was neither returned as defective by the court below and the same was taken on file on 25.11.2021 for necessary registration.

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(v) Aggrieved against such dismissal, the present Civil Revision Petition is filed before this court.

3. The learned counsel for the petitioners submitted that since the respondent police has not filed final report within the statutory period, the petitioners by invoking provisions under section 167(2) Cr.P.C., filed statutory bail petition. However, the court below, after receiving final report belatedly without full documents, passed the impugned order, holding that though charge sheet was received by this court on 17.09.2021, the same remained unscrutinised and on 25.11.2021, the case was taken on file for necessary registration. Stating so, it dismissed the statutory bail petition as not maintainable.

4. It is his further contention that in the impugned order, the learned Special Judge has stated that only on 24.11.2021, it was brought to the notice of the court that charge sheet was filed on 17.09.2021 and of course the same was not placed before the court for scrutiny or for taking the same on file and on scrutiny of the charge sheet, it was found to be correct and was taken on file.



The above statements are only an afterthought and inadmissible. The court below has miserably failed to scrutinize the records properly and passed improper order and for such a mistake of the court below, the provision laid down in section 167(2) Cr.P.C., cannot be violated. The petitioners are languishing inside the prison for more than two years for no such fault of them. Thus, the impugned order is improper, unjust, illegal and unsustainable in law in view of the principle stated by the Supreme court and therefore the same is liable to be set aside.

5. The learned Govt. Advocate (crl.side) submitted that the final report has been filed with all required documents. The case has been taken on file on the day of passing of the impugned order. Therefore, the petitioner is not entitled for statutory bail. The trial court rightly dismissed the statutory bail petition. Therefore, there is no reason to interfere with the order passed by the trial court. Hence he seeks to dismiss the criminal revision case.

6. Heard both sides and perused the impugned order and also the entire materials available on record.

7. It is seen that on 19.04.2023, when the matter came up for admission, it was noticed by this court from the records that charge sheet was filed on



25.11.2021 and the same was taken on file as C.C.No.315 of 2021 and subsequently on 29.11.2021, there is an endorsement 'records received without list of documents'. The Registry was directed to obtain a clarification from the court below as to whether the final report has been taken on file without list of documents or not.

8. On 27.04.2023, the Registry received a communication from the learned Principal Special Judge in Dis.No.2683 of 2023, wherein, it has been stated as follows;

'On perusal of records, it is found in this case, charge sheet was filed before the court on 17.09.2021, it was taken on file on 25.11.2021 and it is numbered as C.C.315/2021. When it was taken on file, all such related material document pertaining to this case was enclosed with charge sheet, and it was taken on file by the said Bench Clerk. On transfer, the case bundle was handed over to II Additional Court, the Bench Clerk of that court had received and endorsed in such a manner "Records received without list of document.'

9. Considering the report of the learned trial Judge, it is clear that on the date of passing this impugned order, charge sheet filed before the court on 17.09.2021 was taken on file on 25.11.2021 and the case was numbered as C.C.No.315 of 2021 with all related material documents pertaining to that case.



In the circumstances, the petitioners are not entitled for statutory bail and there is no reason to interfere with the impugned order passed by the trial court. I find no merits in the criminal revision. Therefore, it is hereby dismissed.

05.06.2023

msr

Index:Yes/No

Internet:Yes/No

To

- 1.The Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai
2. The Inspector of Police,
NIB CID, Chennai.
- 3.The Public Prosecutor, High Court, Madras.

V. SIVAGNANAM, J.

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