



Crl.R.C.No.828 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.828 of 2023 and
Crl.M.P.No.6366 of 2023

R.Rakesh

... Petitioner

Vs.

The State represented by,
the Inspector of Police,
T-3 Korattur Police Station,
Chennai.

... Respondent

Prayer: Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the charges framed against the petitioner dated 19.01.2023 in C.C.No.122 of 2022 pending on the file of the Principal Special Court for E.C. and NDPS Act, Chennai.

For Petitioner : Mr.S.K.Mageshwaran

For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

ORDER

Challenging the orders, dated 19.01.2023 passed in C.C.No.122 of 2022 by the Principal Special Court for E.C. and NDPS Act, Chennai, the present Criminal Revision is filed.



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2. The facts leading to the filing of the revision case are as follows:

- i. On receipt of a Police report, the learned Principal Judge for E.C. and NDPS Act, Chennai took cognizance of the offences under Sections 8(c), 22 (c) and 29 (1) of Narcotic Drugs and Psychotropic Substances (Amended Act) 2001 (NDPS Act) against the revision petitioner and the other accused;
- ii. charges under Sections 8(c), 22 (c) and 29 (1) of NDPS Act (Amended Act, 2001) were framed against all the accused including the present revision petitioner on 19.01.2023 and the accused pleaded not guilty;
- iii. According to the revision petitioner, he had already filed a petition under Section 227 Cr.P.C., in Crl.M.P.No.6119 of 2022 for discharging him from the offences and the learned trial Court Judge, without disposing of the said application framed charges against him;
- iv. Crl.M.P.No.6119 of 2022 was disposed of on 27.03.2023 and once again the Special Judge framed charges against all the accused for



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the offences under Sections 8(c), 22 (c) and 29 (1) of NDPS Act (Amended Act, 2001).

Challenging the same, the present revision is filed.

3. At the time of admission, my learned predecessor (Hon'ble Justice.V.Sivagnanam) had called for remarks from the concerned Court vide orders dated 14.06.2023 which is extracted hereunder:

“When the matter is taken up for hearing, learned counsel for the petitioner submitted that the petitioner is arrayed as A5 in C.C.No.122 of 2022 on the file of the Principal Special Court, EC & NDPS Act, Chennai and prosecuted under Section 8(c) r/w. Section 29(1) of the NDPS Act (Amended Act,2001) and Section 8(c) r/w. Section 22(c) of the NDPS Act (Amended Act,2001). The revision petitioner has filed a discharge petition before the Trial Court and the same has been taken on file as CMP No.6119 of 2022 on 01.12.2022 and the first hearing date was fixed on 22.12.2022 and thereafter, it was periodically adjourned for enquiry. All of a sudden, the learned Judge without deciding the discharge petition, framed charges against the petitioner on 19.01.2023.



2. *On perusal of records, the fact reveals that the revision petitioner, who is arrayed as A5 in C.C.No.122 of 2022 has filed a discharge petition in CMP No.6119 of 2022 and the same was periodically adjourned for enquiry. The learned Judge, without deciding the discharge petition, framed charges against the petitioner on 19.01.2023.*

3. *Under these circumstances, the learned Principal Special Judge, Principal Special Court under NDPS Act, Chennai, is hereby directed to offer remarks for not deciding discharge petition in C.M.P.No.6119 of 2022 filed by the petitioner and framed charges pending the discharge petition.*

4. *Registry is directed to get remarks from the learned Principal Special Judge, Principal Special Court under NDPS Act, Chennai and file it before this Court on or before 26.06.2023.*

List the case on 26.06.2023.”

4. Accordingly, the learned Principal Special Court for E.C. and NDPS Act, Chennai sent her remarks dated 23.06.2023 to this Court wherein she has stated thus:

“I most respectfully submit that in this case there are seven accused [A1 to A7] arrested for committing the offence U/s 8(c) r/w 22(c), 29(1) of the NDPS Act which is



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of commercial quantity. While the bail petition was preferred before the Hon'ble High Court by the accused there was three separate bail orders by Hon'ble Court fixing time limit to dispose on separate date. Hence after appearance of accused before this court and serving of copies it was fixed for framing of charges on 19.01.2023.

It is true, lordship that discharge petition was filed by Accused AS Rakesh before this court on 25.11.2022. The said discharge petition was numbered as Crl.M.P.6119/2022 and it was kept pending to give notice to P.P finally A5 had served notice to P.P only on 15.06.2023 and the discharge petition was kept pending and filing of reply by P.P. The said petition was not called along with C.C.122/2022. Hence without knowing of discharge petition pending this court had framed of charge on 19.01.2023. The accused and counsel as well as court Bench Clerk had not brought to the court notice about the discharge petition. All the accused had simply denied the offence when the charges was read over to them, both accused and counsel had not said anything about the discharge petition. It was a mistake committed by this court. I was not put to knowledge about that discharge petition the record was voluminous petition was mixed up with other paper Due to tension and work pressure every day, myself without verification had framed



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the charge against them. By oversight and due to workload, this mistake had happened. I regret for the mistake committed by this court. I may be pardoned, excused. Hereafter, I would be very careful while discharging my duty.

This is for your Lordship kind consideration.”

5. It is seen from the remarks submitted by the learned Principal Judge that the counsel for the present revision petitioner who appeared in the trial Court did not bring it to the knowledge of the Principal Special Court for E.C. and NDPS Act, Chennai with regard to the pendency of the Crl.M.P.No.6119 of 2022 when the charges were framed on 19.01.2023. It is also seen from the records that Crl.M.P.No.6119 of 2022 was posted for counter of the Special Public Prosecutor. However, charges were framed on 19.01.2023. Subsequently, when the Judicial Officer came to know about the pendency of the discharge petition in Crl.M.P.No.6119 of 2022, she disposed of the same on merits and framed the charges once again against all the accused for the offences punishable under Sections 8(c),



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22 (c) and 29 (1) of NDPS Act (Amended Act, 2001) on 27.07.2023, forgetting the fact that charges were already framed on 19.01.2023.

6. However, a perusal of the charges framed on 19.01.2023 and 27.07.2023 shows that they are one and the same and in fact the charges framed on 27.07.2023, is a verbatim reproduction of the earlier charges framed by the trial Court on 19.01.2023. In the circumstances, it is incomprehensible as to how the present petitioner is prejudiced by the same. It is settled law that the trial Court can frame / alter the charges at any stage of the proceedings under Section 216 Cr.P.C., Hence, I do not see any reason to interfere with the charges framed by the trial Court Judge on 19.01.2023 and 27.07.2023 as the defect is curable. However, the trial Court is directed to treat the charges framed on 27.07.2023 as charges framed against the accused.

7. It is also brought to the notice of this Court that three witnesses have been examined on the side of the prosecution. Since the Calender Case is of the year 2022, the learned Principal Special Court for



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E.C. and NDPS Act, Chennai is directed to dispose of the case as expeditiously as possible.

8. With the above observation, this Criminal Revision is dismissed. Consequently, connected miscellaneous petition is closed.

22.09.2023

Index: Yes/No
Speaking/Non-Speaking order
vum

To

- 1.The Principal Special Judge,
The Principal Special Court for
E.C. and NDPS Act, Chennai.
- 2.The Inspector of Police
T-3 Korattur Police Station,
Chennai.



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R. HEMALATHA, J.

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