



Crl.O.P.No.21582 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.10.2023

PRONOUNCED ON : 31.10.2023

CORAM:

THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.21582 of 2021

and

Crl.M.P.Nos.11743 and 11744 of 2023

Naveen Kumar S/o. D. Fedrick Samuel
(Manager Operations)
M/s. Federal Express India Pvt. Ltd.,

...

Petitioner

Vs

The Assistant Commissioner of Customs,
Prosecution Unit (AIR),
New Customs House, Meenambakkam,
Chennai-600 027.
Respondent

...

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records in C.C. No.56 of 2016 on the file of the Special Court under E.C. & N.D.P.S. Act, Chennai against the petitioner and quash the same.

For Petitioner : Mr. Pranav Charan
for M/s. India Law LLP

For Respondent : Mr. P. Vishnu,
Special Public Prosecutor (Customs).



Crl.O.P.No.21582 of 2021

ORDER

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This Criminal Original petition has been filed to quash the proceedings in C.C. No.56 of 2016 on the file of the Special Court under E.C. & N.D.P.S. Act, Chennai.

2. Heard Mr. Pranav Charan (for M/s. India Law LLP), learned counsel appearing for the petitioner and Mr. P. Vishnu, learned Special Public Prosecutor (Customs) appearing for the respondent.

3. The case of the prosecution is that, based on information, on 01.07.2011, a team of officers from Air Cargo Intelligence Unit examined a courier parcel in Fedex Dedicated Courier Terminal. The said courier, consigned from Hyderabad to Maldives declared as books under Courier Shipping Bill No.2200 dated 01.07.2011. On examination of the parcel, it was found that it was regular cover of Fedex and inside the cover, it was found an another brown cardboard cover with sender's address as “from Naresh”, 1st accused and the recipient's address was also the same. The said box contained two books and on scrutinizing the books, it was found that



cavities were made inside the books by removing the inner portion of the pages, leaving the pages, wherein four packets wrapped in carbon paper. It was found to be heroin and the same has been attempted to be smuggled out of India by concealing the same inside the books in contravention of the Customs Act, 1962 and N.D.P.S. Act, 1985. After investigation and after accorded sanction, the respondent has filed complaint for the offences U/s.8(c) of NDPS ACT and sections 21, 23, 28 and 29 of NDPS Act, 1985 r/w Sections 132 and 135 of the Customs Act, 1962 .

4. The learned counsel appearing for the petitioner would submit that the petitioner is arrayed as A2, who was employed as Operation Manager to M/s.Federal Express Service (India) Pvt. Ltd., He, on receipt of summons, on behalf of M/s. Federal Express Service (India) Pvt. Ltd., as Operation Manager, he represented on behalf of the Company and appeared before the authority, for enquiry. Therefore no summons were served in his individual capacity. The petitioner neither indulged in any offence of smuggling of contraband subsidies nor he aided the commission of the offence. There is no provision U/s.8(c) of NDPS Act. In fact, the sanction was accorded from



the Principal Commissioner of Customs, Chennai-I Commissionerate only to

prosecute the accused persons under Clause 3 of the NDPS (Regulation of Controlled Substances) Order 1993 r/w Section 8(c) of the N.D.P.S. ACT 1985 (as amended) and punishable under Sections 21, 23, 28 and 29 of the N.D.P.S. Act, 1985 read with Section 135 of the Customs Act, 1962.

Whereas the respondent lodged the complaint for the offence punishable under Section 8(c) of the N.D.P.S. Act read with Section 132 and 135 of the Customs Act. No sanction was accorded to prosecute the accused under Section 132 of the Customs Act. The said offence is no way connected to the petitioner. Though there were 4 boxes of contraband, the respondent had taken the sample from one box only and it is evident from the Mahazar.

The samples were sent for analysis. The respondent stated that on a reasonable belief that the brown substance might be some narcotic, a test was conducted using Field Test Kit, and it tested positive for Heroin. The contraband was seized on 01.07.2011, whereas it was sent for analysis only on 07.07.2011. As per the provision, it has to be sent within a period of 72 hours. The Analyst namely The Assistant Chemical Engineer has reported that “the sample is in the form of brown coloured powder and it answers the



tests for the presence of Diacetyl Morphine (Heroin) and is covered under NDPS Act, 1985. Weight of remnant sample along with plastic cover returned is 4.7 grams. However, the quantitative analysis of the sample could not be carried out as the instrument is not in working condition. Therefore, admittedly, the quantitative analysis of the sample was not done even as per the report dated 09.08.2011.

4.1. In support of his contention, the learned counsel for the petitioner relied upon the judgment of the ***Hon'ble High Court of Gujarat*** in a case of ***Mahmad Hanif Vs. State of Gujarat*** dated 18.01.1994, in which it is held that, “when the sample was sent to Forensic Science Laboratory for obtaining its report, they mentioned the name of the contraband. This practice of naming or describing the substance in advance as far as possible should be refrained from. The reason is that these days, the office of Public Analyst is already over-burdened with number of contraband articles to be analysed what ought to know is that in the absence of sufficient staff, reeling under the acute pressure, coupled with lack of sense of duty, with a view to have sigh of relief from piled-up



work, it may mechanically report back that the sample analysed was the same as named or as described in the forwarding letter”.

4.2. The above judgment is not applicable to the case on hand since it is arising out of conviction. The grounds raised by the petitioner can be considered only before the trial Court during the trial. Therefore, the documents which are cited before this Court cannot be tested without let in evidence.

5. The learned counsel for the petitioner also cited a judgment rendered by the **Hon'ble High Court of Delhi** in a case of **Basant Rai Vs. State** dated 02.07.2012, in which, it is held that *“For example, if the 8 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation,*



as per settled law, the benefit thereof should go in favour of the accused.

It does not matter the quantity. Proper procedure has to be followed, without that the results would be negative”.

6. In the case on hand, there were only four packets. All are contraband. The samples were drawn from one packet only. Therefore, it can be said that the other packets contain same substance. That too, it is once again matter for trial and therefore, the judgment is not applicable to the case of hand.

7. Further on enquiry, it was found that the sender namely the 1st accused was found to be fictitious. The statement of the 4th accused reveals that he worked as sub agent for M/s. Realm International who were in turn an Authorized Service Provider to M/s. Fedex Courier Service. He used to collect the consignments from the customers and send the consignments to M/s. Realm International. Further it also revealed that they had a parcel to be sent to Maldives. A person introduced himself as Naresh, came to deliver the parcel and he also stated that the said parcel contains educational books. However, he was not a regular customer.



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8. On perusal of the statement from the petitioner, he categorically admitted that, he was in charge of Fedex Express Services (India) Pvt. Ltd., and he was engaged in the courier clearance of international shipping. Therefore he is liable to be prosecuted under NDPS Act as well as Customs Act.

9. It is not the case of the petitioner that the samples were opened or missing. As per the test report dated 09.08.2011 of Assistant Chemical Examiner that all the seals were intact and were tallying with the facsimile seals kept in the Court letter and in the memo. It is further reported that the samples are in the form of brown coloured powder. It answers the test for the presence of Diacetyl morphine (Heroin) and is covered under N.D.P.S. Act, 1985.

10. In so far as the sanction is concerned, no sanction is required to prosecute the accused for the offences under NDPS Act. In so far as the Customs Act is concerned, the Principal Commissioner of Customs had



Crl.O.P.No.21582 of 2021

accorded sanction to prosecute the accused for the offence under Section 135 of Customs Act. The petitioner is prosecuted for the offence under Section 135 of Customs Act and not for the offence under Section 132 of Customs Act. Further there is typographical error, instead of Section 9(c) of NDPS Act, it has been typed as Section 8(c) of NDPS Act in the complaint and it is nothing but a curable defect and it is not a ground for quashing the proceedings as against the petitioner.

11. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C. No.56 of 2016 on the file of the Special Court under E.C. & N.D.P.S. Act, Chennai as against the petitioner.

12. Accordingly, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

31.10.2023

Internet:Yes
Index:Yes/no
Speaking/non speaking order
mjs/sma

Page 9 of 10



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Crl.O.P.No.21582 of 2021

G.K.ILANTHIRAIYAN. J.

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To

The Assistant Commissioner of Customs,
Prosecution Unit (AIR),
New Customs House, Meenambakkam,
Chennai-600 027.

**Pre-delivery order made in
Crl.O.P.No.21582 of 2021
and Crl.M.P.Nos.11743 and 11744 of 2023**

31.10.2023