



Crl.O.P.Nos.6565 and 10280 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 23.08.2023

PRONOUNCING ORDERS ON : 29.08.2023

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Criminal O.P.Nos.6565 and 10280 of 2022
and Crl.M.P.Nos.3713, 3715 and 6095 of 2022

S.K.Varadharajan .. Petitioner in Crl.O.P.No.6565/2022
A.Balamurugan @ Bala .. Petitioner in Crl.O.P.No.10280/2022
..Vs..

Intelligence Officer
Narcotics Control Bureau
South Zonal Unit, Chennai 600 090.

.. Respondent in both petitions

Prayer in Crl.O.P.No.6565 of 2022 : Petition under Section 482 of Cr.P.C., to quash the supplementary complaint filed against the petitioner in Spl.C.C.No.2 of 2003 pending on the file of the learned Special Judge (III Additional Sessions Judge), Pondicherry.

Prayer in Crl.O.P.No.10280 of 2022 : Petition under Section 482 of Cr.P.C., to quash the complaint and supplementary complaint filed against the petitioner in Spl.C.C.No.2 of 2003 pending on the file of the learned Special Judge (III Additional Sessions Judge), Pondicherry.

For Petitioner : Mr.John Sathiyar, Senior Counsel
for M/s.R.Murugan in Crl.O.P.No.6565/2022
Mr.John Sathiyar, Senior Counsel
for M/s.D.Prabu in Crl.O.P.No.10280 of 2022



WEB COPY



Crl.O.P.Nos.6565 and 10280 of 2022

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor (in both O.Ps.)

ORDER

These quash petitions have been filed by A3 and A4 respectively against the proceedings pending in Special C.C.No.2 of 2003, on the file of the learned Special Judge (III Additional Sessions Judge), Pondicherry.

2. The case of the prosecution is that A1 was running a business in the name and style of M/s.Essar Pharm Sale at Puducherry and that he is indulging in diversion of Ephedrine HCL-IP precursor / controlled substance under the Narcotics and Psychotropic Substances Act (hereinafter referred to as the 'NDPS Act') between Nellore and North Eastern States and abroad for manufacturing narcotics and psychotropic substances. It is further alleged that he was involved in the seizure of 24 Kgs of Ephedrine by Narcotics Control Bureau (hereinafter referred to as the 'NCB'), Kolkata on 17.05.2003. Once again, A1 has procured 500 Kgs of Ephedrine from M/s.Krebs Bio-chemicals Limited, Nellore District and that he took delivery of the same through A2 Kannan, who is a representative of A3 Balamurugan, who had agreed to transport the said substance. The NCB got this information and they reached M/s.Navata Road Transport, Puducherry on 05.06.2003 and enquired about the consignment and they came to know that the consignment had already reached the Transport office and the same has not been delivered to the consignee. Ultimately, at about 17.00 Hrs on 05.06.2003, when two



Crl.O.P.Nos.6565 and 10280 of 2022

individuals came to Navata Road Transport office to take delivery of the said Ephedrine which had reached in 20 drums, the officers of NCB immediately entered into the Transport Office and enquired about their identity. One person revealed his name as Ramadas (A1) and another revealed his name as Kannan (A2). A1 is said to have informed NCB officers that he had brought the said Kannan from Chennai to take delivery of 20 drums of Ephedrine cargo weighing 500 Kgs in order to transport the same to one Balamurugan (A3) who is the resident of Redhills and that the said Balamurugan is the representative of Kannan.

3. The respondent had filed the complaint before the Court below against A1 and A2 for the offences under Section 25A read with Section 29 and 9A of the NDPS Act, 1985. Insofar as A3 is concerned, he is alleged to have committed the offence under Section 27A and 25A read with Section 29 and 9A of the NDPS Act, 1985. Insofar as A4 is concerned, a supplementary complaint was filed and he was made as an accused on the ground that he had taken demand drafts from his bank account for the purchase of Ephedrine and thereby he is said to have abetted and financed the transaction and thereby had committed an offence under Section 9A read with Sections 27A and 29 of the NDPS Act.

4. The petitioners in these quash petitions have been arrayed as A3 and A4.



Crl.O.P.Nos.6565 and 10280 of 2022

5. Heard Mr.John Sathiyar, learned Senior Counsel for the petitioners in both the petitions and Mr.N.P.Kumar, Special Public Prosecutor for the respondent.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. Insofar as A3 is concerned, he has been arrayed as an accused mainly based on the confession made by A2 when his statement was recorded under Section 67 of the NDPS Act. A2 had made a confession to the officials belonging to NCB to the effect that A3 is his relative and he had introduced A2 to A1 and had asked him to go over to Puducherry and take custody of the property that is given to him by A1 and accordingly A2 met A1 and by the time the controlled substance was transported, he was intercepted by the officials of NCB. In view of the same, the only material that is available as against A3 is the confession made by A2 under Section 67 of the NDPS Act.

8. It is not in dispute that there was no recovery of incriminating material from the petitioner (A3) and that the discharge petition that was filed by A2 was allowed by this Court in Crl.R.C.No.740 of 2009 by order dated 23.03.2010 and thereby the accused person who had given a confession as against the petitioner(A3) has already been discharged from the case.



Crl.O.P.Nos.6565 and 10280 of 2022

9. Apart from the confession of the co-accused, yet another material that has been put against the petitioner (A3) is his confession statement recorded under Section 67 of the NDPS Act.

10. The effect of a confession statement made under Section 67 of the NDPS Act was considered by a larger bench of the Apex Court in **Tofan Singh -vs- State of Tamil Nadu** reported in **(2021) 4 SCC Page 1**. One of the main issue that was considered by the Apex Court was as to whether a conviction can be based solely on the confessional statement recorded under Section 67 of the NDPS Act by the investigation officer. This issue was considered in detail by the Apex Court and the majority answered the questions that were referred to the larger bench as follows:

“ 158. We answer the reference by stating :

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.”

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”



Crl.O.P.Nos.6565 and 10280 of 2022

11. It is clear from the above that the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act. A statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

12. There is yet another issue to be taken into consideration by this Court which is the discharge of A2 in this case. While considering the discharge petition, this Court had acted upon the statement recorded from A3 under Section 67 of the NDPS Act. Such a reliance was made by this Court in the year 2010 when the law was otherwise and which ultimately came to be decided by a larger bench only in the year 2020. This Court by placing such a reliance found that A3 had not given any money to A2 to procure the material and A2 also did not benefit out of the said transaction. This Court found that A2 was not even aware as to what material was transported in the 20 drums. Ultimately this Court found that there was no prima facie material against A2 to implicate him in the offence and accordingly he was discharged. In the light of this development, the so-called confession statement of A2 also becomes insignificant and on carefully perusing the entire materials, this Court is not able to find any other prima facie material against the petitioner (A3) except the confession statement.



Crl.O.P.Nos.6565 and 10280 of 2022

13. Insofar as the petitioner (A4) is concerned, he was roped in as an accused only based on a supplementary complaint filed during November 2003. As per the supplementary complaint, a search was conducted in the premises of A1, A2 and A3 and as per the statement recorded from A3 under Section 67 of the NDPS Act, the involvement of the petitioner (A4) who is the brother-in-law of A3 came to light. Accordingly, a summon was issued to A4 and he was enquired under Section 67 of the NDPS Act and his statement was recorded. In his statement, A4 is said to have admitted his involvement in the entire transaction. A4 also has admitted that he has taken demand drafts favouring M/s.Krebs Bio-chemicals Limited, Hyderabad from the Savings Bank account of one P.Balaji for a sum of Rs.7,76,550/-. That apart, A4 had also taken a demand draft from his Savings Bank account for a sum of Rs.8,15,400/-. The petitioner (A4) had further stated in his confession statement that the demand drafts were taken only on the instructions given by A1.

14. The important issue that has to be considered insofar as A4 is concerned is as to whether A4 had any knowledge that the demand drafts were taken only for the consignment involving the controlled substance.

15. In the confession statement of the petitioner (A4), he has specifically stated that A1 had approached him as instructed by A3 and asked him to take demand drafts and at that point of time, he was not even aware that A1 did not have a valid licence for procuring the controlled substance. This petitioner (A4) came to know that the entire



Crl.O.P.Nos.6565 and 10280 of 2022

transaction was illegal only after the arrest of the other accused persons and till then he was not even aware about the transaction and that it was done by persons who did not have the licence.

16. On carefully going through the materials, it is evident that the petitioner (A4) did not get any benefit out of the transaction and he had no knowledge about the illegal acts committed by A1 and at the best, he can only be treated as a victim of circumstances. The petitioner (A4) can be roped in this case only if there is a material to show that he had the knowledge regarding the transportation of a controlled substance and that he actively participated in the same and had assisted the accused persons. What is available before the Court is only the statements recorded under Section 67 of the NDPS Act and such statements by itself cannot be the basis for proceeding against the accused persons in view of the judgment of the Apex Court in **Tofan Singh's** case referred supra.

17. In the light of the above discussion, this Court finds that there are no materials to proceed further with the case as against the petitioners (A3 and A4). An incident which had taken place 20 years back and which was hanging over the head of the petitioners is brought to an end since the continuation of the proceedings against them will be an abuse of process of Court. In view of the same, the proceedings in Special C.C.No.2 of 2003, on the file of the learned Special Judge (III Additional Sessions Judge), Pondicherry is hereby quashed insofar as the petitioners (A3 and A4) are concerned.



Crl.O.P.Nos.6565 and 10280 of 2022

WEB COPY

18. In the result, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be a direction to the Court below to proceed further with the complaint insofar as A1 is concerned on its own merits and in accordance with law and the proceedings in Special C.C.No.2 of 2003 shall be completed within a period of three months from the date of receipt of a copy of this order.

29.08.2023

Index : Yes/No
Internet : Yes/No
KST

To

1. Intelligence Officer
Narcotics Control Bureau
South Zonal Unit, Chennai 600 090.
2. The Special Judge (III Additional Sessions Judge),
Pondicherry.



WEB COPY



Crl.O.P.Nos.6565 and 10280 of 2022

N.ANAND VENKATESH,J.
KST

Pre-Delivery Order in Crl.O.P.Nos.
6565 and 10280 of 2022

.08.2023