

**IN THE HIGH COURT AT CALCUTTA  
Circuit Bench at Jalpaiguri  
Criminal Revisional Jurisdiction  
Appellate Side**

**CRR No. 162 of 2024**

ANANT GROVER  
-VS-  
THE STATE OF WEST BENGAL

Mr. Biswarup Roy, Adv.  
Ms. Supria Debnath, Adv.

...for the petitioner

Mr. Aditi Shankar Chakraborty, Adv.  
Mr. Sourav Ganguly, Adv.

...for the State

Mr. Biswarup Roy, learned counsel, is appearing for the petitioner.

Mr. Sourav Ganguly, learned counsel, is appearing for the State.

The petitioner has filed the present application being CRR 162 of 2024 under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the proceeding of Bagdogra Police Station Case No. 586 of 2022 dated 18.12.2022 under section 20(b)(ii)(c) of NDPS Act corresponding to C.R. NDPS no. 139 of 2022 pending before the learned Special Court (NDPS Act) at Siliguri.

The petitioner says that the Assistant Manager, Security Indigo Airlines has made the alleged seizure on 18<sup>th</sup> December, 2022 at the Indigo X-BIS (I) at Bagdogra Airport and also detained the petitioner. The petitioner along with the alleged seized articles were brought to the Bagdogra Police Station by the Assistant Manager, Security and on the basis of the complaint made by the Assistant Manager, Security, Indigo, namely, Kapil Dev Singh, police has registered FIR being no. 586/2022 dated 18.12.2022 under section 20(b)(ii)(c) of NDPS Act against the petitioner and the petitioner was arrested by the police at the Bagdogra police station on 18.12.2022 at 23:50 hours. The petitioner submits that the alleged seizure made by the security officer of the Indigo flight i.e. the complainant is not a seizure under the provision of section 43 of the NDPS Act. He further submits that the police has also not conducted inventory under the provisions of section 52(A) of NDPS Act.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the instant case and the police had not followed the procedures as provided under the NDPS Act.

He also relied upon the judgment in the case of *Roy V.D. -Vs- State of Kerala* reported in 2008 SCC 590 and submitted that arrest and search made by the officer not

empowered or authorized in violation sections 41 & 42 is *per se* illegal and the trial would vitiate.

Learned counsel for the petitioner further relied upon a judgment reported in *2023 Live Law SC 570 (Simronjit Singh -Vs- State of Punjab)* and submitted that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the learned Magistrate for the purpose of correctness of inventory but in the present case no inventory has been made.

Learned counsel for the petitioner further relied upon the judgment in the case of *Yusuf @Asif -Vs- State* passed in Criminal Appeal no. 3191/2023 arising out of SLP (Crl. No. 3010/2023) dated 13<sup>th</sup> October, 2023, wherein the Hon'ble Supreme Court held that in absence of any material on record to establish that the samples of the seized contraband was drawn in the presence of the learned Magistrate and the inventory of the seized contraband was duly certified by the learned Magistrate, it is apparent that the seized contraband and the sample drawn therefrom would not be valid piece of primary evidence in the trial.

He submits that the police authority had not followed any of the provisions of the NDPS Act and as such FIR and the charge sheet are required to be quashed.

Per contra, learned counsel for the State submits that as per section 43 any Officer of the department can make seizure and in the present case the complainant, who is the Officer i.e. the Security Officer of the Indigo Airlines and he found the contraband when the materials were scanning through the scanner machine at airport and accordingly, he has made the seizure and subsequently he has brought the petitioner along with the seized articles to the police station and inform the same to the police. On the basis of complaint police has instituted the FIR and as such it cannot be said that the seizure made by the complainant is illegal.

He further submits that after initiation of FIR on the basis of the complaint of the Security Officer of the Indigo Airlines, the police has taken custody of the Narcotics and made a fresh seizure memo by making the complainant as one of the witness to the said seizure memo and also arrested the petitioner by preparing the arrest memo and as such this act of the police authority cannot be said to be illegal. He further submits that after seizure, the Investigating Officer has made a prayer before the learned Special Judge, NDPS Court for making an inventory and accordingly learned Special Judge requested the learned

Magistrate for making inventory of the Narcotics and accordingly the inventory was made and as such the submission made by the counsel for the petitioner that inventory has not been made cannot be sustained.

Learned Counsel for the State submitted that the State has completed the investigation, filed charge sheet and charge has already been framed and the case is at the stage of evidence. As such a direction can be passed upon the learned Special Judge to expedite the trial of the matter.

Heard the learned Counsel for the respective parties. Perused the materials on record.

Admittedly, the complainant has made the seizure of the alleged Narcotics and detained the petitioner and the complainant has brought the petitioner and the Narcotics to the police station. After going through the CD, this Court astonished to see that police had made a fresh seizure list at 22.15 hours to 23.45 hours with regard to the same Narcotics from the petitioner though as per the seizure memo prepared by the complainant at the airport the alleged narcotics had already been taken possession by the complainant at the Bagdogra Airport itself and as such the seizure memo prepared by the Investigating Officer at Bagdogra police station from the possession of the petitioner cannot be said to be legal.

This Court further noticed that after making of the fresh seizure, the Investigating Officer has made a prayer before the Special Court for making inventory and accordingly learned Special Judge has directed the learned Judicial Magistrate, 1<sup>st</sup> Court, Siliguri to make inventory and accordingly on 11<sup>th</sup> January, 2023 the Investigating Officer has produced all the seized articles before the learned Magistrate for making inventory. Accordingly learned Magistrate had certified the inventory made by the police authority by way of photographs and making the sample of the seized alamats.

This Court further astonished to see that as per the order passed by the learned Special Judge, NDPS Court dated 29<sup>th</sup> December, 2022, the Investigating Officer had produced the seized articles before the Magistrate on 11<sup>th</sup> January, 2022 for correctness of inventory but in contrary it is found that the Investigating Officer has already sent the narcotics to the State Drugs Control and Research Laboratory which was received by the said Laboratory on 27<sup>th</sup> December, 2022. This Court failed to understand that the learned Special Judge has passed the order on 29<sup>th</sup> December, 2022 to place the materials before the learned Magistrate for certification of correctness of inventory and on 11<sup>th</sup> January, 2023 the Investigating Officer has placed the material before the learned Magistrate but how the materials

were sent to the State Drugs Control and Research Laboratory on 27<sup>th</sup> December, 2022.

Considered the above circumstances, this Court finds that the procedure adopted by the Investigating agency is total in violation of the provision of Section 43 and Section 52A of the said Act.

The Hon'ble Supreme Court in the case of *Yusuf @ Asif (Supra)* has categorically held that in the absence of any materials on record to establish that the sample of the seized contrabands were drawn in the presence of the Magistrate and the inventory of the seized contrabands were duly certified by the Magistrate, it is apparent that the seized contrabands and the sample drawn seizure would not be valid piece of primary evidence in the trial.

In this case the first seizure was not made by the authorized person. Subsequently, the police of P.S. Bagdogra by sitting in the Police Station made second seizure of the same articles from the petitioner though the said alleged narcotics was already taken possession by the complainant at the airport itself.

After the seizure is made at P.S. Bagdogra, inventory was made and was placed before the Learned Magistrate for certification on 11.01.2023 as per the order of the Learned Special Judge (NDPS) dated 29.12.2023 but the alleged

Narcotics already received by the State Drugs Control Laboratory on 27.12.2023 which is unimaginable.

Considering all the above facts, this Court finds that this is a fit case wherein this Court can invoke the provision of Section 482 of the Code of Criminal Procedure for quashing of the proceeding.

Accordingly, the proceeding in connection with Bagdogra P.S. Case No. 586 of 2022 is quashed and set aside.

The petitioner is discharged from the bail bonds.

In view of the above, CRR 162 of 2024 is disposed of.

**(Krishna Rao, J.)**