



CRL. R.C. No.1462/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
18.07.2024	14.08.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. R.C. NO.1462 OF 2023

Raja Chandrasekaran

.. Petitioner

- Vs -

Union of India

Rep. by Intelligence Officer

Directorate of Revenue Intelligence (DRI)

.. Respondent

Criminal Revision case filed u/s 397 and 401 Cr.P.C. praying this Court to

(a) call for the records, examine the same for the purpose of satisfying itself as to the correctness, legality and propriety and set aside the impugned order dated 28.07.2023 passed by the Principal Special Court under EC & NDPS Act, Chennai 600 104 in CrI. M.P. No.2956/2022 in C.C. No.37/2020 in R.R. No.14/2019 in F. No.DRI/CZU/VIII/48/ENQ-I/INT-38/2019 and any subsequent order of charge passed thereto.



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(b) Pending hearing and final disposal of this revision petition, stay the proceedings before the Principal Special Court under EC & NDPS Act, Chennai 600 104 in Crl. M.P. No.2956/2022 in C.C. No.37/2020 in R.R. No.14/2019 in F. No.DRI/CZU/VIII/48/ENQ-I/INT-38/2019.

For Petitioner : Mr. Anand Grover, SC, for
Ms. Mamta Pandey

For Respondent : Mr. N.P.Kumar, Spl. PP (NDPS)

ORDER

The rejection of the petition for discharge filed by the petitioner by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, vide order dated 28.07.2023 in Crl. M.P. No.2956/2023 in C.C. No.37/2020 is put to challenge by filing the present revision petition.

2. The petitioner was charged for the offences u/s 8 (c) r/w 22 (c), 25, 28 and 29 of the Narcotic Drugs & Psychotropic Substances Act (for short 'the Act') r/w Section 135A of the Customs Act on the allegation that contraband was sought to be exported under the guise of Herbal/Ayurvedic medicines vide multiple shipping reference bills of M/s.ST Courier, Chennai, through



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M/s.Aviation Star Express, a franchisee of M/s.DHL Express India Pvt. Ltd. Upon receipt of the said information in writing u/s 42 of the Act, on 15.10.2019, around 22.00 hours, search was conducted at the premises of M/s.Aviation Star Express at Door No.9A, New No.27, Dhanakoti Raja Street, Ekkattuthangal, Chennai under the shipping reference numbers of M/s.ST Courier, all dated 15.10.2019 for onward transmission to USA. The said consignment was booked by one M.V.Srinivasan, proprietor of M/s.2 Destination. The said consignments, were seized under mahazar at the premises of M/s.Aviation Star Express. On 16.10.2019, at 11.00 hours, search was effected at the residential premises of the petitioner at No.95/95, TI, 3rd Floor, Swarnalakshmi Apartments, Orgadam Road, Ambattur, in the presence of two witnesses and during the search operations, one person, named M.Ashok Kumar was introduced at the employee of the petitioner. Incriminating materials were seized, which were serially numbered from 1 to 66 and marked as Annexure I. Since the said place was not conducive for conducting detailed inventory of the items, the incriminating materials were move to the offices of the respondent for detailed investigation. During the proceedings, a packet was delivered to Ashok Kumar, which was also seized and inventoried. The officers seized the items listed in Annexures A to E,



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packaging materials, labels, weighing machines, a laptop, etc.

3. Thereafter, on 16.10.2019, from 12.00 noon onwards, search was conducted at the premises of M/s.2 Destination, franchise of M/s.ST Courier located at Shop No.12, Ground Floor, Taas Mahal, No.10, Monteith Road, Egmore, which had cleared the 9 consignments seized from M/s.Aviation Star. On searching the premises, plastic boxes containing stickers of “Moringa Olaitera” and “True Clucosammune” were seized and mahazar was prepared. Search was also conducted at the business premises of M/s.DHL Express (India) Pvt. Ltd., located at Plot No.12-B, South Phase, Guindy Industrial Estate, Chennai and 12 packages were seized in which tablets, weighing 90 Kgs., were found, which were seized under the mahazar, as it was reasonably believed that the said tablets were psychotropic substances.

4. It is the further case that on 17.10.2019, the petitioner’s statement was recorded in which the complicity of various persons, including V.Srinivasan, M.Ashok Kumar and one Bharat Choudhary of Jaipur and one Prakash Kataria, proprietor of Simran Medical, Nagpur came to light and the statements were



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recorded u/s 67 of the Act, wherein it was admitted that they were allegedly involved in sending consignments of psychotropic tablets through courier to customers abroad.

5. The petitioner/A-1 and A-2 and A-3 were arrested for the aforesaid offences and remanded to judicial custody on 18.10.2019. On 21.10.2019, the case properties were produced along with memo and on 22.10.2019, as per the order of the court below, 71 samples were sent to lab for chemical analysis and the remaining contraband were returned for safe custody with the investigating officer. Of the 71 samples, 27 were shown to be psychotropic substances. An application was filed before the court below on 21.01.2020 to sent 26 samples to CFSL, Hyderabad in respect of which facilities were not available in Chennai for chemical examination, which was objected by the petitioner, by filing counter. However, the court below allowed the same and the samples were sent to CFSL, Hyderabad. Inspite of summons, the proprietor of Simran Medicals, who was shown as A-4 did not turn up and, therefore, search was undertaken at the residential and business premises of A-4 and incriminating documents were seized. On 17.3.2020, A-4 was remanded to judicial custody upon arrest.



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Thereafter, on 9.4.2021, complaint was filed by the respondent against A-1 to A-4 for the aforesaid offences. The test report with regard to the second samples sent to CFSL, Hyderabad on 12.08.2021 was filed before the court below.

6. In the aforesaid backdrop, the petitioner had filed the discharge petition before the court below contending that the nexus of the petitioner with the alleged dealing in contraband has not been established. It was further contended that the arrest and prosecution of the petitioner is based on the confessional statement of co-accused, which are inadmissible in evidence on the basis of the decision of the Apex Court. It was further contended that the recovery of psychotropic tablets from the various places during the search and seizure proceedings on 15.10.2019 and 16.10.2019 have not been established in the present cases and have not been connected with the petitioner and unless the recovery of the drugs are found to be narcotic or psychotropic substances covered under the Act and are recovered from the person/places connected with the petitioner, the petitioner cannot be fastened with liability with regard to handling of the said substances. It was further contended that the identity and description of the contraband seized from the various premises is not recorded



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in the mahazar and the same were not drawn on the spot but prepared later at the office of the respondent and, therefore, the same cannot form the basis of proceeding against the petitioner. It was further contended by the petitioner that in respect of the case properties, though an application u/s 52A of the Act was filed along with the list of material objects from S. Nos.1 to 42 and after taking samples on the order of the court and handing over of the balance of the seized items for destruction, however, no order was passed by the court below in that application and no date was fixed for the inventory of the seized drugs and to draw samples for testing. Further, there is no material to show that the said properties were deposited after drawing samples and there is no link connecting the samples with the seized contraband. Therefore, it was submitted that as there was no link connecting the petitioner with the contraband, alleged to have been seized, the petitioner sought for discharge from the said case.

7. In support of the aforesaid submissions, learned senior counsel for the petitioner placed reliance on the following decisions :-

- i) *Union of India – Vs – Mohanlal & Anr. (2016 (3) SCC 379);*
- ii) *Mangilal – Vs - State of M.P. (2023 INSC 634);*



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- iii) *Yusuf @ Asif – Vs – State (2023 INSC 912);*
- iv) *N.Uganchand Kumawat – Vs – NIB-CID (Crl. A. (MD) 551/2021 – Dated 29.09.2023);*
- v) *Mohammed Khalid & Anr. – Vs – The State of Telengana (2024 INSC 158);*
- vi) *Dipakbhai Jagdishchandra Patel – Vs – State of Gujarat (2019 (16) SCC 547);*
- vii) *State of Odisha – Vs – Registrar General, Orissa High Court, Cuttack (WP (Civil) No.32580/2021 – Dated 31.01.2022); and*
- viii) *Sanjeev Chandra Aggarwal & Anr. – Vs – Union of India (2021 SCC OnLine SC 1268)*

8. Countering the above, the respondent submitted that the seizure was made in various places in the presence of the accused as well as independent witnesses and that signatures were also obtained from the witnesses and the accused. Further, Section 52-A (2) does not require sampling to be made at the seizure spot and that the samples, which were sent for testing have confirmed that the seized contraband are psychotropic substances. It was further submitted that the contentions raised by the petitioner are to be decided only at the time of trial and it cannot be decided at the threshold, by means of a petition for discharge as at the stage of framing of charge, it is necessary for the court to



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see whether there is material placed by the investigating agency to frame a charge and granting opportunity to the accused to produce evidence to defend is not required to be considered. Therefore, it is submitted that the discharge petition requires to be dismissed.

9. The court below, on consideration of the materials placed before it and also considering the contentions raised, held that what is to be considered at the time of framing of charge/seeking discharge is only about the *prima facie* nature of the case connecting the alleged accused with the commission of the crime and only if the materials on record indicate that there are no sufficient grounds to proceed against the accused, then discharge is permissible. The court below held that there were sufficient materials, which *prima facie* which point to the complicity of the petitioner in the commission of the offence and the contentions raised by the petitioner could be tested only at the time of trial and, accordingly, dismissed the discharge petition, aggrieved by which the present revision is preferred.



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10. Learned senior counsel appearing for the petitioner submitted that it is the specific case of the respondent that the alleged contraband was seized from four different places on 15.10.2019 and 16.10.2019 under separate mahazars and before the learned Addl. Chief Metropolitan Magistrate, while the remand applications were filed on 18.10.2019, no application was made u/s 52-A of the Act, which is a mandatory condition. Further, it is the submission of the learned senior counsel that no detailed inventory of the goods alleged to have been seized was prepared. No application was made before the Magistrate along with the detailed inventory of the goods so seized.

11. It is the further submission of the learned senior counsel that neither any application was made before the Magistrate for drawing samples nor were any samples were drawn before the Magistrate, which is clear violation of Section 52-A of the Act. In this regard, learned senior counsel placed reliance on the decision of the Apex Court in ***Mangilal – Vs – State of MP (Crl. A. No.1651/2023)***. In the light of the breach of the mandatory provision, the petitioner is entitled for discharge.



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12. It is further submitted that Section 52-A (4) of the Act postulates that the samples drawn should be certified by a Magistrate in compliance with sub-sections (2) and (3) of Section 52-A, which would constitute primary evidence for the purpose of trial. However, the said provisions have not been followed and as such there is no primary evidence of the alleged offence, which would therefore entitle the petitioner to discharge. It is further submitted by the learned senior counsel that there is no material to show as to the authority before whom the samples were drawn, though the impugned order shows that 142 samples were drawn before the Special Court is not borne out by records.

13. It is the further submission of the learned senior counsel that the application for inventory and drawing of samples was made before the Special Court, though it ought to have been made before the Magistrate and this violation hits at the inventory sought for and also the drawal of samples, which are against the decision of the Apex Court in the case of ***Union of India – Vs – Mohan Lal (2016 (3) SCC 379)*** and *Mangilal's case*.



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14. It is the further submission of the learned senior counsel that even though the petitioner had sought for a certified order copy with reference to the application filed for inventory and drawl of samples by application dated 21.10.2019 u/s 52-A (2) of the Act, however, the said application was returned with the endorsement *"Returned. For want of correct date. No order passed. Hence this application is returned.- Dt. 11.10.2021."* It is the submission of the learned senior counsel that the learned Special Judge had made many adverse remarks against the court staff and missing records and in the absence of records to show that there is an order passed u/s 52A of the Act, the only presumption that could be drawn is that no order has been passed, which is a clear violation of Section 52-A and, therefore, the petitioner is entitled to an order of discharge.

15. It is the further submission of the learned senior counsel that even in the memo claimed to have been filed by the respondent in which some handwritten notings have been made with regard to the drawal and sending of samples and safe custody of the seized contraband, however, in the absence of any proof to show that the said order was passed by a Judicial Officer, as the said



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order does not bear the seal or the name of the Judicial Officer, the said document cannot ex facie be taken as proof of the conditions prescribed under the Act having been followed. However, without appreciating the same, the court below had dismissed the discharge petition, which is *per se* perverse and unsustainable and the same deserves to be interfered.

16. Per contra, learned Special Public Prosecutor appearing for the respondent, relying on the counter affidavit filed by the respondent submitted that at the time of remand, when the seized properties were produced before the Magistrate, the Magistrate did not draw the samples, but directed the respondent to submit the properties to the Special Court, which alone prompted the respondent to file the application u/s 52-A before the Special Court. It is the further submission of the learned Special Public Prosecutor that upon the said application, samples were drawn in the presence of the Presiding Officer of the Special Court after remanding the accused. Therefore, there is no violation of Section 52-A of the Act. It is further submitted that the proof there of will be provided and proved at the time of trial and it cannot be determinable at the time of considering the case of discharge of an accused.



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17. Learned Special Public Prosecutor further placed before this Court a circular issued by the High Court on its administrative side in ROC No.5653/2024/F1 & P.Dis. No.37/2024, wherein, reference has been made to the refusal of the Magistrates to remand the accused and necessary directions were issued to the Principal Sessions Judges and Principal District Judges with regard to the manner in which the Magistrates under their control must act while taking samples in compliance with the procedure stipulated u/s 52-A of the Act. It is therefore the submission of the learned Special Public Prosecutor that in the light of the aforesaid circular, the inventory and drawal of samples by the Special Court is not illegal.

18. It is the further submission of the learned Special Public Prosecutor that the laboratory tests confirmed the presence of psychotropic substances in the samples that were drawn and the report in this regard has also been forwarded to the Special Court.



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19. It is therefore submitted that all the other points raised by the petitioner are issues, which have to be deliberated at the time of trial and not at the stage of discharge and rightly appreciating the above, the learned Special Judge had refused to discharge the petitioner, which cannot be said to be illegal or perverse and the same does not require any interference at the hands of this Court.

20. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on by the parties in support of their contentions.

21. The whole case of the petitioner is predicated upon the non-compliance of the provisions of Section 52-A of the Act, as the samples have inventoried and samples drawn with out any petition and without the presence of the Magistrate and, therefore, such inventory and sample drawal is wholly illegal and the consequential continuance of the case against the petitioner is wholly farcical.



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22. To appreciate the issue, Section 52-A of the Act, more particularly, sub-section (2) therein, on which much reliance is placed, is quoted hereunder :-

“52-A. Disposal of sseized narcotic drugs and psychotropic substances.-

* * * * *

(2) Where any narcotic drugs or psychotropic substances has been seized and forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in subsection (1) shall prepare an inventory of such narcotic drugs or, psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of,-

(a) Certifying correctness of the inventory so prepared; or (b) Taking, in the presence of such Magistrate, photographs substances and certifying such photographs as true; or (c) Allowing to draw representative samples of such drugs or substances, in the



presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.”

23. The Apex Court in *Mohanlal case (supra)* had occasion to deal with the aforesaid 52-A of the Act and the ratio laid down by the Apex Court in the said decision is quoted hereunder for ready reference :-

“15. It is manifest from Section 52A (2)(c) (supra) 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 Magistrate for purposes of (a) certifying the correctness of the inventory (b) certifying photographs of such drugs or substances taken before the Magistrate as true and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52- A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the Magistrate for the purposes mentioned above



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including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-section (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

18. Be that as it may, a conflict between the statutory provision governing taking of samples and the standing order issued by the Central Government is evident when the two are placed in juxtaposition. There is no gainsaid that such a conflict shall have to be resolved in favour of the statute on first principles of interpretation but the continuance of the statutory notification in its present form is bound to create confusion in the minds of the authorities concerned instead of helping them in the discharge of their duties. The Central Government would, therefore, do well, to



re-examine the matter and take suitable steps in the above direction.

19. Mr. Sinha, learned Amicus, argues that if an amendment of the Act stipulating that the samples be taken at the time of seizure is not possible, the least that ought to be done is to make it obligatory for the officer conducting the seizure to apply to the Magistrate for drawing of samples and certification etc. without any loss of time. The officer conducting the seizure is also obliged to report the act of seizure and the making of the application to the superior officer in writing so that there is a certain amount of accountability in the entire exercise, which as at present gets neglected for a variety of reasons. There is in our opinion no manner of doubt that the seizure of the contraband must be followed by an application for drawing of samples and certification as contemplated under the Act. There is equally no doubt that the process of making any such application and resultant sampling and certification cannot be left to the whims of the officers concerned. The scheme of the Act in general and Section 52-A in particular, does not brook any delay in the matter of making of an application or the drawing of samples and certification. While we see no room for prescribing or reading a time frame into the provision, we are of the view that an application for sampling and certification ought to be made without undue delay and the Magistrate on receipt of any such application will be expected to attend to the application and do the needful, within a reasonable period and without any



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undue delay or procrastination as is mandated by sub-section (3) of Section 52A (supra). We hope and trust that the High Courts will keep a close watch on the performance of the Magistrates in this regard and through the Magistrates on the agencies that are dealing with the menace of drugs which has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Magistracy in this country addresses a problem of such serious dimensions.”

24. From the above provision of law as also the decision in *Mohanlal case*, it is clear that the requirements mandated to be complied with by the investigating agency as also the duty of the Magistrate upon the application of the investigating agency are clearly spelled out and there could be no claim for any ambiguity on the said provision and the compliance of the same are also *sine qua non* to the said provision.

25. Though other decisions have also been pressed into play by the learned senior counsel for the petitioner, however, in view of the fact that the issue in the present case revolves around the very point, which has been dealt



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with in *Mohanlal case (supra)*, there is no necessity to multiply the ratio by placing reliance on other decisions.

26. Though it is the case of the petitioner that there is non-compliance of Section 52-A (2) and (3) of the Act, but it is countered by the respondent by submitting that there is not only compliance, but due compliance as inventory was done upon the application of the respondent, during which time photographs were caused to be taken and the samples were also drawn in terms with the provisions of Section 52-A (2).

27. However, It is the case of the respondent, at the same length, that the Magistrates were not inclined to remand the accused and more often than not, were insisting on the respondent to take them before the Special Court, the High Court, on the administrative side had issued a circular, the details of which had been given above, but for better appreciation, the relevant portion of the same is quoted hereunder :-

"R.O.C. No.5653/2024/F1

P.Dis. No.37/2024

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The Hon'ble Rule Committee (Criminal), High Court, Madras, upon considering the letter put up by both the Principal Judge, Special Court for EC and NDPS Act, Chennai and also by Principal Judge, City Civil Court at Chennai, has issued the following directions :-

- (i) The Metropolitan Magistrates/Judicial Magistrates must remand to judicial custody an accused produced for remand.*
- (ii) The Principal Sessions Judge at Chennai and the Principal District Judge and Chief Judge, Puducherry, must also ensure that whenever permission is sought to take samples from the contraband seized, the Magistrates under their jurisdiction do not abjure their duty and there is compliance of the procedure stipulated in Sec.52-A of the NDPS Act."*

28. From the above, it is evident that the entire machinery with regard to remanding the accused and taking inventory and drawal of samples was not being done in line with the provisions of Section 52-A (2) and (3) of the Act, which necessitated the High Court to step in and pass administrative directions to the court under its jurisdiction for the compliance of the aforesaid provisions.



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The above circular issued by the High Court is not disputed by the learned senior counsel for the petitioner.

29. In the light of the above, though contention had been advanced that it is only the Magistrate, who has jurisdiction to inventory the seized contraband and allow drawal of samples in his presence, however, abdication of duty by the Magistrate had led to the issuance of the above administrative order and in the interregnum period, the Special Court was doing the duty which was to have been done by the Magistrate.

30. True it is that to lessen the burden on the Special Court so that it would involve itself in the trial of the issues, which are more pressing in nature, the Parliament had thought it fit to impose the task of taking inventory and drawal of sample on the Magistrates. However, when a particular act is not performed by the Magistrate, which has hitherto been set right by the administrative orders of this Court, the inventory and drawal of samples during the period of stalemate by the Special Court cannot be struck down as bad, as only for the purpose of lessening the burden on the Special Court, the Magistrate



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was entrusted with the task. However, if the task had been properly done by the Special Court, necessarily, that cannot be the basis to hold that the provision has not been followed, as the intent of the Parliament is only to safeguard the interest of a citizen from the clutches of the law enforcing agency and hand it over to the judicial machinery so that the citizen would feel protected and the intent of the Parliament is not to scuttle the whole process to the benefit of the accused and, therefore, stretching the same analogy, curable procedural infraction by the Magistrate, which has, thereafter, been done by the Special Court cannot be put against the respondent.

31. Further, what is to be seen here is that the safeguard provided by the said provision to the accused is only to protect the accused from malicious prosecution. However, in the case on hand, the Special Court had embarked upon inventorying the seized contraband and also had overseen the drawal of samples, which were, thereafter, sent for chemical analysis. Though the Magistrate ought to have overseen the inventory and drawal of samples, however, the same having been done under judicial overseeing, by the Special



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Court, the said procedural infirmity cannot nullify the act done by the Special Court.

32. On the side of the petitioner, the act of the Special Court in inventorying and drawing samples have been put in issue, as the said orders do not bear the seal of the court below and in this regard, reliance is placed on the order passed by the Special Court, which had returned the petition filed by the petitioner with regard to making available an order copy to the petitioner. In this regard, it is pointed out by the learned senior counsel for the petitioner that the Special Court had come up heavily upon the staff of the Special Court and, therefore, the connivance of the respondent with the staff with regard to the order cannot be ruled out.

33. Though such a contention has been advanced, however, it is the specific stand of the respondent that the inventorying and drawal of samples was done in the presence of the judicial officer and to that effect certain materials have been placed before this Court. However, this Court is not going into the said materials, as those issues have to be adjudicated at the time of trial



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and this Court, at the time of considering the legality of the dismissal of the discharge petition cannot go into a roving enquiry about the acts done by the Special Court or the members of staff of the Special Court.

34. Further, it is to be pointed out that the petitioner had raised contentions touching the admissibility of the statement of co-accused for the arrest of the petitioner by placing reliance upon the decision in *Tofan Singh case*. However, it is to be pointed out that at the time of discharge, the duty of the Special Court is only to see whether *prima facie* materials are available to proceed with the charge against the accused, which charge could be proved at the time of trial. It is not open for the court below to see that the nature of the materials available would be sufficient to prove the charges or not. In the case on hand, the trial court, satisfying itself that there are materials, which *prima facie* establish the involvement of the petitioner in the offence, had thought it fit not to discharge the accused of the charges laid against him. The said view arrived by the trial court cannot be said to be perverse, arbitrary or illegal.



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35. Further, the materials placed on record by the petitioner reveals that the Special Court had taken note of the issue and had inventoried the seizure and had samples were drawn in the presence of the judicial officer. Though the petitioner attacks the said orders by pointing out that the judicial officer who passed the said order is not available and it does not carry the seal of the court, however, it is to be pointed out that all those alleged irregularities have to be pointed out and established at the time of trial and it is not open for the Special Court to consider the same at the time of discharge.

36. Moreover, in the cases, which have been relied on, on behalf of the petitioner, all the decisions relates to conviction upon trial being completed and appeal having ended against the accused, where the Court have tested the non-compliance of Section 52-A and have held in favour of the accused, as in the said decisions, the non-compliance of 52-A stood established, which was not established to the satisfaction by the prosecuting agency. However, in the case on hand, the impugned order of dismissal is with regard to a discharge petition, which is at a nascent stage and, therefore, precluding the prosecution/respondent to establish its case by relieving the petitioner from the



clutches of prosecution, without even there being an iota of evidence would be wholly impermissible and would be against the intent with which the said provision u/s 52-A was enacted.

37. Further, it is to be pointed out that seizure was made from the residence/office of the petitioner in the presence of the petitioner and other mahazar witnesses. The samples, which were drawn have been tested and results have returned position for psychotropic substances. In this backdrop, without testing the veracity of the witnesses as also the mahazar in relation to the seizure made at the time in the presence of the said witnesses, it would not be in the interest of justice to discharge the petitioner, that too of a very grave and serious offence, which has global ramifications, would be nothing short of acquitting the petitioner without following the due process of law.

38. Therefore, looking at from any angle, the plea of the petitioner for discharge, which has been negated by the Special Court, on the facts and circumstances of the case and also the materials available on record cannot be found fault with as the Special Court has taken into consideration the *prima*



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facie materials to hold that discharge of the accused at this point of time would not be possible and had negated the plea of the petitioner, which, on a holistic consideration, is just and reasonable and no perversity or illegality can be attributed to the said findings given by the Special Court.

39. This Court is in agreement with the order impugned herein negating the discharge and the criminal revision challenging the said order is unsustainable and the same deserves to be dismissed. Accordingly, the criminal revision fails and the same is dismissed.

14.08.2024

Index : Yes / No

GLN

To

1. The Principal Special Judge
Special Court for EC & NDPS Act Cases
Chennai.
2. Intelligence Officer
Directorate of Revenue Intelligence (DRI)



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3. The Special Public Prosecutor
(NDPS Act Cases)
High Court, Chennai.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
CRL. R.C. NO.1462 OF 2023**



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CRL. R.C. No.1462/2023

**Pronounced on
14.08.2024**