

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SMT. JUSTICE NANDITA DUBEY
ON THE 26th OF SEPTEMBER, 2022**

CRIMINAL REVISION No. 1803 of 2022

BETWEEN:-

**KAMTA PRASAD @ K.P. JAISWAL S/O
SHRI RAMKHELAWAN JAISWAL,
AGED ABOUT 46 YEARS,
OCCUPATION: LABOUR, R/O
VILLAGE HARRAI RAMNAGAR
DISTRICT SATNA, AT PRESENT
DILOURA BYPASS KOLGAWAN,
DISTRICT SATNA (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI PD JAISWAL, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH THE POLICE STATION
MAIHAR, DISTRICT SATNA (MP)**

.....RESPONDENT

(BY MS. PRIYANKA MISHRA, GOVT. ADVOCATE)

This revision coming on for admission this day, the court passed the following:

ORDER

This criminal revision has been filed by the present applicant against the order dated 26.2.2021 (Annexure A-1), passed by the Special Judge (NDPS Act), Satna in Special Case NDPS No.36/2020, framing charges against him under Sections 8 read with Section 20(b)(2c) and 29 of the Narcotic (for brevity “**NDPS Act**”).

The brief facts of the case, as emerged from the material on record are that on 14.5.2020 Sub Inspector S.K.Jhariya of Police Station Maihar, District Satna received an information from an informant that a Truck bearing registration No.CG-04-DA-3388 is coming from Katni road carrying Ganja. The truck was intercepted near railway bridge and during search the police found 8 quintal Ganja in 73 sacks and 5 persons sitting therein were arrested. On the basis of aforesaid, an FIR came to be registered at Crime No.360/2020 at Police Station Maihar, District Satna (M.P.) for the offences under Sections 8 read with Section 20(b)(2c) and 29 of the NDPS Act. During investigation the statement of co-accused Gopal

Sahu was recorded, who disclosed in his memorandum that the seized Ganja belongs to the present applicant. On the basis of this memorandum statement of co-accused, present applicant was arrested on 15.5.2020.

Upon completion of investigation, the charge sheet was filed against the present applicant and other co-accused persons. Upon committal, the Special Judge (NDPS Act), Satna framed the charges against the present applicant under Sections 8 read with Section 20(b)(2c) and 29 of the NDPS Act, who pleaded non-guilty. The applicant has, therefore, filed the present revision challenging the order dated 26.2.2021, framing the charges as aforementioned and continuation of proceedings.

Learned counsel appearing for the present applicant submits that the charges are completely untenable in the facts and circumstances of the case, as there was no material gathered by the prosecution to show that the seized Ganja belongs to the present applicant. It is stated that there is nothing on record to connect the present applicant with the alleged offence, as no recovery was made from him nor is he the owner of the offending truck.

It is further contended by the learned counsel for the applicant that the present applicant has been made an accused and subjected to trial only on the basis of memorandum given by the co-accused

Gopal Sahu. It is argued that the confessional statement made under Section 27 of the Evidence Act, 1872 is barred under Section 25 of the Evidence Act and Sections 162 and 164 of Cr.P.C. and cannot be taken into account in order to convict the present applicant. In support of his contention, learned Senior Counsel has placed reliance upon the decisions of the Hon'ble Apex Court in the case of **Tofan Singh Vs. State of Tamil Naidu, AIR 2020 SC 5592, Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and another, (2019) 16 SCC 547, and Aghnoo Nagesia Vs. State of Bihar, AIR 1966 SC 119.**

Per contra, learned counsel for the State has fairly submitted that call details of the applicant are not reflected in the CDR during investigation. He has also no criminal antecedent.

I have considered the rival submissions and material placed on record.

In order to appreciate the defence of the present applicant and the stand of the respondent/State, it is necessary to refer the specific allegations against the applicant in the charge sheet. The present applicant has been arrayed as accused No.7 and the charges framed against him are as under:-

आरोप-पत्र

मैं जगदीश अग्रवाल, विशेष न्यायाधीश (एन.डी.पी.एस.) एक्ट सतना (म.प्र.) आप कामता प्रसाद उर्फ के.पी. जैसवाल पिता रामखेलावन जैसवाल, उम्र-46 वर्ष, निवासी-ग्राम हरई रामनगर जिला सतना हाल निवासी-डिलौरा बाईपास कोलगवां जिला सतना म.प्र. पर नीचे लिखे अनुसार आरोप लगाता हूं :-

(1) दिनांक 15.05.2020 को समय लगभग 03:00 बजे एन.एच. 30 रेल्वे ब्रिज के नीचे मैहर पर आपके एवं सहअभियुक्तगण के स्वामित्व/अधिपत्य से ट्रक वाहन क्रमांक सी.जी./04/डी.ए./3388 में 73 बोरियों में कुल 08 क्विंटल मादक पदार्थ गांजा पाया गया जिसकी कोई वैध अनुज्ञप्ति नहीं थी, इस प्रकार आपने ऐसा कृत्य किया जो स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम 1985 की धारा 8 सहपठित धारा 20 के खण्ड (ख) के उपखण्ड (2)(सी) के तहत दण्डनीय है।

(2) उक्त दिनांक समय व स्थान पर आपके द्वारा अन्य सहअभियुक्तगण के साथ मिलकर उक्त अपराध किये जाने का आपराधिक षडयंत्र एवं दुष्प्रेरण कारित किया गया, जिसके अनुक्रम में सहअभियुक्तगण के आधिपत्य से उक्त मादक पदार्थ पाया गया है, जो स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम 1985 की धारा 29 के अधीन दण्डनीय होकर इस विशेष न्यायालय के प्रसंज्ञान में है।

अतः आदेश देता हूं कि आपके विरुद्ध उक्त आरोपों का विचारण इस न्यायालय द्वारा किया जाये।

Section 397 of the Code of Criminal Procedure, 1973 vests the Court with the power to call for and examine the record of the trial Court for the purpose of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The revisional jurisdiction, however, is limited one and has to be

exercised cautiously. It can only be invoked where the decision under challenge is grossly erroneous, there is no compliance with the provisions of the law, the finding recorded is based on no evidence, material evidence is ignored or the jurisdiction is exercised arbitrarily or perversely.

It is settled that the Judge while framing charge has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge. At the admission stage though the Judge is not required to meticulously judge the evidence proposed to be adduced by the prosecution, but he is expected to exercise its judicial mind to determine the total effect of the evidence and the documents produced, to find out as to whether a *prima facie* case against the accused is made out or not. Needless to say, any such evidence and documents relied upon by the prosecution should be admissible under the law of evidence, as no inadmissible evidence or document can be taken into account for the purpose of framing the charge. [See (2019) 7 SCC 148 **Asim Shariff vs National Investigation Agency**, (2018) 13 SCC 455 **State Of Karnataka vs Selvi J. Jayalalitha and others**, (2013) 11 SCC 476, **Sheoraj Singh Ahlawat**

and others vs. State Of U.P. and another and (2012) 9 SCC 512, CBI, Hyderabad vs K. Narayana Rao].

In Sajjan Kumar Vs. Central Bureau of Investigation (2010) 9 SCC 368, after considering various authorities about scope of Section 227 and 228 of the Code has summarized the following principles :-

“21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have

committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

The allegation in the FIR, which was lodged at Police Station Maihar, District Satna on 15.5.2020 at 10:30 AM by Sub Inspector S.K.Jhariya discloses that on the basis of an information from police informer, that a Truck bearing registration No.CG-04-DA-3388 carrying illegal contraband from Katni, he along with other police personnel apprehended the said truck at 3:00 AM in the intervening night of 14/15.5.2020 near the railway bridge. Five accused persons namely Gopal Sahu, Bhaiyan Kushwaha, Sonu Choudhary, Balmik

Kol and Raju Kol sitting in the truck were arrested, whereas one person namely Guddu Kushwaha ran away from the scene. On search 8 quintal Ganja in 73 sacks/bags were seized from the truck. The FIR further mentions that during investigation the accused/driver disclosed that the present applicant has sent him for bringing the contraband from Orissa and Guddu Kushwaha has come to deliver the contraband but ran away after seeing the police party.

The memorandum of co-accused Gopal Sahu recorded under Section 27 of the Evidence Act discloses that he brought the contraband from Orissa under the instructions of the present applicant, Guddu Kushwaha and Anoop Jaiswal. When the truck in question reached near the railway bridge, Guddu Kushwaha, who came to deliver the contraband ran away after seeing the police party.

The Hon'ble Apex Court in the case of **Tofan Singh (supra)** has held as under:-

“The confessional statement recorded under Section 27 of the Evidence Act is hit by Section 25 of the Evidence Act and has no evidentiary value. Section 25 of the Evidence Act, 1872 states that a confession made to any police officer, whatever his rank, cannot be relied upon against a person/accused of any offence. The involuntariness or otherwise of the confession being irrelevant.”

The Hon'ble Apex Court in the case of **Dipakbhai Jagdishchandra Patel (supra)** in para 23 and 24 has observed as under:-

“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

24. Undoubtedly, this Court has in Suresh Budharmal Kalani, taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgment of this Court in Kashmira Singh v. State of M.P. We notice the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a

conviction and an appeal therefrom. However, in Suresh Budharmal Kalani, the Court has proceeded to take the view that only on the basis of statement of the co-accused, no case is made out, even for framing a charge.”

The Narcotic Drugs and Psychotropic Substances Act, 1985 prescribes offences which are very severe. Section 54 of the NDPS Act provides presumption of commission of an offence under this Act. If the accused fails to account satisfactorily for the possession of the contraband. Section 66 of the NDPS Act provides presumption as to documents seized from the accused.

While framing a charge, the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. No meticulous examination of evidence is needed for considering whether the case would end in conviction or not. However, the Court is required to consider and apply its judicial mind, whether the allegations taken as a whole will, *prima facie* constitute an offence and if so, whether continuation of proceedings is an abuse of process of Court leading to injustice.

In the present case, as discussed herein above, apart from the memorandum statement of co-accused Gopal Sahu, there is no other evidence or document or seizure from applicant, which may form the basis of a strong suspicion or which may implicate or connect the present applicant with the offence as alleged.

Resultantly, this criminal revision is **allowed**. The impugned order dated 26.2.2021 (Annexure A-1) passed by the Special Judge (NDPS Act), Satna in Special Case NDPS No.36/2020, framing charges against the present applicant under Sections 8 read with Section 20(b)(2c) and 29 of the NDPS Act is hereby set aside and the applicant is discharged.

(Nandita Dubey)
Judge

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