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IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 21ST DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE P.N.DESAI

CRIMINAL PETITION NO.201054/2022

BETWEEN

1. SUNIL KUMAR KOUSHIK
S/O BALWAN SINGH

2. VIJAY KOCHHAR

...PETITIONERS

(BY SMT. SHINDE GEETA RAMAKRISHNA, ADVOCATE)

AND

THE STATE OF KARNATAKA
BY INDI RANGE EXCISE PS.
REP GOVERNMENT ADVOCATE
HIGH COURT PREMISE
KALABURAGI 585103

...RESPONDENT

(BY SRI.GURURAJ V. HASILKAR, HCGP)

THIS CRL.P FILED U/S.482 OF CR.P.C. PRAYING TO, QUASH THE FIR, COMPLAINT AND CHARGE SHEET IN CRIME NO. 12/2021-22/10065IE2/100606 IN INDI EXCISE POLICE STATION, REGISTERED ON 29.09.2021, FOR THE OFFENCE PUNISHABLE U/SEC. 15(C), 18(C), 25, 61, AND 8(C) OF NDPS ACT, 1985 WITH RESPECT OF ACCUSED NO.2 AND 3 / PETITIONER NO. 1 AND 2 AND CONSEQUENTLY QUASH THE ENTIRE PROCEEDINGS IN SPL. C.(NDPS) NO.10/2022 ON THE FILE OF THE HONOURABLE PRL. DIST. AND SESSIONS JUDGE AT VIJAYAPUR.

THIS PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

This petition is filed under Section 482 of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.' for short) by petitioners/accused Nos.2 and 3 seeking to quash FIR, complaint and charge sheet filed in Crime No.12/2021-22/10065IE2/100606 of Indi Excise Police Station, Vijayapura Sub-Division, Vijayapura, registered for the offences punishable under Sections 15 (c), 18 (c), 25, 61 & 8 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act' for short) in Special Case (NDPS) No.10/2022 on the file of Prl. Dist. & Sessions Court, Vijayapura.

02. The brief case of the prosecution is that on 28.09.2021, Sri.M.H.Padasalagi, Excise Inspector, Indi Sub-Division, received a credible information that some person by name Jasavanthkumar transporting poppy straw powder through Pandarapur via Shirdoan road by keeping it behind the driver seat in Eicher Company vehicle No.HR-38-T-5583 in fertilizer bags. Immediately, he recorded the statement, reduced into writing and requested panchas and Gazetted officer to the raid. Accordingly, they went to the said place and all the materials to raid have been collected, search warrant was prepared. Thereafter, at about 10:20 hours one Eicher Company container came. As per information received, it was stopped and enquired the name of the driver. He told his name as Jashwantakumar. On searching the container, they found fertilizer bag. Then they opened the said bag. They found NDPS articles and when enquired regarding licence, he does not possess any licence to transport the same and he intent to sell the same in Bangalore. He told that the vehicle belongs to NITCO Logistics Pvt. Limited. The respondent-Police weighed the seized materials and it is found that it is about 500 grams of poppy straw powder in 10

packets. The accused were arrested and said powder and vehicle were seized. The police registered the complaint and after completing investigation, they have filed charge sheet against the driver of the said vehicle and also accused Nos.2 and 3.

03. The learned Magistrate has taken cognizance and issued summons to the accused persons, which is challenged in this petition.

04. Heard Smt. Geeta Sindhe, the learned counsel for the petitioners and Sri. Gururaj V. Hasilkar, the learned counsel for the respondent -- State.

05. The learned counsel for the petitioner argued that the petitioners were falsely implicated in this case without there being any basis or reason regarding commission of the alleged offences. Taking cognizance of the alleged offences against these petitioners is only mechanical, without assigning any reasons. The petitioner No.1 is the Senior Manager at NITCO Logistic Private Limited and the petitioner No.2 is the Managing Director of the said Company. The said company is having good standing in India with several branch

offices and is more than five decades old. The Company provides transportation, logistics services, is a well known and a reputed company. There are no criminal antecedents against these petitioners. There is no room for illegal activities in the Company. The goods loaded in the vehicle are all as per the supporting invoices and the container is sealed after loading of the goods. It is contended that the container is to be opened at the place of destination to unload the goods. The container is lock it will be opened only at the place of unloading of the goods by giving one time lock password. There is no scope for illegal transportation. In spite of giving the explanation by the Company regarding their functioning, the petitioners are falsely implicated in this case. The said contraband was recovered from the possession of the said Jashvanth Singh the driver of the vehicle who has placed the same in the driver's cabin, behind the driver seat in fertilizer bags. Nothing was recovered from the container. No material is forthcoming regarding the NITCO Logistics Company being involved in any such illegal transportation. The charge sheet material does not show that these petitioners in any way committed the said offences. The

allegations against these petitioners is under Section 15(b), 38 and 25 of NDPS Act, 1985. None of the ingredients are attracted against these petitioners. There is no material for invoking the provision of Section 38 of the NDPS Act. Neither the Company or its officials or Managing Director, have any knowledge or they knew about the transportation of the illegal contraband by driver in his cabin. By over looking the offence punishable under Section 25 of the NDPS Act, these petitioners are illegally implicated in this case. Therefore, taking cognizance and registering the case against these petitioners is bad in law. In support of her arguments, the learned counsel has relied upon the decision of this Court in the case of **Rameshkumar s/o Sh, Bhimising vs. The State of Karnataka** in **Cri.P.No.201458/2019** and decision of the High Court of Orissa in the case of **Balbir Singh vs. State of Orissa** reported in **1995 Cri.L.J. 1762**. Hence, the learned counsel for the petitioners prays to allow the petition.

06. Against this, the learned High Court Government Pleader argued that there are statements of the witnesses to show that the vehicle belongs to NITCO Logistic Private

Limited. The said contraband was transported in the said vehicle. Whether these petitioners are having knowledge or not, is to be proved at the time of trial, not at this stage. There is also the presumption under the NDPS Act. Therefore, at this stage, it is premature to quash the charge sheet. Hence, the learned High Court Government Pleader prays to dismiss the petition.

07. I have perused the FIR, complaint, charge sheet, statements of the complainant and accused. The seizure of panchanama clearly shows that when the said vehicle was intercepted as per the information received by the police officials and checked, the accused No.1 was a driver and he informed his name and behind the driver's seat in the cabin there was a bag and contraband powder. Then, he was enquired regarding the materials in the container and he has not given any information. However, he stated that the vehicle belongs to NITCO Logistics Pvt. Ltd., and the officials or the company does not know that he is transporting the said contraband powder. Even the owners of "goods" who loaded goods is also not know about any such articles transported by him. Thereafter, police have collected the

invoice and again as per the panchanama dated 06.12.2021 the said container door was break opened, as it was locked and it can be opened only at the place of unloading by giving one time lock password. The Investigating Officer found that as per the invoice carried by the driver, there were goods such as blankets, uniform, radiators, pillow and other materials as shown in the panchanama and no contraband substance was found in the said container. I have also perused the statements of the witnesses. There is no material against these petitioners that they have committed offences as alleged against them.

08. It is also necessary to refer relevant Section of NDPS Act to appreciate the contention of the petitioner. They are Sections 8(c), 25, 61 of the NDPS reads as under:

"8. Prohibition of certain operations.-

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance.

25. Punishment for allowing premises, etc., to be used for commission of an offence.—Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.

38. Offences by companies.—

(1) Where an offence under Chapter IV has been committed by a company, every person, who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under

Chapter IV has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation—For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and*
- (b) "director", in relation to a firm, means a partner in the firm.*

61. Confiscation of goods used for concealing illicit drugs or substances.- *Any goods used for concealing any [narcotic drug, psychotropic substance or controlled substance] which is liable to confiscation under this Act shall also be liable to confiscation.*

Explanation.- In this section "goods" does not include conveyance as a means of transport".

09. If these Sections are reads together, there is nothing to show that these petitioners are either knowing the owners of the said logistic or they have knowingly permitted driver to transport such contraband substance. When the accused No.1 - driver himself stated that owners of the vehicle or owners of the goods were not knowing that he is transporting the said contraband substance, the question of prosecuting these petitioners does not arise at all. Admittedly, they have stated that the NITCO Logistics Company is a reputed logistic and working since last five decades. They have stated that procedure of loading and unloading is that once a goods are loaded and invoice is given to the driver, the lock will be opened at the place of unloading by giving one time lock password and nobody can open the said container and on search no contraband was found in the container. It is evident from the statements of the witnesses, charge sheet materials and in view of the contents of the panchanama, which shows that neither owners nor officials and owner of NITCO Logistic Company were knowing about accused No.1 transporting contraband

substances. Therefore, prosecuting them under above charged offences, is bad in law.

10. The Orissa High Court in the case of **Balbir Singh vs. State of Orissa** reported in **1995 Cr.L.J. 1762** held in the identical situation and at Para No.4 to 6 held as under :-

"4. Section 25 of the Act provides, inter alia, that whoever being the owner of conveyance knowingly permit it to be used for commission by any other person of an offence under any provision of the Act, shall be punishable with the sentence mentioned therein. The linchpin of the offence under Section 25 thus, lies in knowingly permitting use of the vehicle for commission of any offence under the Act. No doubt under Section 26 of the Act, the Court shall presume culpable mental state of the accused in any prosecution for an offence under the Act. Similarly, under section 64 of the Act, presumption is available to be raised that the accused has committed an offence under Chapter-IV of the Act. Similar presumption can be raised in case of confiscation of conveyance etc., used in

carrying any narcotic drug as provided under Section 60 (3) of the Act. But in a case under Section 25 of the Act, it is for the prosecution to establish that the owner of the vehicle knowingly permitted the vehicle to be used for commission of an offence under the Act. I say so because of the specific mention of the word 'knowingly' by the legislature in section 25 of the Act. The legislature is not expected to use unnecessarily any word or expression. It does not use any word without meaning something. As such, the expression 'knowingly' has to be given due weight. When the Legislature has employed the word knowingly in Section 25 of the Act, it has to be held that so far as the offence under section 25 is concerned, it is for the prosecution to establish that with the owner's knowledge, the vehicle was used for commission of an offence under the Act and the presumption of culpable mental state referred to in section 36, 54 and 60 (3) of the Act cannot be pressed into service by the prosecution. In Raghunath Singh vs. State of Madhya Pradesh, 1967 Maharashtra Law Journal 575, the Supreme Court held that the words 'knowing' or 'knowingly' are used to indicate that knowledge as such must be proved either by positive evidence or

circumstantially before mens rea can be established. The words 'knowing' or 'knowingly' are obviously more forceful than the words 'has reason to believe' because they insist on a greater degree of certitude in the mind of the person who is said to know or to do the act knowingly.

5. The next question is as to what are the materials available against the petitioner in support of the charge under section 25 of the Act. The learned counsel for the State fairly stated that the only material against the petitioner is the extra-judicial confession made by the co-accused (occupants of the vehicle) stating that the petitioner had sent them to Sileru for procurement and transportation of ganja. In this connection, he has referred to the FIR and the statements of K.N.Sahu, constable and Dr. B.K. Prusty, Medical Officer, recorded under Section 161 of the Code. The aforesaid material would at best amount to confession of co-accused. It is now well-settled that confession of co-accused cannot be treated as substantive evidence. In dealing with a case against the accused person, the Court cannot start with the confession of a co-

accused. It must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt if the judicial mind is about to reach on the said other evidence. In other words, confession by a co-accused can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence.

6. *For the aforesaid reasons, I am of the considered opinion that merely because the petitioner is the owner of the vehicle, that by itself is not sufficient to sustain the charge under section 25 of the Act. Something more is necessary to indicate that the petitioner knowingly permitted his vehicle to be used for commission of offence by other which is lacking."*

11. The Co-ordinate Bench of this Court in the case of **Rameshkumar S/o Sh. Bhimsing vs. The State of Karnataka in Cril.P.No.201458/2019 dated 29.01.2020**, wherein at paragraph No.7 held as under:

"7. In the instant case, the very complaint very clearly and specifically mentions that the owner of the vehicle Sri Ramesh Kumar had no knowledge about his driver carrying the contraband in the lorry. The complainant has clearly stated that he enquired the driver who told him that the owner of the vehicle being Sri Ramesh Kumar is unaware of the driver carrying the contraband in his lorry at the instance of Suraj Singh. Thus, at the very first instance the complaint itself in clear term says that the owner of the vehicle had no knowledge about his vehicle being used for illegal activity by its driver.

Secondly, even according to the learned High Court Government Pleader his discussion with the Investigating Officer revealed that Investigating Officer has not collected any of the material to establish any nexus between the alleged commission of crime and the owner of the vehicle. Learned High Court Government Pleader also submitted that there are no material to show that the present petitioner who is the owner of the vehicle had any knowledge about his vehicle being used for any illegal activity of carrying any contraband goods in it. Learned High Court Government

Pleader fairly submits that it is only based on the endorsement issued by RTO authorities that the said vehicle stands in the name of the present petitioner, the said petitioner was also arraigned as an accused in the charge sheet. A perusal of the charge sheet materials placed before this Court also reveals that no material has been collected by the Investigating Officer to show that the present petitioner being the owner of the seized vehicle had any knowledge about the driver of the vehicle carrying contraband in it.

Thus, prima facie, it shows that the ingredients of section 25 of NDPS Act which is levelled against the present petitioner has not been fulfilled by the Investigating Officer by placing the material. As such, the filing of the charge sheet against the present petitioner is nothing but a harassment of the present petitioner by the Investigating Officer. Thus, the petition not only deserves to be allowed but with cost payable by the respondent-State to the petitioner."

12. Therefore, in view of the principles stated in the above decisions, charge sheet materials, allegations against these petitioners, the statement of the driver, the contents of the panchanama and Sections referred above, it is evident

that these petitioners cannot be prosecuted as they have nothing to do with the said alleged offences. Therefore, continuing the proceedings against them is nothing but abuse of process of law and Court. Hence, the said proceedings are liable to be quashed. Accordingly, I proceed to pass the following:

ORDER

The petition filed under Section 482 of Cr.P.C. is allowed.

The FIR, complaint and the charge sheet in Crime No.12/2021-22/10065IE2/100606 in Indi Excise Police Station registered on 29.09.2021, for the offences punishable under Sections 15 (c), 18 (c), 25, 61 and 8 (c) of NDPS Act, 1985 with respect of accused Nos.2 and 3 – petitioners and the entire proceedings in Spl.Case (NDPS).No.10/2022 on the file of the Prl. Districts and Sessions, Court at Vijayapur, so far as these petitioners concerned, are hereby quashed.

**Sd/-
JUDGE**

sdu/KJJ