

(2002) 11 AP CK 0011
In the Andhra Pradesh High Court
Case No : Criminal Petition No. 5383 of 2002

Dhamia

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 26-11-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 41(2), 42, 42(2), 48, 8

Citation : (2002) 11 AP CK 0011

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : K.M. Mahender Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—This is a petition to quash the F.I.R. in Cr. No. 88/2001-02 of Prohibition and Excise Station, Yellareddy, Nizamabad District, registered u/s 8(b) r/w. 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called "the Act").

2. The case of the prosecution is that on 18.09.2001 at about 10.40 a.m., on reliable information about illegal cultivation of Ganja plants in S. No. 24/2 of Somaram village, Inspector of Police and Station House Officer, Yellareddy Prohibition & Excise Police Station, accompanied by Sub Inspector of Police, visited the place along with panchas and conducted a panchanama and found that approximately 4,855 Ganja Plants were raised in 0.05 Gts., of land, which, on enquiry, is said to be belonging to the petitioner, and took samples of the ganja plants of about 100 grams each in sealed bags and destroyed the remaining ganja plants therein, and registered a case in Cr. No. 88/2001-02 against the petitioner.

3. The contention of the learned counsel for the petitioner is that since the Excise

officials did not follow the procedure prescribed by Section 42 of the Act, which is mandatory, the F.I.R. is liable to be quashed. He placed strong reliance on ROY V.D. Vs. STATE OF KERALA AIR 2001 SC 137 where it is held that in collection of material, detention or arrest of a person or search of a building or conveyance or seizure, effected by an Officer not being an empowered officer or an authorised officer u/s 41(2) of the Act lacks sanction of law, and is inherently illegal and cannot form the basis of a proceeding in respect of offences under Chapter IV of the Act, and where criminal proceedings are initiated based on such illicit material collected on search, it amounts to abuse of process of Court, and such proceedings are liable to be quashed u/s 482 Cr.P.C.; and contended that since the record does not disclose that the excise officials have submitted information to the immediate superiors in writing, the entire proceedings are vitiated and are liable to be quashed. The contention of the learned Additional Public Prosecutor is that since the Government of Andhra Pradesh in G.O.Ms. No. 184, Revenue (E) dated 14.02.1996 empowered the Officers of the State Excise Department including Enforcement Wing not below the rank of Sub Inspectors and all officers of the police department not below the rank of Sub Inspector to exercise the power u/s 42 of the Act, and since the search and destruction was made u/s 48 of the Act by the Inspector of Police, who is a Gazetted Officer, there are no grounds to quash the proceedings.

4. Section 48 of the Act reads:

"48. Power of attachment of crop illegally cultivated: Any Metropolitan Magistrate, Judicial Magistrate of the First Class or any Magistrate specially empowered in this behalf by the State Government or any officer of a gazetted rank empowered u/s 42 may order attachment of any opium poppy, cannabis plant or coca plant which he has reason to believe to have been illegally cultivated and while doing so may pass such order including an order to destroy the crop as he thinks fit."

5. Section 42 of the Act relates to entry into and search of any building, conveyance or an enclosed place where any narcotic drugs or psychotropic substances are kept, concealed or enclosed. That Section does not apply to open fields where cultivation of ganja, etc., is made. So, Section 42 does not apply to the facts of this case. Therefore, Roy V.D. Vs. State of Kerala (1 supra), relied on by the learned counsel for the petitioner, which relates to cases u/s 42 of the Act, has no application to the facts of this case, to which Section 48 of the Act applies.

6. As stated above, Inspector of Excise is a gazetted officer. So, he, by virtue of the power given to him by the notification in G.O.Ms. No. 184 , Revenue (E) dated 14.02.1996, referred to above, the Inspector of Excise has power to search and order destruction of the ganja plants cultivated in the fields. Since Section 48 does not contemplate information received about ganja cultivation being given to superior authority before the authorizing officer proceeds to the field where ganja is cultivated, the fact that the Inspector of Excise did not immediately furnish information in writing to his superior officer about the details

of information he got, is not a ground for quashing the complaint, since sub section (2) of Section 42 cannot be implanted or read into Section 48 of the Act. If the intention of the Parliament was to incorporate a provision like Section 42(2) in Section 48 of the Act also, it would have made such a provision in Section 48 of the Act also. Therefore, Sub Section (2) of Section 42 cannot be read in Section 48 of the Act, as the said sub section is confined to information received u/s 42 of the Act, i.e., enclosed places and buildings and conveyances where narcotic drugs or psychotropic substances are kept.

7. The contention of the learned counsel for the petitioner that since the field is not actually divided and since there are other co-owners of the land along with the petitioner, petitioner cannot be prosecuted, cannot be countenanced at this stage, because as seen from the F.I.R. the information received is that the petitioner is the person that raised the ganja crop. The question, whether it is the petitioner or his co-owner that raised the ganja crop in the field, will have to be gone into at the time of trial. That apart, Section 46 of the Act provides that every holder of a land should give information to officials about illegal cultivation of opium poppy, cannabis or coca plants within his land, and provides punishment for his neglect. Therefore, if the petitioner, who admittedly is a co-owner of the land, knew that somebody else had cultivated the ganja in his land, he was under a duty to give information to the Excise Officials about cultivation of ganja in the land which he is a co-owner. Admittedly, he did not do so. Therefore, I find no grounds to quash the F.I.R. Petition is dismissed.