(2010) 07 DEL CK 0101

In the Delhi High Court

Case No : Criminal Rev. Petition No. 329 of 2010

Narcotic Control Bureau — APPELLANT

Vs

Naresh Kumar Jain — RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2, 24A, 36(4)(A), 36A(4), 67

Citation : (2011) 2 AD 465 : (2010) 171 DLT 435 : (2011) 6 RCR(Criminal) 2475

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Rajesh Manchanda, for the Appellant; Vikas Pahwa, R.K. Jain and Naveen Malhotra, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this petition, the petitioner has assailed order dated 4th June, 2010 passed by the learned Special Judge NDPS whereby an application of the petitioner u/s 36A(4) NDPS Act seeking extension of time beyond the period of 180 days to investigate the case was dismissed. The learned Special Judge observed that in terms of provisions of NDPS Act, investigation should have been completed within 180 days. If the investigation was not completed within the stipulated period as provided u/s 167, an indefeasible right was created in favour of the accused seeking bail. The prosecution failed to indicate if any progress in the investigation had been made after 18th January, 2010 except that a request for issuance of Letter Rogatory was made. There was no ground for extension of time. The report of Public Prosecutor was merely a reiteration of facts narrated by the investigating agency in remand application. The report did not specify as to what progress in the investigation had been done. The Special Court relied on Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors. 1994 SCC (Cri.) 1087. The Special Court observed that in the light of judgment of Supreme Court in Hitendra Vishnu Thakur''s case (supra) there was no cogent reason to extend the period of investigation.

2. A perusal of the case set up by the petitioner against the accused before the Special Court under NDPS Act would show that the accused was a resident of Dubai for the last 14 years, he being an Indian enjoying the status of NRI. He connived with several criminals and indulged into money-laundering in Delhi and became a route for hawala money to facilitate illegal trafficking. Criminal proceedings were launched against the accused in Italy being proceedings No. 4884/04R.G.N.R. mode 21 opened in operations Khyber Pass. The accused also faced criminal proceedings in UAE along with other accused persons for transfers of money gains worth 2,022,459,1777,00 UAE Dirham. It was suspected that this transaction of enormous amount was because of dealing in drugs and bribery and the accused was liable for offences under Uniform Penal Code of UAE and under other penal codes. Accused absconded from Dubai and entered into India illegally through Nepal. During investigation Dubai identified various banking and wire transfers made by accused to bank accounts in USA. Information was sought by Dubai Government from US Government in respect of these transactions and US Government forfeited an amount of 4.3 million US$ on the ground of it being the narcotic laundered money. Serious Organized Crime Agency of UK also probed the activities of accused and found that the accused was having links with Albanian Drug Traffickers, who were transferring and organizing the narcotic money and laundering of this money was being done through routes of Italy, Dubai and other countries of Europe.

3. After the accused was arrested in Delhi, the accused during investigation disclosed his complicity with one Parvez Ahmed arrested in Italy and statement of accused was recorded u/s 67 of NDPS Act indicating that the accused was involved in offences under NDPS Act thus a case was registered against the accused.

4. The accused had also made petition before this Court being W.P.(Crl.) No. 485/2010 seeking quashing of the criminal proceedings against him under NDPS Act. A Division Bench of this Court vide order dated 21.5.2010 observed as under:

13. A conjoint reading of the aforesaid provisions would clearly disclose that the definition of "illicit traffic" is very wide and even those handling of letting out any premises for carrying on any of the activities referred to in Sub-clauses (i) to (v) of the definition are covered by the said definition. Not only that, whosoever finances these activities is also treated as indulging in "illicit traffic". Section 24A of the Act provides for punishment of those who indulge in financing, directly or indirectly, any of the activities specified in Sub-clauses (i) to (v) of Clause (viiia) of Section 2 which provides the definition of "illicit traffic". We had examined the recording keeping in view the aforesaid legal position in mind.

14. Since the matter is still at investigation stage and charge-sheet is yet to be filed, it would not be appropriate for us to comment upon the material collected

by the investigating officer against the petitioner during the investigation. We would only observe at this stage that the material collected so far does indicate the possibility of launded money received by the petitioner and hawala money which is being rooted again to facilitate illegal traffic where the possibility of role of the petitioner in financing the said illicit traffic, directly or indirectly, cannot be ruled out. Therefore, it cannot be said that there is no jurisdiction with the Special Judge to deal with this matter. The submission of the learned Counsel for the petitioner that even on the basis of admitted facts no case of illicit trafficking is made out, cannot be accepted at this stage.

5. It is submitted by the learned Counsel for the petitioner that the investigation in this case was spread over several countries and it necessarily had to take time and the learned Special Judge did not consider the enormity of the investigation and wrongly came to the conclusion that there was no progress in the investigation. He submitted that an application for Letter Rogatory was moved before the Court concerned however, the Court concerned pointed out certain formal defects in the proforma and the application was returned for re-submission. Thus, the defects were then removed and a request was again made for issuance of Letter Rogatory and this letter was thus issued with a delay. It was sent to the countries from where documents were to be collected. The learned Public Prosecutor submitted that the foreign governments do not cooperate so easily and action on Letter Rogatory takes time. It was not practically possible to complete the investigation u/s 180 therefore an application was made to the learned Special Judge for extension of time in terms of Section 36A(4) NDPS Act. it is submitted that the operations of money-laundering drug trafficking and other illicit operations of the accused was spread over various countries including Italy, UK, USA, UAE and the prosecution was in process of collecting these documents and it was necessary that the time for completing investigation should have been extended.

6. There is no doubt that an investigation normally should be completed at the earliest. However, the Legislature was aware of the fact that cases involving narcotic drugs and Psychotropic Substances were not ordinary cases where investigation could be completed in the same time as in IPC cases, it is for this reason that the Legislature, in its wisdom, by Section 36A(4) amended provision of Section 167(2) of NDPS Act and substituted "180 days" in place of "90 days" for NDPS offences. The Legislature further provided that if it was not possible to complete the investigation within the said period of 180 days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of 180 days. Thus, the Legislature was conscious of the fact that there may be circumstances where the investigation may extend beyond 180 days and the accused was required to be kept in custody. Obviously, these are those cases where investigation was of a complex nature and despite sincere efforts the investigating agency could not complete the investigation. Thus, the Court below should have seen whether the

investigating agency made sincere efforts to collect the documents and to complete the investigation. It is not disputed that the collection of documents in this case was required to be done from various countries where the operations of the accused were extended. It is also not disputed that the accused though could have come directly from Dubai to India by air route rather chose to land in Nepal first and enter India clandestinely hoping that he would not be noticed. It is undisputed that the allegations against the accused are not simple recovery proceedings of narcotic drugs itself but the accused was allegedly involved in a big organized chain of criminals who had been indulging into drug trafficking, money laundering and may be funding terrorism and other criminal activities with drug money as it is well known that one of the main source of funding of terrorism is drug money and hawala money. The investigation of such cases takes time. India is not a powerful country that its wishes are respected by other countries. India is considered as a soft and weak country even if it is progressing economically. On all other fronts the reputation of India abroad is not such that its requests are acceded to by the foreign governments immediately. Moreover, other countries have their own legal system and mere issuance of Letter Rogatory does not result in handing over the documents. Letter Rogatory issued by Indian Court has to meet the requirements of the legal system of the countries where it is presented and the judicial process of those countries also takes time. These factors were not taken into account by the learned Special Judge who dismissed the application only on the ground that there was no progress in the investigation and learned Public Prosecutor in its report merely repeated what was stated in the remand application.

7. A Public Prosecutor while submitting a report to the Judge about the progress is not supposed to invent the facts. He is supposed to present the facts. He had not to present something new and had to present the same material which was known to the Court earlier that does not mean that the report has to be rejected. What is to be seen is whether the extension of time was being rightly asked for completing the investigation or not. What was the enormity and complexity of investigation? Since the documents were to be obtained from different countries, were the documents easily available or not.

8. I consider that the learned Special Judge wrongly rejected the application. The petition is allowed. The order dated 4th June, 2010 of the learned Special Judge NDPS is set aside. The application of the petitioner u/s 36A(4) NDPS Act is allowed. Time for investigation in the matter is extended by 90 days from today.

