(2010) 11 DEL CK 0303

In the Delhi High Court

Case No : Criminal Revision Petition No. 671 of 2010

Narcotics Control Bureau APPELLANT

Vs

Naresh Kumar Jain RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21(2), 36A(4)

Citation : (2011) 5 RCR(Criminal) 204

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

Bench : Single Bench

Advocate : Rajesh Manchanda, for the Appellant; Vikas Pahwa, for the Respondent

Final Decision : Disposed Off

Judgement

Shiv Narayan Dhingra, J.—By the present petition, the petitioner Narcotics Control Bureau has assailed order dated 11th October, 2010 whereby an application u/s 36-A(4) of NDPS Act of the petitioner for extension of time for investigation was dismissed by the Special Judge.

2. Brief facts relevant for the purpose of deciding this petition are that the respondent an NRI was allegedly involved in money-laundering of the money gained from drugs and bribery and his operations were spread in various countries. Operation in the name of Khyber Pass, was launched in order to nab all those persons involved in this crime. The prosecution found involvement of the respondent in a large-scale laundering of the money generated from sale of drugs and bribery cases. A case was registered against the respondent in UAE being case No. 3452/07. The respondent was also wanted in Italy in another case. He had also made transactions in USA and the US government had forfeited an amount of U.S. $ 3.4 million belonging to respondent being narcotic laundered money. An operation snow blading was carried out by the Organized

Crime Agency of UK which unearthed links of respondent/accused with Albanian drug traffickers in arranging money laundering in countries viz. Italy, Dubai, USA and others. The respondent absconded from Dubai and entered into India illegally through illegal route. He was arrested by the petitioner bureau and the petitioner bureau started investigation against the respondent after registering a case under NDPS Act. The investigation could not be completed within 180 days as provided u/s 36-A(4) of NDPS Act. Thereafter, the Narcotics Control Bureau moved an application before the trial Court for extension of time by another 180 days. This application was dismissed by the trial Court vide order dated 4th June, 2010. Against this order of dismissal of the application, petitioner bureau approached this Court and this Court vide order dated 16th July, 2010 allowed the petition and extended time by another 90 days from 16th July, 2010. The investigation still could not be completed and another application was made by the NCB before the learned Special Judge for further extension of time for investigation. The learned Special judge vide order dated 11th October, 2010 dismissed this application on the ground that vide order dated 16th July, 2010, this Court while extending the time for investigation, granted only 90 days extension from 16th July, 2010 and it would not be in the fitness of things for the Special Judge to extend the time for investigation for any further period beyond 90 days as extended by the High Court. The Special Judge being subordinate to the High Court was bound to implement the directions of the High Court.

3. It is apparent from the order of the trial Court that the trial Court did not reject the application on merits and considered that it had no power to even consider the application on merits in view of the fact that the earlier extension granted by the High Court was only for 90 days.

4. It is submitted by the Counsel for the petitioner that at the time of earlier grant of extension of time for investigation, the Letters Rogatories had already been sent to the different countries where the operation of the accused was spread. Response to one of the Letter Rogatories was received only from the US government during the extended period that also on 7th October, 2010 and the learned Special Judge was informed about this response however, learned Special Judge considered itself powerless in extending the time. It is submitted that there was no jurisdictional bar on the learned Special Judge on considering the application despite the fact that High Court had extended the time only for 90 days in the earlier petition. On the other hand it is submitted by the Counsel for the respondent that once the High Court has considered the request of the prosecution for extension of time and the prayer of the prosecution to extend the time by another 180 days was not allowed and only extension of 90 days was given, the High Court cannot entertain the second petition for extension of further time. The other limb of the argument of the respondent is that there was no justification for extension of time as the State Counsel/Public Prosecutor had failed to made out a case for extension of time. There was no progress in investigation and the status of investigation was same as it was on the last hearing therefore this petition should be dismissed.

5. The first argument made by the Counsel for the respondent is not tenable. This argument was considered by the Supreme Court in Mustaq Ahmed Mohammed Isak and Others Vs. State of Maharashtra, in context of MCOCA wherein Supreme Court observed as under:

15. There is nothing in the language of second proviso inserted in Section 167(2) of the Code by Section 21(2) of the Act to indicate that the power of extension can be exercised only once as contended by the appellants. Para 30 of the Hitendra Thakur''s case (supra) on which the appellants place reliance did not deal with the present issue i.e. whether the power can be exercised more than once under the proviso.

6. The provision of Section 36A(4) of NDPS are akin to Section 167(2) of Cr.P.C. and I consider that the law laid down by the Supreme Court in above case is equally applicable in NDPS cases while considering extension of time for investigation. I also feel that the learned Special Judge should have decided the application on merits instead of considering that it had no jurisdiction. Whenever an application for extension of time comes and the time is not extended to the full period as available in the provision, that does not mean that no application for extension of remaining period of time can be entertained by the Special judge. The decision of the High Court extending time for 90 days at the initial stage did not debar the prosecution from seeking further extension on the ground that the investigation could not be completed, as observed by Supreme Court power can be exercised more than once.

7. The prosecution has made out a valid case for grant of extension of time. Letter Rogatories were sent to different countries. Response of the countries had to be awaited and it is only when the countries responded that the team of investigators can be sent to that countries to do further investigation. If the case had been that despite receipt of response to the Letter Rogatories, the investigating agency had been sitting idle one could understand that investigating agency was not keen to investigate the matter and was only seeking extension of time to prevent the accused from enjoying statutory bail. It is not so in this case. It is submitted by the Counsel for the petitioner that the team of officers was ready to go to USA and reminders were being sent to other governments to expedite the response. The Letter Rogatories and the teams of the bureau were already in place to visit these countries as and when response is given. It is not disputed that the spread of accused activities was in different countries and prosecution has been launched against the accused in Dubai and Italy, while US government has forfeited the amount of 4.3 million U.S. $. In order to do the complete investigation, it would be necessary for the prosecution to take assistance of police of these countries in knowing the extent of operations of respondent/accused and to bring forth all facts before the Special judge so that a proper and effective trial can take place. The sole purpose of the legislature in providing for extension of time of limitation is that there should be no constraints in appropriate cases on the investigating agency in investigation of

the case while the accused is kept in judicial custody.

8. I consider that this is an appropriate case where time for investigation should be further extended so that the prosecution is able to complete the investigation. The accused in this case was arrested on 6th December, 2009. The total period for which the investigation can be carried while the accused is kept in custody after extension shall be 180+180 days i.e. 360 days. The time for investigation is extended upto 1st December, 2010 and in case the investigation is not complete and challan is not filed by that day, the legal consequences shall follow.

The petition stands disposed of in above terms.

