
(2007) 03 AP CK 0015

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 300 of 2007

Senior Intelligence Officer, Directorate of Revenue Intelligence	APPELLANT
Vs	
Sri Jugal Kishore Samra	RESPONDENT

Date of Decision : 22-03-2007

Acts Referred:

Constitution of India, 1950 — Article 20(3), 22, 22(1)
Criminal Procedure Code, 1973 (CrPC) — Section 438(2)(1)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 21, 61(2), 67

Citation : (2007) CriLJ 2692 : (2007) 3 RCR(Criminal) 991

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : V. Gopala Krishna Gokhale, Special Public Prosecutor for Customs and Central Excise, for the Appellant; C. Praveen Kumar, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This Revision Case is preferred by the Senior Intelligence Officer, Directorate of Revenue Intelligence, against the order of the Metropolitan Sessions Judge, Hyderabad, dated 15-12-2006 in Cri. M. P. No. 3038 of 2006 in Cri. M. P. No. 2772 of 2006 in F. No. VIII/48/03/2006 HRU of Directorate of Revenue Intelligence, Hyderabad.

2. The respondent herein was a businessman. He was prosecuted for the offences under Sections 20 and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the Act"). On 21-7-2006, the officials of the Directorate of Revenue Intelligence, raided the premises of M/s. Hy-Gro Chemicals Pharmatech Private Limited and found certain contraventions in the manufacture and supply of the Dextropro-poxyphene Hydrochloride (DPP HCL) which is a narcotic drug and thereafter they found 250 kgs. of Dextropropoxyphene Hydrochloride was noticed when compared to the book balance and the Managing Director of the company admitted that the said drug was clandestinely cleared to M/s. J. K. Pharma Agencies, Delhi. The respondent

and his brother were indulging in the said business, therefore, the crime was registered and the contraband was seized. In the crime petition, anticipatory bail was granted to the respondent directing him to make himself available for interrogation as and when his presence is required, therefore, he could not be arrested by the Investigating Officials for the purpose of interrogation. When the Investigating Officer requires his presence for the purpose of interrogation, the respondent herein filed an Application covered by Cri. M.P. No. 3038 of 2006 u/s 438(2)(1) of Cr. P.C. requesting the Court to modify the order to the extent that his interrogation and examination to be done by the Investigating Officers in the presence of his Advocates Sri S.M. Deshmukh and Sri P. Venkataraman and Cardiologist to monitor the health of the petitioner in the interest of Justice. The learned Sessions Judge, after hearing both sides, allowed the petition in part directing the Investigating Officers to interrogate the respondent in the presence of his Advocates Sri S.M. Deshmukh or Sri P. Venkataraman and further directing that the Advocate shall not interfere with the interrogation by the Investigating Officers. Being aggrieved by the said order, the Senior Intelligence Officer filed this Revision Case to set aside the order of the learned Sessions Judge in Cri. M. P. No. 3038 of 2006.

3. The contention of the Revision Petitioner is that the officers of DRI, New Delhi on examination at Air Cargo Complex, IGI Air Port, New Delhi found 5 drums containing Dextropropoxyphene Hydrochloride having stickers affixed to them which revealed that the same were manufactured by M/s. Hydro Chemicals Pharmtek Private Limited, IDA, Bollaram and the consignee was mentioned as M/s. J. K. Pharma Agencies, New Delhi. The goods were seized on reasonable belief that the same had been cleared in contravention of the provisions of the Act to a party not holding proper permit as prescribed under the Act. In this connection, some of the persons were summoned and their statements were recorded u/s 67 of the Act, which reveal that the said persons have committed the offences punishable under Sections 21 and 29 of the Act and they were arrested and produced before the Metropolitan Sessions Judge, Hyderabad. Thereafter, the respondent and his brother Mr. Ramesh Kumar Sarma were summoned u/s 67 of the Act. Mr. Ramesh Kumar Sarma admitted his guilt and he was arrested and remanded to judicial custody.

4. The respondent filed an application for anticipatory bail and he was granted the same. The Revision Case filed by the State was dismissed by the High Court. The respondent filed an application seeking permission to have the presence of his Advocate and doctor at the time of examination by the Investigating Officer and the learned Sessions Judge was pleased to direct that the interrogation and examination of the respondent herein be done in the presence of his Advocate.

5. It is contended by the petitioner that the powers of the officers doing investigation were affected by permitting the Advocate to be present during the course of investigation, therefore, he requested to set aside the order of the learned Sessions Judge.

6. The learned Counsel for the respondent relied on a judgment of the Supreme Court in *Nandini Satpathy Vs. P.L. Dani and Another*, wherein the Supreme Court observed as follows:

The spirit of Article 22(1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near-custodial interrogation. Moreover, the observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice. Lawyer's presence is a constitutional claim in some circumstances in our country also, and, in the context of Article 20(3), is an assurance of awareness and observance of the right to silence. Article 20(3), and Article 22(1) may, in way, be telescoped by making it prudent for the Police to permit the Advocate of the accused, if there be one, to be present at the time he is examined. Overreaching Article 20(3) and Section 61(2) will be obviated by this requirement. If an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-crimination secured in secrecy and by coercing the will, was the project.

The Supreme Court in the above case extensively dealt with the right guaranteed under Articles 20(3) and 22 of the Constitution of India and after considering the entire case law, came to the above conclusion. This decision was considered by the Supreme Court in *Poolpandi Vs. Superintendent, Central Excise and others* etc. etc., and laid down the principle.

7. The learned Public Prosecutor representing the petitioner drew the attention of this Court to a decision of the Supreme Court in *Poolpandi Vs. Superintendent, Central Excise and others* etc. etc., . In the said judgment, the question that arose for consideration is whether the respondents accused are entitled to the presence of their lawyers when they are questioned during the investigation under the provisions of the Customs Act, 1962 and the Foreign Exchange Regulation Act, 1973. There is difference of opinion between the High Courts on this issue. The Delhi High Court took a different view to the Madras High Court. Article 20(3) declares that no person accused of any offence shall be compelled to be a witness against himself. It does not refer to the hypothetical person who may in the future be discovered to have been guilty of some offence. A statement from the accused was recorded and in pursuance of the confessional statement, diamonds, pearls and jewellery was recovered from different places. During the trial, the reliance was placed on his confessional statement made before the customs authorities, which was objected on the ground that the same were inadmissible in evidence inter alia in view of the provisions of Article 20(3) of the Constitution of India. While rejecting the objection, the Supreme Court held that in order that the guarantee against testimonial compulsion incorporated in Article 20(3) may be claimed by a person, it has to be established that when he made the statement in question, he was a person accused of an offence. The

Supreme Court made the said observation by relying on Romesh Chandra Mehta Vs. State of West Bengal, . The Supreme Court after considering Nandini Satpathy Vs. P.L. Dani and Another, and other cases observed that the FERA and the Customs Act are pari materia and the object of the two Acts is also similar, therefore, the Appeal has to be allowed against the judgment of the Delhi High Court permitting the interrogation of the accused in the presence of their lawyer.

8. Therefore, in the light of the above decision, the learned Public Prosecutor representing the petitioner submitted that the respondent shall not be permitted to have his Advocate present during the course of interrogation.

9. In the present case, on account of the apprehension of the respondent, the lower Court permitted the Advocate to be present during the course of interrogation. But the Advocate was directed not to interfere during the course of interrogation. The purpose of the respondent requesting the presence of the Advocate is only on account of the apprehension that the Investigating Officers are likely to apply third degree methods like physical assault etc., therefore, the learned Sessions Judge passed the impugned order.

10. It is an undisputed fact that the application of third degree method to the accused is prohibited and interrogation of the accused is a right provided to the Investigating Officer to elicit certain information regarding the commission of the offence. Though the Advocate was permitted to be present during the course of interrogation, he was prevented from interference during the course of interrogation. When the police do not resort to apply third degree methods, there cannot be any problem for them to interrogate the respondent to elicit necessary information relating to the above crime in the presence of his Advocate.

11. After considering the above aspects, I am of the view that the order passed by the learned Sessions Judge is in no way affecting the right of the Investigating Officer to interrogate the respondent in the presence of his Advocate therefore, I do not find any merits in this Revision Case.

12. Hence, the Revision case is dismissed.