
(2003) 06 MP CK 0050

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 72 of 2003

Shrikrishna Bharadwaj

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 24-06-2003

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 50, 8

Citation : (2003) 06 MP CK 0050

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : C.L. Yadav, for the Appellant; G. Desai, D.A.G. for non-applicant Nos. 1, 4, 5 and 6 and Z.A. Khan for non-applicant Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Kochar, J.—Dissatisfied with the order dated 20-12-2002 passed by the learned Special Sessions Judge, Mandsaur in Special Sessions Trial No. 71/2002, for framing charge against him u/s 8/21 of the Narcotic Drugs and Psychotropic Substances Act, the applicant has preferred this criminal revision. In this revision petition, he has also made several prayers regarding issuance of direction to the respondents (N. As. No. 1, 4, 5 and 6) to file enquiry report by the CTD Department and issuance of direction to Non-applicants No. 1 and 6 to initiate departmental inquiry against respondents (N. As. No. 2 and 3) as well as registration of criminal case.

2. The facts of the prosecution case in narrow compass giving rise to the present revision are that in the night intervening 29th and 30th November, 2001, some informer (Mukhbeer) informed Sub-Inspector Shri Shailendra Singh Jadon, City Kotwali, Mandsaur that in room No. 16 of Hotel Amrit three persons namely Shri Krishna Bharadwaj, Radhakishan and Suresh were staying there and they are going to smuggle the contraband heroin. A Panchnama to this effect was prepared, by the Police City Kotwali, Mandsaur. Since there was paucity of time

to obtain search warrant, the Sub-Inspector along with police force went to the place of incident where he found the applicant and two other co-accused staying in room No. 16 of the aforesaid lodge. The Sub-Inspector, after performing the formalities under the provisions of section 50 of the NDPS Act, seized 1.500 Kgs Heroin from accused Radhakishan, 2 Kgs of heroin from accused Shri Krishna and 500 grams from accused Suresh. After weighment of the seized article a sample therefrom was taken and sealed. The remaining article was also sealed. The accused were arrested and the seized article was got deposited in the Malkhana.

3. The applicant and other two co-accused were charge-sheeted for the offence punishable u/s 8/21 of the NDPS Act.

4. The learned Trial Court framed the charge by the impugned order dated 20-12-2002 u/s 8/21 of the NDPS Act against which the accused-applicant Shri Krishna only has preferred this revision.

5. The Trial programme was submitted by the prosecution before the trial Court 20-1-2003. Thereafter, the case was fixed for recording of the prosecution evidence on 31-1-2003 and 1-2-2003. On 24-1-2003, an application was filed on behalf of the applicant-accused for issuance of a direction to file inquiry-report before the Court. On 31-1-2003, some prosecution witnesses were present in the Court, but they could not be examined and cross-examined because of non-production of the applicant Shri Krishna who was sick inside the jail. A report to this effect was called by the trial Court and the case was again taken up the same day at 3.00 PM. The medical report from jail authorities was disclosing that the applicant was discharged from the jail-hospital. Thereafter, the applicant was also produced before the Court the same day.

6. Learned counsel for the accused persons had submitted before the trial Court that for the same incident, CID-Investigation was also done and in the inquiry, the case was found to be false against the accused persons. Counsel for the accused persons had also filed an application before the trial Court for initiating appropriate action to get the case transferred from the said Court and prayed for staying the proceedings. The same day, stay order filed before the trial Court passed by this Court, in this revision. Pursuant to the stay order passed by this Court on 31-1-2003, the trial is stayed.

7. Though this revision has been filed against the order of framing of charge and upto that date before the trial Court there was no CID report filed and the charges were framed against the applicant-accused and other co-accused persons. On the basis of the charge-sheet filed by the regular police i.e. Police of P. S. City Kotwali, Mandsaur, the investigation was done by respondent (Non-applicants No. 2 and 3. Thereafter, on 31-1-2003, an application was filed for issuance of direction to the State to file CID-Inquiry Report which is contrary to the charge-sheet filed by the Police City Kotwali, Mandsaur, and the applicant without waiting for final adjudication of their application, filed before the trial

Court, filed the present revision before this Court and made composite prayers as mentioned above.

8. I have heard Shri C.L. Yadav, learned counsel for the applicant and Shri G. Desai, learned Dy. Advocate General appearing for the Non-applicants No. 1, 4, 5 and 16 as also Shri Z. A. Khan, learned counsel for the Non-applicants No. 2 and 3 perused the entire material available on record.

9. Contention of the learned counsel for the applicant is that on the basis of the complaint filed by the applicant-accused the Director General of Police, Bhopal has ordered for further inquiry and in pursuance thereof, the CID inquired into the matter and found that the accused persons have been falsely implicated. On the basis of the CID-Report, the D.G.P. has also directed for initiation of action against the Non-applicants No. 2 (Sub-Inspector Shailendra Singh Jadon) and No. 3 M.P. Singh Parihar, In-charge Flying Squad, Mandsaur who were suspended, but the CID Report was not filed before the Trial Court. According to the learned counsel the D.G.P. is the head of the State Police and has power to issue directions for further investigation by any authority than the Regular Civil Police. Therefore, the inquiry done by the CID police would be nothing, but the further investigation in the case and according to this further investigation, no case is made out against the accused persons and they have been falsely implicated. Therefore, they should be discharged and in compliance with the order passed by the D.G.P. the prosecution must withdraw their case and action should be taken against the Non-applicants No. 2 and 3.

10. Learned counsel has also submitted that because of two contradictory reports, one by the Regular Police and another by CID, and benefit would be extended to the accused persons and they are entitled for discharge from the case.

11. Learned counsel has placed reliance on the following authorities in support of his contention:-

State of Bihar and Another Vs. J.A.C. Saldanha and Others, , K. Chandrasekhar Vs. The State of Kerala and Others, , K Chandrasekhar and others vs. State of Kerala and others.; 2002(II) M.P.W.N. 41, R.P. Kapur and Others Vs. Sardar Pratap Singh Kairon and Others, , State of Madhya Pradesh Vs. Mohanlal Soni, , G. Sagar Suri and Another Vs. State of U.P. and Others, , S.W. Palanitkar and others Vs. State of Bihar and another, , S.N. Palanitkar and others vs. State of Bihar and another; 2003 (1) JLJ 221, Kunstocom Electronics (I) Pvt. Ltd. vs. Gift Pack Ltd. and another.

12. As against this, learned Dy. Advocate General appearing for N. As. No. 1, 4 to 6 has submitted that on a complaint filed by the accused persons, the D.G.P. had merely ordered for inquiry by the CID and the same will not be construed as investigation. The date of offence was the intervening night of 29th and 30th of November, 2001 whereas the charge-sheet was filed by the Regular Civil Police, City Kotwali, Mandsaur on 25-12-2001 and charges were framed by the

impugned order dated 20-12-2002. Upto the date of framing of charge, no prayer was made by the applicant and other co-accused persons for issuance of direction to the CID Police or any State Authority to file the CID Report. The complaint was filed by the accused persons on 5-12-2001 with a covering letter dated 20-3-2002. This covering letter was on the letter-pad of Madhya Pradesh Congress Sewa Dal (E) Jawahar Bhawan, Roshan-pura, Bhopal. This was sent by the Head organisor of the State named Mahesh Joshi and on the same letter-pad, the matter was referred to DIG-CID by the Director General of Police. Thereafter, it appears that the DIG-CID has ordered for inquiry. According to the learned Dy. Advocate General, the CID-Report is merely an inquiry-report and the same cannot be construed as further investigation as envisaged u/s 173(8) of the Code of Criminal Procedure. He further submitted that up-to the date of filing of the revision and passing the stay order by this Court, the CID inquiry report was not presented before the trial Court and the date on which the accused persons have filed a specific application for production of CID Report i.e. 31-1-2003, the further proceedings in the trial Court were already stayed.

13. According to the learned Dy. Advocate General, merely on the basis of the contrary inquiry-report by the CID, the charge framed by the trial Court against the applicant should not be quashed and the whole proceedings are not liable to be quashed u/s 482 of the Criminal Procedure Code. If any order is passed for withdrawal of the case by the Director General of Police, that order is not in conformity with the provisions of section 321 of the Criminal Procedure Code because, for that purpose, only the Public Prosecutor-in-charge of the case is authorised to do so.

14. Learned counsel for the State has also submitted that the original case was registered by the regular police of City Kotwali, Mandsaur and after due investigation, charge-sheet was filed. If any order was passed for further investigation into the matter by the CID, then, the CID must act in accordance with the Police Regulation No. 745, which reads as under:-

"745 - When a superior officer decides to take over the investigation, he will take charge, of the diary, after noting the date of his arrival and of his assuming management of the case. He will then carry on the record from the point at which he assumed charge of the enquiry after verifying, if necessary, the recorded statements by briefly questioning the witnesses. He is, on no account, to record over again the statements already recorded, or to reiterate facts already recorded in the diary."

15. In the present case, the superior officer of CID Department had undertaken the investigation or inquiry, but he had not taken the charge of the case diary and without looking into the previous case-diary and documents of investigation started inquiry into the matter and submitted the enquiry-report. The said CID enquiry, photo copy of which has been filed before this Court, is consisting only the statements of the accused persons and the witnesses who had submitted affidavit in support thereof. No concrete material has been collected by the CID

Police, to falsify the charge-sheet filed by the Regular Police. According to the State counsel, since Regulation 745 has not been followed, the CID-report cannot be considered as further investigation u/s 173 of the Criminal Procedure Code.

16. Therefore, on the basis of mere enquiry report, the whole charge-sheet filed by the regular police and the charges framed by the trial Court on that basis, cannot be quashed.

17. Learned counsel for respondents No. 2 and 3, Shri Z.A. Khan, has also submitted that the order passed by the Director General of Police is passed on the political influence which is clear from the letter-pad itself. The letter pad of a politician as mentioned above and the difference of dates of complaint and the date of letter on which Shri Mahesh Joshi, organisor of Congress Sewa Dal (I) has recommended the complaint for investigation by CID. He further contended that the learned Director General of Police as well as the CID has not acted in accordance with the Regulation 7 read with 16 of the M. P. Police Regulation which says that the matter can be handed over for investigation by CID on recommendation by the concerned Superintendent of Police of concerned district. Learned counsel has also supported the arguments advanced by the learned Dy. Advocate General of the State.

18. Having heard learned counsel for the parties and after having perused the entire record, this Court is of the view that only on the basis of the further report which has not yet been filed before the trial Court, and photo-stat copy of the same has been filed before this Court, the accused persons are not entitled for discharge and the whole prosecution case cannot be quashed on the basis of the said report. The said report may not be considered as part of the same investigation done by the Regular Police because, as per the Regulation No. 745, the concerned police official had not taken the diary and investigated into the matter. There was no direction issued by the Court also for further investigation and no order was sought by the CID Police for further investigation into the matter after filing of the charge-sheet. It is really a matter of great concern that if CID investigation was done and such a report was submitted showing the fact that the accused persons were falsely implicated, then why the prosecution itself has not filed the said report as per provisions u/s 178(3) of the Code of Criminal Procedure. The accused persons have also filed the application seeking direction for filing of such report after framing of the charge sheet. The order passed by the Director General of Police for withdrawal of the case, it also not in conformity with the provisions of section 321 of the Criminal Procedure Code. It is the complete dominion of the Public Prosecutor in-charge of the case to file an application before the trial Court and thereafter, the case can be withdrawn with the consent of the Court. Section 321 of the Code of Criminal Procedure reads as under:-

Withdrawal from prosecution.

"321. The Public Prosecutor or Assistant Public Prosecutor in-charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal -

(a) if it is made before a charge has been framed, the accused shall be discharge in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences;

Provided that where such offence -

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty.

and the Prosecutor incharge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution."

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No such application has been filed by the prosecution/Public Prosecutor or Assistant Public Prosecutor in-charge of the case before the trial Court for withdrawal of the prosecution.

19. The Non-applicants have placed reliance on number of authorities regarding power and provision of further investigation, contradictory report as well as power of this Court and to quash the entire proceedings pending before the trial Court u/s 482 of the Code of Criminal Procedure. These authorities are as under:-

Rajesh and Ors. v. SHO Ist Town, Kadappa, 2001 (10) SCC 759 , K. Chandrasekhar Vs. The State of Kerala and Others, , T.K. Narayanaswamy Vs. State of Karnataka, , State of Bihar and Another Vs. J.A.C. Saldanha and Others, , State of Orissa Vs. Debendra Nath Padhi, , State of Orissa vs. Debendra Nath Padhi,. 1999 SCC (Cri) 373, Radhey Shyam Vs. Kunj Behari and Others, , T.T. Antony Vs. State of Kerala and Others, , H.N. Rishbud and Inder Singh Vs. The State of Delhi, Rishbud and another vs. State of Delhi;

20. This Court does not feel it necessary to deal with each and every citation relied upon by the learned counsel for the parties because, still the original report has not been filed before the trial Court and if prosecution desired to do so. it may do so in accordance with law and thereafter, if the prosecution wants to withdraw the case for that purpose also, it has to act in accordance with section 321 of the Code of Criminal Procedure. Merely because of photo-stat copy of contrary report given by the CID filed by the State on direction given by this Court, would not be sufficient to hold that the charge-sheet filed by the Regular Police of City Kotwali, Mandsaur is false and a false case has been concocted against the applicant and other accused persons. Either of two, which one is true, is a matter of evidence and that will be weighed and finally considered after giving full opportunity to both the parties during the course of trial by examination and cross-examination of their respective witnesses. At this juncture, it would be difficult to say that which of the reports is true and which one is false. One report is given by Regular Police of City Kotwali, Mandsaur which has already been filed and on its basis, the learned Special Judge NDPS has taken cognizance and framed the charges, whereas the report of the CID has not yet been filed before the trial Court and the application filed by the accused to this effect is still pending before the trial Court. The Trial Court is, therefore, directed to pass appropriate orders on the application so filed by the accused persons to this effect and to proceed further with the trial in accordance with law.

21. As a result of the discussion as aforesaid, this revision fails and is hereby dismissed. The order of staying the proceedings in the trial Court is recalled. Office is directed to send the copy of this order along with the record of the trial Court to that Court immediately. The trial Court is further directed that if the seized contraband heroin is not disposed of in accordance with section 52 of the Act, now it shall not be disposed of till the final disposal of the trial and shall be kept intact. Parties, through their counsel, are directed to appear before the trial Court on 24-7-2003 to take further orders in the case.