

*** HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Criminal Petition No.5349 of 2021

% Dated 01-10-2021.

K. Ranjith

..... Petitioner/A6

Versus

\$ The State of A.P. through SHO, Gangavaram P.S., Chittoor
District, rep. by Public Prosecutor, High Court of A.P., Amaravati.
..Respondent

! Counsel for the petitioner : Dr.Majji Suri Babu,
learned counsel

^ Counsel for respondent : Learned Addl. Public Prosecutor

<GIST:

> HEAD NOTE:

? Cases referred:

1. 2017 SCC OnLine Del 12810
2. (1994) 3 SCC 299
3. (2014) 8 SCC 273

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH**Criminal Petition No.5349 of 2021**

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JUDGMENT PRONOUNCED ON: 01-10-2021

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? ---
2. Whether the copies of judgment may be
marked to Law Reporters/Journals -Yes-
3. Whether His Lordship wish to see the fair
copy of the Judgment? -Yes-

JUSTICE CHEEKATI MANAVENDRANATH ROY

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
CRIMINAL PETITION No.5349 of 2021

ORDER:-

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") is filed seeking quash of F.I.R in Crime No.324 of 2020 of Gangavaram Police Station, Chittoor District, registered for the offence punishable under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act').

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

3. On the allegation that the petitioner herein, who is A-6, is responsible for illegal transportation of 600 gms of Ganja and as Ganja of 100 gms in a packet was found in the vehicle of the petitioner, who left the said vehicle and ran away from the scene of offence, after seeing the police who reached the scene of offence on receipt of reliable information regarding illegal transportation of Ganja, the aforesaid crime was registered against the petitioner for the offence punishable under Section 20(b)(ii)(C) of the NDPS Act.

4. Learned counsel for the petitioner would submit that as per the table furnished in the notification issued by the Ministry of Finance, Department of Revenue, in exercise of the powers conferred by clauses (viiia) and (xxiiiia) of Section 2

of the NDPS Act, dated 16.07.1996, at serial number 55, Ganja of 1000 gms is to be considered as small quantity. Therefore, he would submit that the facts of the case at best attract the offence punishable Section 20(b)(ii)(A) of the NDPS Act as the total quantity of Ganja involved in this case is only small quantity and facts of the case do not attract the offence punishable under Section 20(b)(ii)(C) of the NDPS Act, which pertains to commercial quantity. Therefore, learned counsel for the petitioner would submit that as the offence under Section 20(b)(ii)(A) of the NDPS Act relating to small quantity of Ganja is punishable with one year imprisonment or with fine which may extend to ten thousand rupees or with both that the present case is amenable to Section 41A Cr.P.C and thereby prayed to order for issuance of notice under Section 41A Cr.P.C to the petitioner without touching the merits of the case. Thus, learned counsel for the petitioner has confined his request in the Criminal Petition only to order notice under Section 41A Cr.P.C.

5. Learned Additional Public Prosecutor would submit that since the F.I.R is registered for the offence punishable under Section 20(b)(ii)(C) of the NDPS Act and as the said offence is punishable with imprisonment for a term not less than ten years and which may extend to twenty years and also liable for fine that the present case is not amenable to Section 41A Cr.P.C. He would also contend that Section 41A Cr.P.C cannot be applied to an offence punishable under the special

enactment i.e. the NDPS Act. In support of his contention, he relied on the judgment of the High Court of Delhi in the case of ***Vakamulla Chandrashekar Vs. Enforcement Directorate***¹, which was rendered under Prevention of Money Laundering Act (for short 'PMLA').

6. Considering the aforesaid rival contentions of both the parties and the facts of the case, it is to be first seen whether any offence under Section 20(b)(ii)(C) of the NDPS Act relating to illegal possession or transportation of commercial quantity of Ganja for which the F.I.R. was registered is made out or not.

7. The facts of the case clearly show that the total quantity of Ganja involved in this case is only 600 grams. Learned Additional Public Prosecutor also did not dispute the said fact. He fairly concedes that the total quantity of Ganja involved in this case is only 600 grams. Therefore, the facts of the case attract only an offence punishable under Section 20(b)(ii)(A) of the NDPS Act, as the said total quantity of Ganja is only a small quantity. Notification specifying small quantity and commercial quantity was issued by the Central Government in exercise of the powers conferred on it by clause (viia) and (xxiiia) of Section 2 of the NDPS Act. The said notification contains a table specifying the small quantity of Ganja and commercial quantity of Ganja. The quantity of Ganja shown in Column No.5 of the said table is specified as

¹ 2017 SCC OnLine Del 12810

small quantity. Serial No.55 in the said table relates to Ganja. At Column No.5 of it, it is shown that 1000 grams of Ganja is a small quantity and in Column No.6 it is shown that 20 K.Gs. of Ganja is a commercial quantity. The relevant portion of the said table contained in the aforesaid notification at Sl.No.55 is extracted hereunder for ready reference and it reads as follows:

TABLE

(See sub-clause vii(a) and xxiii(a) of section 2 of the Act)

Sl. No.	Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN))	Other non-proprietary name	Chemical Name	Small quantity (in gm)	Commercial Quantity (in gm./kg.)
(1)	(2)	(3)	(4)	(5)	(6)
55.	Ganja			1000	20 Kg.

8. Therefore, it is now evident from the aforesaid notification that Ganja upto 1000 grams is considered to be a small quantity. Only Ganja of 20 Kgs. and above is considered to be a commercial quantity.

9. Now it is relevant to consider Section 20 of the NDPS Act and it reads thus;

“20. Punishment for contravention in relation to cannabis plant and cannabis.---Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,---
(a)cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable ---

(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),---

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine, which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

10. As can be seen from the aforesaid Section of law, when small quantity of Ganja is involved in commission of the offence, the imprisonment prescribed is for a term which may extend to one year or with fine, which may extend to ten thousand rupees, or with both. In the instant case, the Ganja involved in commission of the offence is only 600 grams, which is below the 1000 grams. Therefore, as per the aforesaid notification, it is to be held that the Ganja involved in this case is only a small quantity and an offence under Section 20(b)(ii)(A) of the NDPS Act is only made out. So, the very registration of F.I.R. for the offence punishable under

Section 20(b)(ii)(C) of the NDPS Act, which is relating to commercial quantity, is obviously erroneous. Clause (C) of sub-clause (ii)(b) of Section 20 of the NDPS Act applies only when the Ganja involved is of 20 Kgs. as it is a commercial quantity as per the aforesaid notification. The said offence under Section 20(ii)(b)(C) of NDPS Act relating to possession or illegal transportation of Ganja of a commercial quantity is punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. So, when it is found that only a small quantity of Ganja of 600 grams is involved in this case, it is to be held that only an offence punishable under Section 20(ii)(b)(A) of the NDPS Act is made out and not an offence punishable under Section 20(ii)(b)(C) of the NDPS Act relating to commercial quantity. So, it is obvious that the police have registered the F.I.R. quoting a wrong section of law.

11. Therefore, when it is found from the facts of the case that only an offence under Section 20(b)(ii)(A) of the NDPS Act is made out and as the said offence is punishable with less than seven years period of imprisonment, the case is clearly amenable to Section 41A Cr.P.C.

12. Now the crucial question that arises for consideration is whether the procedure contemplated under Section 41-A of

Cr.P.C. is applicable to the offences punishable under special enactment i.e. NDPS Act or not.

13. Learned Additional Public Prosecutor vehemently contended that the procedure contemplated under Section 41A Cr.P.C cannot be applied to the offence under special enactment. No doubt, the NDPS Act is a special enactment. But there is nothing in NDPS Act which excludes application of the provisions of Cr.P.C relating to arrest and also the procedure contemplated under Section 41A Cr.P.C to the offence under the special enactment i.e. NDPS Act.

14. In this context, it is relevant to note that Section 4(1) of Cr.P.C. mandates that all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions of the Cr.P.C. Now, it is significant to note that clause (2) of Section 4 of Cr.P.C. further mandates that all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions i.e. of Cr.P.C, but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiry and trial etc. Therefore, the offences under the NDPS Act being offences under any other law i.e. other than the Indian Penal Code shall also be investigated and dealt with according to the provisions of Cr.P.C. as there is nothing in the NDPS Act

regulating the manner in which the investigation of offences under the NDPS Act is to be made.

15. Now it is significant to note that Section 51 of the NDPS Act clearly mandates that the provisions of the Code of Criminal Procedure, 1973, shall apply to all warrants issued and **arrests**, searches and seizures made under the NDPS Act. For better appreciation, Section 51 of the NDPS Act is extracted hereunder and it reads as follows:

“51. Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures.--
—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and **arrests**, searches and seizures made under this Act.”

16. Therefore, it is now clear that the relevant provisions relating to arrest as contemplated under Cr.P.C. are clearly made applicable to the offences punishable under the NDPS Act. Since, Section 41-A Cr.P.C. in a way pertains to arrest of an accused, the procedure contemplated under Section 41-A of Cr.P.C. relating to arrest of an accused undoubtedly applies to a person involved in an offence under the NDPS Act when the said offence is punishable with less than seven years period of imprisonment.

17. The Apex Court in the case of **State of Punjab Vs. Balbir Singh**² held at para No.5 of the judgment that search, seizure or arrest carried out by them in an offence under the

² (1994) 3 SCC 299

NDPS Act were obviously under the provisions of Cr.P.C. So, the provisions of arrest, warrant, search and seizure incorporated in Sections 41 to 60, 70 to 81, 93 to 105 and 165 Cr.P.C are applicable to the said arrest, search and seizure, warrant etc., made under the NDPS Act. The aforesaid group of provisions includes Section 41-A of Cr.P.C. The Apex Court also held that the NDPS Act is not a complete code incorporating all the provisions relating to search, seizure etc., and the said Act after incorporating the broad principles regarding search, seizure, arrest etc. in Sections 41, 42, 43 and 49 has laid down in Section 51 that the provisions of Cr.P.C shall apply insofar as they are not inconsistent with the provisions of the NDPS Act to all warrants issued and arrests, searches and seizures made under the NDPS Act. The Apex Court also held that the provisions of Section 165 Cr.P.C, which are not inconsistent with provisions of NDPS Act, are applicable for effecting search, seizure, arrest under the NDPS Act. Further, it is significant to note that the Apex Court held that Section 4(2) Cr.P.C provides that all the offences under any other laws shall be investigated and inquired as mentioned therein.

18. In fact, even in the judgment of the Delhi High Court, which is relied on by the learned Additional Public Prosecutor in ***Vakamulla Chandrashekar Vs. Enforcement Directorate***¹, while dealing with the legal position whether the procedure contemplated under Section 41A Cr.P.C can be

made applicable to an offence registered under the PMLA, the Delhi High Court clearly held that there is nothing in the special enactment to exclude the application of the provisions of Cr.P.C and also procedure contemplated under Section 41A Cr.P.C and thereby ordered that the authorities concerned under the PMLA shall adhere to the guidelines under Sections 41 and 41A Cr.P.C. Therefore, the ratio laid down in the above judgment is more in favour of the petitioner herein and it is against the contention raised by learned Additional Public Prosecutor that benefit of the procedure contemplated under Section 41A Cr.P.C cannot be made applicable to the offence under the special enactment.

19. Similar provision akin to Section 51 of the NDPS Act is also available in the Prevention of Money Laundering Act, 2002 (for short, "the PMLA"). Section 65 of the said Act is the said provision which provides that the provisions of the Cr.P.C shall apply in so far as they are not inconsistent with the provisions of the PMLA to arrest, search and seizure etc. Considering the said Section 65 of the PMLA, the Delhi High Court also in the above judgment in **Vakamulla Chandrashekar Vs. Enforcement Directorate**¹ held at para.No.60 that there is nothing in the scheme of the Act i.e. PMLA to suggest that Sections 41 and 41A of the Code would not apply to the exercise of power of arrest under Section 19 of the PMLA by one of the authorised officers. Also held that there is no provision in the PMLA, in respect of which it could

be said that Sections 41 and 41A are not in accord and that the scheme of PMLA does not even impliedly exclude the application of Sections 41 and 41A of the Code.

20. The said analogy squarely applies to the present facts of the case. In the NDPS Act also Section 51 of the Act mandates that the provisions of the Cr.P.C. in relation to search, seizure and arrest etc. shall apply to the offences under the NDPS Act, in so far as they are not inconsistent with the provisions of the NDPS Act. There is nothing to indicate in the NDPS Act even to impliedly exclude the application of Sections 41 and 41-A Cr.P.C. Therefore, Section 41-A Cr.P.C. undoubtedly applies to the offences under the NDPS Act which are punishable with less than seven years of imprisonment.

21. In this context, it is also relevant to note that the provisions contained in Sections 41 and 41-A Cr.P.C. are meant to safeguard the liberty of citizens against arbitrary, whimsical or *mala fide* exercise of the power of arrest by the police officers. So, application of the said provision which is meant to safeguard the individual liberty of a citizen from arbitrary, whimsical or *mala fide* exercise of the power of arrest by the police officers cannot be excluded even to offences punishable under the special enactments when there is no express or implied provision in the said special enactment excluding application of the said provision. A

combined reading of Section 4(2) Cr.P.C. and Section 51 of the NDPS Act makes the legal position very clear that the safeguard contained in Section 41-A Cr.P.C. is also applicable to the offences under the NDPS Act. The Apex Court in the case of **Arnesh Kumar v. State of Bihar**³ clearly observed as follows:

“The aforesaid provision of Section 41A of Cr.P.C. makes it clear that in all cases where the arrest of a person is not required under Section 41(1) Cr.P.C, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, that the police officer is of the opinion that the arrest is necessary.”

22. It is further held that at that stage also, the condition precedent for arrest as envisaged under Section 41 Cr.P.C. has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

23. Therefore, the said laudable object of protecting the liberty of a citizen from unnecessary and arbitrary arrest cannot be defeated by accepting the contention that the safeguard under Section 41-A of Cr.P.C. applies only to the offences under the Indian Penal Code and not to the offences under the special enactments.

³ (2014) 8 SCC 273

24. To sum up, the upshot of above discussion is that application of provisions of Cr.P.C insofar as they are not inconsistent with provisions of the NDPS Act are not expressly or impliedly excluded to the offence under the NDPS Act. Therefore, there is absolutely no legal bar to apply the procedure contemplated under Section 41A Cr.P.C. to the offences under the NDPS Act. So, there is no substance in the contention of the learned Additional Public Prosecutor that the benefit of the procedure contemplated under Section 41A Cr.P.C cannot be extended to the offences under the NDPS Act, which are punishable with less than seven years period of imprisonment.

25. In fine, as it is found that the procedure contemplated under Section 41A Cr.P.C can also be applied to the offences punishable under NDPS Act, which are punishable with less than seven years period of imprisonment, this Criminal Petition is disposed of with a direction to the Investigating Officer to follow the procedure contemplated under Section 41A Cr.P.C against the petitioner, as it is found that the facts of the case constitute only an offence punishable under Section 20(b)(ii)(A) of the NDPS Act relating to possession of Ganja of small quantity, which is of 600 gms, which is punishable with less than seven years period of imprisonment.

Miscellaneous petitions, if any pending, in the Criminal
Petition, shall stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date: 01.10.2021.

Note:
L.R. copy to be marked.
B/O
akn/cs