

HIGH COURT OF PUNJAB AND HARYANA

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Date of Decision: 24.11.2023

CRR-2744-2022 (O&M)

ASHOK KUMAR ...PETITIONER

VERSUS

STATE OF PUNJAB ...RESPONDENT

Representing Advocates: Mr. Animesh Sharma for the petitioner, Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

Legislation:

Pre-Natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act,
1994

Sections 3(1), 3(3), 4, 23, 25 of PNDT Act

Sections 22/61/85 of the NDPS Act

Section 120-B IPC

Subject: Revision petition against the order dismissing the application for summoning records and directing authorities to furnish a report regarding the issuance of 1170 tablets under Batch No.CLE 2001 in a case involving allegations of sex determination tests and recovery of narcotic drugs and illegal abortion equipment.

Headnotes:

Petition for Summoning Records at Time of Charge - Challenging the dismissal of application for summoning records and directing authorities to report on drug issuance - Petitioner alleged wrongful implication in recovery of drugs under NDPS Act, asserting that drugs were delivered to others and not recovered from his premises. [Para 1, 4, 6]

Sting Operation & Allegations - Sting operation conducted under PNDDT Act at Patiala Hospital, Patran - Petitioner and wife accused of conducting sex determination tests, with recovery of narcotic drugs and illegal abortion equipment. [Para 2]

Charges Under NDPS and IPC - Initially charged under PNDDT Act, later provisions of NDPS Act and Section 120-B IPC also invoked - Challans submitted under these sections. [Para 3]

Trial Court's Order and Petitioner's Argument - Trial Court dismissed petitioner's application for record summoning - Petitioner argued for his right to invoke Section 91 Cr.P.C. at the stage of framing charges, citing cases Nitya Dharmananda alias K. Lenin and Brijesh Kumar & 3 others. [Para 6-7]

Supreme Court & High Court Precedents - Reference to Supreme Court and Allahabad High Court judgments emphasizing the court's power to summon material with crucial bearing on framing of charge, even if not part of the charge sheet. [Para 9]

Quashing of Impugned Order & Remand for Fresh Adjudication - High Court found merit in the petition, quashed the impugned order, and remanded the matter back for fresh adjudication on merits. [Para 11]

Referred Cases:

Nitya Dharmananda alias K. Lenin Versus Gopal Sheelum Reddy also known as Nithya Bhaktananda & another, (2018) 2 Supreme Court Cases 93

Brijesh

Kumar & 3 others Versus State of U.P. & another, Application U/s 482 No.7478 of 2020 decided on 07.08.2020

**** **JASJIT**

SINGH BEDI, J.

The present revision petition has been filed for quashing the impugned order dated 11.10.2022 passed by the Additional Sessions Judge, Patiala in case No.NDPS/442/2020 pertaining to FIR No.157 dated 05.06.2020 registered

under Sections 3(1), 3(3), 4, 23, 25 PNDT Act and Sections 22/61/85 of the NDPS Act at Police Station Patran District Patiala whereby the application of the petitioner for summoning the record and for directing SMO Patran and Drug Inspector Patiala to furnish the report regarding the record for issuance of 1170 tablets under Batch No.CLE 2001 has been dismissed.

2. The brief facts of the case as emanating from the pleadings are that on 05.06.2020, a phone call was received from the District Family Welfare Officer, Tarn Taran that a sting operation under the the Pre-Natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994 was to be conducted at Patiala Hospital, Patran. On this, the Police went to the Hospital where the informer along with other Medical Officers was already present. The said operation was conducted and the petitioner and his wife were arrayed as accused on the allegations that the petitioner, his wife and other associates at Patiala Hospital, Patran were conducting sex determination tests. As per the allegations, the petitioner was apprehended at the spot whereas his wife ran away. It was further alleged that narcotic drugs and illegal abortion equipments were recovered from the spot of occurrence.

A copy of the FIR is attached as Annexure P-1 to the petition.

3. Though, initially, the FIR was lodged only under the PNDT Act, subsequently, the provisions of the NDPS Act were also invoked and consequently the challan and the supplementary challan were submitted under Sections 3(1), 3(3), 23, 25 of PNDT Act, Sections 22/61/85 of NDPS Act and Section 120-B IPC, Police Station Patran. The copies of the said challans are attached as Annexures P-2 and P-3 to the petition.

4. Meanwhile, the petitioner on 17.01.2022 filed an application before the Court for summoning the record and for directing the SMO Patran and the Drug Inspector Patiala to furnish their report regarding the record for the issuance of 1170 tablets under Batch No.CLE 2001. A copy of the application dated 17.01.2022 is attached as Annexure P-5 to the petition. A reply was submitted by the APP on 14.03.2022 wherein, it was stated that the defence had the right to summon the record only at the time of leading of the defence evidence. A copy of the reply to the application is attached as Annexure P-6 to the petition.

5. On the basis of the respective pleadings of the parties, the impugned order came to be passed which is under challenge in the present petition.

6. The learned counsel for the petitioner contends that the Trial Court has erroneously dismissed the application of the petitioner for summoning their record and for directing the authorities to furnish a report regarding the record for the issuance of 1170 tablets under Batch No.CLE 2001. He contends that from the very outset, it was the case of the petitioner that the recovery of the drugs under the NDPS Act had been planted upon him and the reports demanded by the petitioner would go on to show that the drugs had in fact been delivered to others and the question of the recovery of the same from the premises did not arise. He contends that though ordinarily, the Court has to charge/discharge an accused only on the basis of material produced with the charge-sheet, however, if the Court was satisfied there was material of sterling quality which had been withheld by the Investigator/Prosecutor which if shown to the Court would pursue it to discharge the accused, then the defence had a right to invoke Section 91 Cr.P.C. even at the stage of framing of charges to summon the record. Reliance is placed on the judgments in **Nitya Dharmananda alias K. Lenin and another Versus Gopal Sheelum Reddy also known as Nithya Bhaktananda & another, (2018) 2 Supreme Court Cases 93** and **Brijesh Kumar & 3 others Versus State of U.P. & another, Application U/s 482 No.7478 of 2020 decided on 07.08.2020.** He, therefore, contends that the impugned order was liable to be quashed.

7. On the other hand, the learned State counsel contends that at the stage of framing of charges, documents in defence cannot be looked at and the Court has to only *prima facie* be satisfied about the existence of sufficient grounds for proceeding against the accused. He, therefore, contends that the present petition was liable to be dismissed.

8. I have heard the learned counsel for the parties.

9. Before proceeding further in the matter, it would be apposite to refer to the judgments relied upon by the petitioner.

The Hon'ble Supreme Court in the case of **Nitya Dharmananda**

alias K. Lenin and another Versus Gopal Sheelum Reddy also known as Nithya Bhaktananda & another, (2018) 2 Supreme Court Cases 93, held

as

under:-

“5. It is settled law that at the stage of framing of charge, the accused cannot ordinarily invoke [Section 91](#). However, the court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case so require, even if the accused may have no right to invoke [Section 91](#). To exercise this power, the court is to be satisfied that the material available with the investigator, not made part of the chargesheet, has crucial bearing on the issue of framing of charge.

6. *In Debendra Nath Padhi, supra, it was observed: “25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is “necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code”. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking [Section 91](#) at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under [Section 91](#) would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under [Section 227](#), what is necessary and relevant is only the record produced in terms of [Section 173](#) of the Code, the accused cannot at that stage invoke [Section 91](#) to seek production of any document to show his innocence. Under [Section 91](#) summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. [Section 91](#) does not confer any right on the accused to produce document in his possession to prove his*

defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.”

7. *In Hardeep Singh Etc. versus State of Punjab and ors. Etc. (2014) 3 SCC 92 a Bench of five-Judges observed:*

“19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.”

8. *Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a right to invoke [Section 91 Cr.P.C.](#) de hors the satisfaction of the court, at the stage of charge.”*

(emphasis supplied)

The Allahabad High Court in the case of **Brijesh Kumar & 3 others Versus State of U.P. & another, Application U/s 482 No.7478 of 2020**

decided on 07.08.2020, held as under:-

28. *In the year 2008, Hon'ble the Apex Court had occasioned to examine the ambit and scope of Section 482 Cr.P.C., 1973 in Rukmini Navekar v. Vijaya Satardekar and others (2008) 14 SCC 1 wherein the main order, it was observed, that the width of the powers of the High Court under Section 482 of Cr.P.C, 1973 and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of the court or otherwise to secure the ends of justice. In concurring but separate order passed in the Rukmini's case (supra), it was additionally observed that under*

section 482 Cr.P.C., 1973 the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained? The aforesaid parameters shall be kept in mind while we examine whether the High Court ought to have exercised its inherent jurisdiction under section 482 Cr.P.C., 1973 in the facts and circumstances of this case.

Now reverting back to the fact and controversy involved in the present case, where the FIR itself was lodged by deceased's own son after inordinate and unexplained delay of almost eight days that too after having assessed over her inquest and postmortem report, the informant tailored a story of scuffle over minor issue of drainage, implicating the applicants for assault by lathi and danda in consonance with post mortem report of the deceased. After the incident, the deceased was taken to various private nursing home and medical college, Saifai and took her last breath on 01.03.2018. None of the attending doctors have observed any injuries over her person during her treatment or even witnesses of fact has attributed that these so called injuries are responsible for her untimely demise. She died during her treatment at Agra and the attending doctor in her post mortem report clearly and unambiguously mentioned the cause of her death is on account of M.I.(Myocardial Infarction i.e. heart attack) as he observed clotted blood in both the chambers of her heart. All the doctors have reiterated the same line. Not only this, her own family member Ms. Raj Kumari too have given severe dent to the prosecution story denying the aspect of assault by lathi and danda. In the totality of circumstances, the Court wonders, how the Investigating Officer of the case has submitted its report under section 173(2) Cr.P.C., 1973 under section 304 IPC. On a plain reading and perusing the post mortem report which is self-explicit. Thus, if we evaluate the entire picture of the prosecution story from FIR, till charge sheet, the Court finds that at every stage, there are different colour and shades in the prosecution case itself.

Thus, after distilling above facts and circumstances of the case, one thing established beyond iota of doubt that neither the dimension nor the seat of injuries are such, which could take away any-body's life. The post mortem report of the deceased too, do not support the prosecution case. In the post mortem report, clotted blood was detected by the doctor, suggestive of the fact that heart attack is more probable cause of her untimely demise. On the other hand, the applicants have filed number of medical prescriptions of the deceased, buttressing the fact that she was old patient of hypertension. Thus,

taking the help of these documents, various medical prescriptions of Ms. Kiran Devi, deceased and the guidelines rendered by Hon'ble the Apex Court in the case of Rajiv Thapar and others(supra) whereby it has been mentioned that material produced by the accused/applicants are such that it would rule out and displace the accusations levelled against them. These material if place on record and taken into consideration, clearly reject and over rule the veracity of the allegations contained in the accusation levelled by the prosecution/complainant. It must be taken into account at this stage. The reason is quite simple that if these materials are taken on record they would change the entire tone, texture and tenor of the accusation made in the FIR and completely blast the prosecution story and save the accused/applicants from the wrath, undue and unwarranted criminal case against them.

29. *Under the circumstances, the Court is quite satisfied that the material produced by the defence in their discharge application should be taken into account while deciding the discharge application. Thus, where two divergent views are in existence, which are equally probable, in that event, applying the principles of CBI, Hyderabad v. K. Narayan Rao(supra) which speaks :-*

"If two views are possible and one of them give rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

This Court is persuaded by the guidelines. Learned Trial Judge shall decide the discharge application afresh in the light of the observation made in the case of CBI, Hyderabad case(supra).

30. *As mentioned above, the Court is at loss at this juncture to give any view point about the veracity of these documents i.e. medical prescriptions of the deceased annexed as annexures to the petition thus, it is hereby directed that the applicants would submit all these documents/prescriptions before the court concern and any other document relating to her ailments i.e. deceased was suffering from hyper tension and the court concern shall direct the investigator to conduct further investigation about the authenticity of those medical prescriptions as well as record 161 statement of the concern doctor who conduct the post mortem within a period of six weeks from the date of filing of this order before the Trial Court. Thereafter, the court again would decide the discharge application taking into account the holistic and peneromic view of all the material on record and decide the same with good*

reasons by 31.12.2020 positively. There shall not be any laxity on the part of the trial court in deciding the discharge application by that date.

31. With the aforesaid observations, the present 482 Cr.P.C application stands allowed and the order impugned dated 31.01.2020 is hereby quashed.

(emphasis

supplied) 10. Coming back to the facts of the instant case, it is apparent that if the report as sought is produced regarding 1170 tablets of Clevidol SR purportedly recovered from the premises of the petitioner, it would certainly have a material bearing on the outcome of the case as the matter is pending before the Trial Court at the stage of framing of charges. By no stretch of imagination can it be held that the documents sought are completely unconnected with the issue in hand. In fact, if the record is brought before the Trial Court, the said Court would be in a better position to appreciate the respective contentions of both the parties.

11. In view of the aforementioned discussion, I find merit in the present petition and therefore, the impugned order dated 11.10.2022 passed by the Additional Sessions Judge, Patiala is quashed. The matter is remanded back to the said Court for a fresh adjudication on merits keeping in view the observations made herein.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.