

CASE NO.:
Special Leave Petition (crl.) 5247 of 2003

PETITIONER:
Md. Malek Mondal

RESPONDENT:
Pranjal Bardalai & Anr.

DATE OF JUDGMENT: 06/05/2005

BENCH:
Y.K.Sabharwal & Tarun Chatterjee

JUDGMENT:
J U D G M E N T

Y. K. Sabharwal, J.

A complaint dated 17th March, 2003 under Sections 21(c) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') was filed by the respondents. The petitioner and one Dilip Das were arraigned as the accused. The basis of the complaint was alleged seizure of 2.050 kg heroin. It was, inter alia, alleged that during the search of the residential premises of Dilip Das, the heroin was found concealed amongst garbage heaped upon the floor under the staircase. During interrogation, Dilip Das stated that the recovered substance was supplied by the petitioner through his carrier to his brother-in-law Sunit Banerjee and he used to keep the said substance in safe custody for further delivery to Bangladesh. According to the statement made by Dilip Das, the petitioner was the real owner of the recovered heroin. It was further alleged that one Alek Mondal appeared before Narcotic Control Bureau Officer and stated that the petitioner, his brother, had left the family seven years ago and was living separately at unknown address and that he had no connection or contact with the petitioner. A notice under Section 67 of the NDPS Act issued in the name of the petitioner was received by said Alek Mondal. Further allegations in the complaint is that the petitioner was issued various notices under the NDPS Act to appear before the Intelligence Officer but he failed to appear. The complainant made a prayer for issue of warrants of arrest against the petitioner. In the complaint, it was submitted that a supplementary complaint will be filed before the learned special court against the petitioner in the event of his arrest and after further investigation. Praying that the court may take cognizance of the offence punishable under Sections 21(c) and 29 of the NDPS Act, it was submitted that since the petitioner could not be intercepted, the court may issue necessary orders to the Superintendent of Police to produce him before the court.

The learned Special Judge, NDPS Court, took cognizance of the case in terms of order dated 17th March, 2003 when Dilip Das was produced from judicial custody. Dilip Das was ordered to be produced on 28th April, 2003 and investigating officer was directed to file report. Warrants were issued for the arrest and production of the petitioner in terms of orders passed by the special court on 28th April, 2003. The prayer of accused Dilip Das for grant of bail was, however, rejected.

Even prior to the filing of the complaint, a prayer was made before the learned Special Judge for issue of warrants of arrest against the petitioner while producing before the court accused Dilip Das from custody. At this stage, the special court in terms of order dated 17th February, 2003, observing that no substantial piece of documentary evidence had been produced by the complainant, had refused the prayer for issue of warrants of arrest against the petitioner.

The petitioner sought quashing of the complaint by filing a criminal

revision petition before the High Court, inter alia, on the ground that the mandatory provision of Section 42 of the NDPS Act had not been complied with and there was no material to proceed against him. The said petition has been rejected by the High Court by the impugned judgment, inter alia, observing that where allegations of such grave nature have been made, the prosecution should be given opportunity to prove the case and that the proceedings were at the very initial stage when only cognizance of offence has been taken by the special court. The High Court has further noticed that material has been collected by NCB Officers against the petitioner which is sufficient for the purpose of proceeding further in the matter. It has also been noticed that the petitioner has been absconding till date and warrants of arrest against him have been rightly issued.

Challenging the impugned judgment, it has been contended by learned counsel for the petitioner that the complaint deserves to be quashed for non-compliance of mandatory provision of Section 42 and also that there is no material to proceed against the petitioner. Further contention is that the special court has no power to issue warrants of arrest.

The proceedings of the complaint are at initial stage after the cognizance has been taken. The petitioner could not be interrogated since he has been avoiding to appear before the NCB Officer despite issue of various notices as per the averments made in the complaint. The allegations in the complaint are grave. The recovery, according to the prosecution, is of 2.050 kg. of heroin which, according to the statement of Dilip Das, belonged to the petitioner. The question whether Section 42 of the NDPS Act has been complied or not being a question of fact has to be gone into on appreciation of evidence that may be adduced before the Special Judge. Prima facie, the High Court has come to the conclusion that there has been compliance. This is not the stage for in depth examination of this question. The contention that there is no material against the petitioner since the only material on record was inadmissible retracted statement allegedly made by the co-accused, Dilip Das, also cannot be accepted, at this stage, when only cognizance has been taken and the petitioner is still to be interrogated. The question about corroborative nature of evidence may also have to be gone into at the appropriate stage. The only other contention urged is about the lack of power of the Special Judge to issue warrants of arrest.

Relying upon Section 41 of the NDPS Act, it has been contended that power to issue warrants of arrest only vests in the Magistrate and not in the special court. Section 41 does not take away powers vested in special court by Section 36A of the NDPS Act. There is no merit in this contention as well.

Before parting, we may also note that wide extraordinary power of quashing vested in the High Court is to be exercised sparingly and with caution and not to stifle legitimate prosecution. Such a power is required to be exercised in a case where the complaint does not disclose any offence and it is frivolous, vexatious or oppressive. At that stage, there cannot be meticulous analysis of the case. The High Court has rightly declined the prayer to quash the complaint at this initial stage. It cannot be said that there was no material for taking cognizance by the special court. The reading of the complaint as a whole shows that as per prosecution case a huge recovery of heroine was made. The recovered substance was stated to belong to the petitioner, the petitioner did not respond and failed to appear before NCB Officers despite written notices. Under these circumstances, the complaint was filed against the petitioner and Dilip Das seeking leave of the Court to file supplementary complaint after further investigation that may be carried out after custodial interrogation of the petitioner. In this background, the complaint cannot be quashed. For the aforesaid reasons we find no merit in the petition. It is accordingly dismissed.