

IN THE GAUHATI HIGH COURT
**(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND
ARUNACHAL PRADESH)**

ITANAGAR BENCH

Criminal Petition 17(AP)2014

Chow Chiktawa Jeinow

S/o Chow Suwonna Jeinow

Aged about 33 years, Village – Lathao

P.O./P.S. Namsai, District – Namsai

Arunachal Pradesh

..... Petitioner

-Versus-

1. State of Arunachal Pradesh,
Represented by the Chief Secretary
Govt. of Arunachal Pradesh, Itanagar.
2. Secretary, Home,
Govt. of Arunachal Pradesh, Itanagar.
3. Secretary, Law and Judicial,
Govt. of Arunachal Pradesh, Itanagar.
4. Director General of Police,
Govt. of Arunachal Pradesh, Itanagar
5. Superintendent of Police,
Changlang District,
Changlang, Arunachal Pradesh
6. Officer-in-Charge, Miao Police Station
District – Changlang, Arunachal Pradesh
7. Shri Tagom Rading (Informant)
Sub-Inspector, Miao Police Station
District – Changlang, Arunachal Pradesh

..... Respondents

For the petitioner : Mr. C.W. Mantaw
For the respondents : Mr. K. Ete, Additional Advocate General,
Arunachal Pradesh

:::BEFORE:::
HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing : **11.09.2015**

Date of Judgment : **01.10.2015**

JUDGMENT & ORDER (CAV)

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing and setting aside of the investigation arising out of Miao P.S. Case No.19/2014 under Section 21/27 Narcotic and Psychotropic Substances Act, 1985, conducted by the Sub-Inspector of Police of Miao Police Station.

2. The petitioner, herein, is arrayed as an accused in the aforesaid case on the basis of an FIR dated 11.8.2014 lodged before the said police station to the effect that the petitioner was found to be in possession of drugs suspected to be brown sugar within 500 mg. In pursuance of the said FIR, the petitioner was arrested and detained behind the bar and subsequently, released on bail. Now, the challenges of the petitioner is that the investigating officer of the case has no any authority of law to investigate the case under NDPS P.S. as no any notification has been issued by the Central Government or the State Government as required under Section 42 of the Act, authorizing the investigating officer (the Inspector) to exercise the power of arrest, search and seizure and investigation. It contends that such investigation carried-out by the said officer is void *ab initio* and lacks sanction of authority of law which infringes the fundamental right of the petitioner as directed under Article 21 of the Constitution inasmuch as provision of section 50 of the NDPS Act requires the investigating officer to produce the accused before the Magistrate at the time of making seizure of drugs from the person, which has not been complied with in this case. As such, the seizure of drugs from the possession of the petitioner is doubtful and unreliable. It is the submission of the petitioner that under the above facts and circumstances, the chances of conviction of the petitioner does not arise and charge-sheet, if so filed, on

the basis of such unlawful investigation will be nothing but would be an abuse of the process of law which would finally end up in the acquittal of the petitioner on the sole ground of lack of jurisdiction and procedural lapse. Petitioner has relied on the case of ***Roy V.D. Vs. State of Kerala*** reported in ***AIR 2008 SCC 590*** in support of his contention. Situated thus, the petitioner has prayed for setting aside the investigation so carried in connection with the aforesaid case as well as charge sheet, if so filed.

3. In response to the notice served, Mr. Ete, learned Additional Advocate General, Arunachal Pradesh, has entered his appearance and instead of filing any written reply, has advanced his oral arguments by placing reliance on various case laws. By taking leave of the Court, learned Additional Advocate General, Arunachal Pradesh, has also placed on record, some Notifications issued by the State of Arunachal Pradesh and has urged this Court to consider the above Notifications which can be relied upon for the purpose of this case.

4. As we found the petitioner, herein, has challenged the investigation so carried-out under the Miao P.S. Case No. 19/2014 under the NDPS Act, on twin grounds that investigating officer was not empowered to investigate the case as required as per Section 42 of the said Act and search and seizure of the accused, is bad in law and violative of Section 50 of the NDPS Act.

5. Learned counsel for the petitioner Mr. Mantaw, has strenuously argued that any arrest, search and seizure, etc., by an officer not empowered, is grossly illegal and would vitiate the trial. Relying upon the case law as reported in (2000) 8 SCC 590, it has been argued that no officer other than an empowered officer can resort to sec. 41(2) or exercise power under Section 42(1) of the NDPS Act or to make a complaint under clause(d) of sub-Section 1 of Section 36(A) of the said Act. Any collection of material, detention, arrest or search and seizure, etc., by an officer not been empowered, lacks sanction of law and is inherently illegal and as such, the same cannot form the basis of a proceeding in respect of the offences under the NDPS Act. He further contends that under the provision of Section 482 of the Code of Criminal Procedure, 1973, the High Court can quash such proceedings to prevent the abuse of process of any Court or otherwise, to secure justice. If such proceeding carried-out by

the investigating officer is not quashed, the illegality will be perpetuated resulted in great hardship to the petitioner by making him to undergo trial which is *per se* illegal.

6. Learned counsel for the petitioner has also referred to the case law ***Gopal Prasad Kalwar v. State of Assam; 2001(1) GLT 365***, wherein, it has been held by this Court that cases triable under summons procedure, investigation must be completed within 6 months from the date of the arrest of the accused. It has been further argued that since the date of arrest, i.e. 11.08.2014, more than 6 months have elapsed and further investigation so far carried-out by the investigating officer should be quashed.

7. On the other hand, learned Addl. Advocate General Mr. Ete, has fairly submitted that it is not a case of total non-compliance of the provisions of the law. The State of Arunachal Pradesh is still in transitional period which is known to all and while appreciating such aspect, rule of law should be upheld. It has been laid before this Court that may be because of misconception of law due to such transitional period prevailing in the State, instead of specific Notification, a general Notification was issued in the year 2012, which reads, as follows:

**"GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF HOME & INTER STATE BOUNDARY AFFAIRS**

No. hmb(B)34/2011

dated Itanagar the 25th June, 2012.

NOTIFICATION

The Governor of Arunachal Pradesh in supersession of Notification dated 17th November, 1999, except things done or committed to be done before such supersession is published to declare the Crime Branch Cell, to PHQ, Chandra Nagar(Itanagar), Police Station, in terms of Clause(s) of Section of the Code of Criminal Procedure, 1973(Act No. 2 of 1994).

The Governor of Arunachal Pradesh is further pleased to empower the Officer of the rank of Sub-Inspector and above to exercise the power of Officer-in-Charge to terms of Clause (s) of Section 2 of Cr.P.C. for the purpose of registering and investigation of cases under Indian Penal Code and local special laws including Economic Offences as provided under the relevant provisions of Cr.P.C.

This Notification shall extend to the whole of the State of Arunachal Pradesh with immediate effect.

**Sd/-
Commissioner(Home)
Government of Arunachal Pradesh."**

8. Subsequently, on 11.05.2015, a corrigendum dated 11.05.2015, was issued by clarifying the above Notification that in second paragraph between the words "local" and "special" the sign "/" (oblique) shall be inserted and the same shall be read as "Local/Special Laws", instead of "Local Special Laws", issued by the Commissioner(Home), Government of Arunachal Pradesh, Itanagar.

9. Thereafter, on 23rd June, 2015, the Principal Secretary(Home), Government of Arunachal Pradesh, Itanagar, issued the Notification, vide Memo. No. HMB(b)-46/2005, which reads as follows:

**"GOVERNMENT OF ARUNACHAL PRADESH
HOME DEPARTMENT; ITANAGAR.**

No. HMB(B)46/2005/412

Dated Itanagar the 23rd June, 2015.

NOTIFICATION

In exercise of the powers conferred by Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985(61 of 1985) and in continuation of earlier Government Notification No. HMB(B)-34/2011 dated 25.06.2012, the Governor of Arunachal Pradesh is hereby pleased to confer the power of entry, search, seizure and arrest, without warrant or authorization to the officer(s) of the rank of Head Constable and above in the Police Department, the officer(s) in the rank of Inspector and above in Excise Department and the official(s) in the rank of UDCs and above, in the District and Local Administrations under the Government of Arunachal Pradesh with immediate effect.

**Sd/-
Dhramendra Sharma
Principal Secretary(Home)
Government of Arunachal Pradesh
Itanagar.**

10. It has been argued by the learned Addl. Advocate General, Arunachal Pradesh, that though in the earlier Notification issued in the year 2012, there is no mention of NDPS Act, but there has been a mention of special local laws which was again corrected as subsequent Notification to indicate all the special laws. So the Investigating Officer might be under an impression that he has been empowered to investigate special laws like the Narcotic Drugs and Psychotropic Substances Act,

1985, and accordingly, investigation was carried-out by him. However, as the matter has been brought to the notice by the learned counsel for the petitioner by filing the instant criminal petition, a specific Notification has been brought out by the State Government, as mentioned above, to clear the ambiguity.

11. By citing the case laws reported in *(2001) 6 SCC 692, Saajan Abraham v. State of Kerala; (2009) 8 SCC 539, Karnail v. State of Haryana; (2013) 2 SCC 212, Sukhdev Singh v. State of Haryana*; it has been urged by the learned counsel for the respondents that the Hon'ble Apex Court while dealing such non-compliance of provisions of Section 42 of the NDPS Act, it has categorically held in the aforesaid case laws that in construing any facts, whether prosecution has complied with the mandate of any provision, which is mandatory, one has to examine with pragmatic approach. The law under the aforesaid Act being stringent to the persons being involved in the field of illicit drugs, traffic and drug abuse, the legislature time and again has made some of the provisions obligatory for the prosecution to comply which the Court have interpreted to be mandatory. The Court can however while construing such provisions, strictly should not interpret it so literally so as to render its compliance impossible. However, before drawing such inference, it should be examined with caution and circumspection. In other words, if in a case following the mandate strictly, results in delay in trapping an accused, which may lead the accused to escape then prosecution case should not be thrown out. Further, it has also been held that while total non-compliance of requirement of sub-Section (1) and (2) of Section 42 is impermissible, delayed compliance is satisfactory explanation about the delay will be acceptable compliance of Section 42. No law can be interpreted so as to frustrate the very basic rule of law.

12. Thus, the above proposition laid down by the Hon'ble Apex Court clearly indicates that the case of total non-compliance may not be accepted but satisfactory explanation can be accepted.

13. Considering into the prevailing state-of-affairs in the State of Arunachal Pradesh, and also the impact of drug abuse in the Society and the future generation of

youth, it has been urged to accept the explanation shown by the State Respondents, at least, it may be considered as "*not a case of total non-compliance*". Still, the learned counsel for the petitioner contends that subsequent Notification though may be proper for the present year i.e. 2015, but it cannot have any retrospective effect to cover the investigation so carried out in the year 2014.

14. Having regard to the contentions so raised by the learned counsel for both the parties and as also being aware of the transitional period in the State of Arunachal Pradesh, and also the fact that State of Arunachal Pradesh has issued Notification in the year 2012, indicating about special laws which was however fully regularized by the specific Notification under the NDPS Act, this Court is of the opinion that the investigation cannot be set aside as totally illegal. Nobody can deny the drug menace in the society became a serious threat to the public as a whole to the country and if society is not protected from such type of serious menace like incurable disease, it will lead to disastrous consequences. If the investigation of such cases is quashed, on such pretext of irregularities or otherwise, it will amount to prevent to secure the socio-economic justice.

15. The scope of section 482 of the Code of Criminal Procedure, 1973 is well defined and the inherent power could be exercised to prevent abuse of process of Court and to otherwise, to secure the ends of justice. However, in exercise of such power, did not confer any arbitrary jurisdiction to the High Court to act according to the whims or caprice. This extra-ordinary power has to be exercised sparingly with circumspection and as far as possible, High Court should not loathe to interfere at early/premature stage of investigation. Any kind of hindrance of process of law from taking its normal course without any supervening circumstance in a casual manner, merely on whims and fancy of the Court tantamount to miscarriage of justice. ***[Reference (2012) 4 SCC 547 State of Orissa & ors. V. Ujjal Kr. Burdham].***

16. In the given case, the offence is registered under Sections of the NDPS Act, and certain amount of brown sugar has been recovered and the copy of notice u/s. 50 of the NDPS Act, has been produced to show the sufficient compliance of section 50 of

the NDPS Act, prior to personal search of the accused. However, the petitioner can take the opportunity of proving the non-compliance of such provision of Section 50 of the NDPS Act, if any, as well as Section 167(5) of the Code of Criminal Procedure, 1973, during the course of trial.

17. In view of all above, having found substance in the submissions of the learned Addl. Advocate General and for better interest of the society, the prayer of the petitioner to quash the investigation of Miao Police Station Case No. 19/2014 is hereby rejected.

18. However, we appreciate the forceful submissions of the learned counsel for the petitioner Mr. Mantaw, who has dealt such matters, diligently and has brought notice of the matter to all concerned for which ultimately, the State of Arunachal Pradesh has brought out a specific Notification which will serve the purpose.

19. Accordingly, the matter stands disposed of. There shall be no order as to costs.

JUDGE

Bhask