

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2066 of 2019

with

CRAN 4 of 2023

Ashadullah Biswas @ Asadulla Biswas

Vs.

The Union of India & Anr.

For the Petitioner : Mr. Milon Mukherjee, Sr.Adv.
Mr. Dipayan Kundu.

For the NCB : Mr. Uttam Basak.

**For the Opposite Party
No. 2** : Mr. Debabrata Ray,
Mr. Avijit Addy,
Ms. Sarbani Mukhopadhyay,
Mr. Soumik Mondal.

Hearing concluded on : 02.08.2023

Judgment on : 29.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceeding including order dated 16.07.2019 in T.R. No. 10 of 2016

pending before the Learned Special Court-cum-Additional Sessions Judge, 3rd Court, Howrah, arising out of NCB Crime No. 21/NCB/KOL/2016 dated June 9, 2016 under Sections 8(c) read with Section 15(c) and 29 of the Narcotics Drugs and Psychotropic Act, 1985 and all orders passed therein by the Learned Special Court-cum-Additional Sessions Judge, 3rd Court, Howrah.

- 2.** The petitioner's case is that he is a peace loving and law abiding citizen of India. The petitioner is aged about 57 years and is a permanent resident of village Eedagahapara falling within the jurisdiction of Kaliachak Police Station in the district of Malda. On the professional score, the petitioner herein is a reputed and well renowned businessman and is a prominent political leader of the area.
- 3.** The petitioner states that he is a responsible and well known person, and has deep roots in the society. He is a person who had long supported a particular political party and while a leader therein, he had undertaken many social works.
- 4.** That after the change in dispensation in the government, the petitioner was repeatedly targeted by the police and the administration and sought to be arraigned as an accused in various matters.
- 5.** The present case is based on a written complaint dated June 9, 2016 lodged by one Manas Jana, Intelligence Officer, Narcotics Control Bureau, Kolkata Zonal Unit (hereinafter referred to as the "de-facto complainant"), which gave rise to the NCB Crime No. 21/NCB/KOL/2016 dated June 9, 2016 under Sections 8(c) read with Sections 15(c) and 29 of the Narcotics Drugs and Psychotropic Act, 1985 wherein it was inter alia alleged that:-

“That the de-facto complainant received specific information that a huge quantity of poppy straw will be loaded in a ten wheeler truck bearing registration no. WB 25D 8184 at Kaliachak, Malda, West Bengal and the said vehicle will go to Kharagpur through National Highway No. 6 and the said truck will start from Malda in the evening on June 8, 2016. The said information was reduced in writing and after obtaining the permission from the competent authority, a team of NCB officials moved out from the office premises at 20:30 hours on June 8, 2016 and reached near Toll Plaza, Dhulagarh, Howrah at 22:30 hours on June 8, 2016 to trace out that ten wheeler truck bearing registration no. WB 25D 8184. After reaching the Toll Plaza, Dhulagarh, Howrah the NCB team approached the two persons passing thereby and asked them to be the independent witnesses and they too agreed. The NCB officials along with the two independent witnesses were keeping a close watch over the vehicles. Thereafter at around 3:00 hours on June 9, 2016 the said truck was found and stopped near Dhulagarh Toll Plaza by NCB officials. The officials searched the truck and found several sunlight coloured guard bags containing poppy straw. The NCB official took samples from the bags and tested it along with their testing kit which tested positive for opium. There were 85 bags in total each containing 40 kilograms of poppy straw. The Truck Driver and Khalasi were interrogated and they have admitted their guilt of carrying poppy straw for delivering the same to Kharagpur from Malda. Subsequently, they were arrested and complaint was drawn up against them. The search and seizure list was prepared on spot at or around 8:00 hours on June 9, 2016 in the presence of two independent witnesses.”

6. During spot interrogation, voluntary statements of one Tapas Sarkar and one Samir Das were recorded by the investigating authority under Section 67 of the NDPS Act . The said Tapas Sarkar (Vehicle Driver) revealed that one Babul Sk. directed him to deliver the contraband articles to one Rupesh Agarwal @ Sonu of Kharagpur, Paschim Medinipur. The said Tapas Sarkar further stated that **the truck was loaded with the articles from the godown of one Ashadullah Biswas. Beside Babul Sk., the present petitioner and one Kamal Sk. were the main supplier of**

contraband articles from Malda to different parts of the country.

Similarly one Samir Das (Khalashi of the Vehicle) had stated that he along with the driver Tapas Sarkar loaded the truck from the godown of Babul Sk. of Village-Haruchak, Mojampur, Police Station – Kaliachak, District-Malda and delivered the same to one Rupesh Agarwal @ Sonu of Kharagpur, Paschim Medinipur.

7. It is stated by the petitioner that on the basis of the voluntary statements of the aforesaid accused persons i.e. Tapas Sarkar and Samir Das, the investigating authority conducted a raid in the house of Rupesh Agarwal but no incriminating material was found. The voluntary statement of the said Rupesh Agarwal was recorded by the investigating agency under Section 67 of the NDPS Act where he had stated that he was engaged in the poppy straw business under license. He further stated that his nick name is not Sonu and Sonu is the nickname of his employee Sanjay Sharma. Subsequently, the said Rupesh Agarwal was arrested by the investigating authority. Later the aforesaid statements were retracted by the said Rupesh Agarwal by filing an application under Section 25 of the Evidence Act, 1872,

8. It is further submitted that owing to the statements given by the arrested persons i.e. Tapas Sarkar, Samir Das and Rupesh Agarwal, the investigating authority had conducted several raid and search operation at certain possible places and notices were issued to the suspected persons, i.e. Babul Sheikh, Anisur Sheikh, Ramesh Kumar Thakur, Binod Gurung, Md. Jasim, Ajit Singh, Harwinder Singh, Jagannath Paul and P. Balakrishna. The name of the present petitioner had never transpired

anywhere in any sort of materials prepared by the investigating agency. No materials whatsoever were at all forthcoming against the petitioner.

9. The petitioner states that no positive investigation was ever carried out regarding him and the investigation did not progress in any manner, for the simple reason that there were no materials forthcoming in connection with his involvement save and except the statement of the co-accused person Tapas Sarkar (Vehicle Driver).
10. The petitioner states that he was subsequently interrogated by the investigating authority and his statement was recorded under Section 67 of the NDPS Act at the material point of time when he was in judicial custody in connection with some other case in the Malda Correctional Home. The investigation also appears to have had massive follow up action with further raids in the residential premises of the present petitioner but no godown of the petitioner has been found till date.
11. The petitioner filed an application before the Learned Trial Court on October 5, 2018 praying for his discharge from the present case being T.R. No. 10 of 2016 arising out from NCB Crime No. 21/NCB/KOL/2016 dated June 9, 2016 under Sections 8(c) read with Sections 15(c) and 29 of the Narcotics Drugs and Psychotropic Act, 1985. The aforesaid application for discharge was filed on the ground that the present petitioner was not apprehended by NCB with possession of any contraband goods and he has been implicated **on the basis of the statement of the co-accused person.**
12. The said discharge application was taken up for consideration by the Learned Court below on January 10, 2019. The Learned Special Court was

pleased to reject the prayer for discharge of the present petitioner on the basis of that there are sufficient materials showing the involvement of the present petitioner in connection with the alleged offence.

- 13.** CRR No. 495 of 2019 came up for consideration before His Lordship the Hon'ble Justice Rajasekhar Mantha on July 29, 2019 when His Lordship after hearing the learned counsel for the respective parties was pleased to dismiss the same by granting liberty to the petitioner to agitate the self same issue in a fresh revisional proceeding. The CRR No. 495 of 2019 was dismissed on the ground that subsequent events i.e. charge has been framed and date for trial has been fixed by the Trial Court subsequent to the filing to this revisional application.
- 14.** That it would appear from the voluntary statements recorded by the investigating agency under Section 67 of the NDPS Act that no incriminating statements has been made against the present petitioner implicating him with the alleged offence except the statement of the vehicle driver Tapas Sarkar and no contraband article has been seized from him.
- 15. Mr. Milon Mukherjee, learned senior counsel for the petitioner** has submitted that from the time of the alleged seizure of the contraband articles and drawing up of the preliminary complaint and during the investigation procedure the present petitioner was in judicial custody at Malda Correctional Home and as such there was no involvement of the present petitioner in connection with the alleged offence.
- 16.** That during initial investigation and during further investigation the investigating authority failed to collect any incriminating materials and

failed to justify their action of filing a complaint against the present petitioner.

- 17.** The Investigating Officer Mr. Maloy Kanti Mondal (now facing disciplinary proceedings) submitted the final report with a prayer for discharge of Rupesh Agarwal and Ashadullah Biswas though, the Learned Trial Court did not accept the report.
- 18.** That in absence of any direct evidence connecting the petitioner with the alleged offence, the statements of the co-accused persons recorded under Section 67 of the NDPS Act would not constitute grounds to attract the statutory restrictions under Section 37 of the NDPS Act.
- 19.** That not a single contraband article has been seized and/or recovered from the petitioner and he has been entangled in connection with the instant proceeding on the basis of the voluntary statement of the co-accused person which does not specify the name of the business with which the petitioner was connected with co-accused persons.
- 20.** It is further submitted that in dealing with a case against an accused person, it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt.
- 21.** That the initiation and continuation of T.R. No. 10 of 2016 pending before the Learned Special Court-cum-Additional Sessions Judge, 3rd Court, Howrah, arising out of NCB Crime No. 21/NCB/KOL/2016 dated June 9, 2016 under Sections 8(c) read with Sections 15(c) and 29 of the

NDPS Act, 1985 is otherwise arbitrary, illegal and bad in law and is thus, liable to be set aside and quashed in respect of the petitioner.

22. Mr. Uttam Basak, learned counsel for the NCB has submitted by filing a written notes of argument on behalf of the NCB that Tapas Sarkar, driver of the seized truck and Samir Das, Khalasi/helper were interrogated and they admitted their guilt of carrying poppy straw. Tapas Sarkar being the driver of the truck revealed under Section 67 of the NDPS Act, 1985 (as amended) that he collected the seized contraband article from one Babul Sheikh of Kaliachak, Malda and he (Tapas Sarkar) was supposed to deliver the said seized contraband article to one Rupesh Agarwal @ Sonu R/o Nimpura, Kharagpur, Paschim Medinipur, W.B. **Tapas Sarkar also disclosed that the contraband had also been loaded from a godown which belongs to the petitioner, Ashadullah Biswas of Kaliachak, Malda.**

23. The Hon'ble High Court vide order dated 27.02.2020 in the instant revisional application was pleased to direct the NCB to appoint another investigating officer to investigate the case thoroughly and to submit the re-investigation report.

24. That, in compliance with the direction for further investigation by the Hon'ble High Court, Calcutta, vide order dated 27.02.2020, Sh. Amal Kumar Sadhukhan, the new investigating officer submitted report.

25. It is stated by the learned counsel for NCB that Para 11 of the further investigation report shows that there is a contradictory statement made by the accused Tapas Sarkar with regard to Ashadullah Biswas. He completely denied to know Ashadullah Biswas. As such, without the

commencement of the trial it is impossible to come to conclusion that there is no material against the present petitioner and moreover the Learned Sessions Court, Howrah, already took cognizance vide order dated 12.07.2022 against him on the basis of the report filed by the investigating officer appointed by the order of this Hon'ble High Court. Rupesh Agarwal, also known as "SONU" further disclosed that Babul Sheikh and Rupesh Agarwal were physically present during the loading of the seized contraband in the truck on that day.

26. In ***Sanjay Dutt vs The State of Maharashtra, through CBI (STF), Bombay, Criminal Appeal No. 1060 of 2007, on 21 March, 2013***, the Supreme Court held:-

"42) In Manjit Singh vs. CBI, (2011) 11 SCC 578, this Court, while considering the question whether retracted confessions of the co-accused could be relied upon to convict the accused, held that the retracted statements can be used against the accused as well as the co-accused provided such statements were truthful and voluntary when made. In the said case, two accused persons made confessional statements and, subsequently, they retracted from their statements. This Court observed:

"87. A confessional statement given under Section 15 of TADA shall not be discarded merely for the reason that the same has been retracted...." It is pointed out that the confession in the present case was truthful and voluntary and has been recorded after strictly following the law and the prescribed procedure, the subsequent retraction and denial of such confessional statements in the statement of the accused under Section 313 was only as a result of an afterthought.

51) In Nazir Khan vs. State of Delhi, (2003) 8 SCC 461, this court held that the confessional statements made by the co-accused can be used to convict a person, and that it is only as a rule of prudence that the Court

should look for corroboration elsewhere. It was held that:

“27. Applying the principles which can be culled out from the principles set out above to the factual scenario, the inevitable conclusion is that the trial court was justified in its conclusions by holding the accused-appellants guilty. When an accused is a participant in a big game planned, he cannot take the advantage of being ignorant about the finer details applied to give effect to the conspiracy hatched, for example, A-7 is stated to be ignorant of the conspiracy and the kidnapping. But the factual scenario described by the co-accused in the statements recorded under Section 15 of the TADA Act shows his deep involvement in the meticulous planning done by Umar Sheikh. He organized all the activities for making arrangements for the accused and other terrorists.”

27. It is also submitted that Para 13 to 18 of the final report filed by the investigating officer appointed by the order of this Hon’ble Court deals with the involvement of Rupesh Agarwal and the existence of Sanjay Sharma @ Sonu is doubtful.

28. It is further submitted that the said Rupesh Agarwal did not cooperate with the investigating officer even after passing of the order from this Hon’ble High Court.

29. It is thus stated that the connection of Asaddullah Biswas S/o Late Fazlur Rahaman Biswas of vill-Haruchak, P.O. Mojampur, Dist. Malda, is established on the basis of spot interrogation during the seizure and voluntarily statement of Tapas Sarkar on 09.06.2016. Further, Asaddullah Biswas also stated that he was present at Malda from 08.06.2016 to 10.06.2016. Thus Ashadullah Biswas’s involvement in the case cannot be ruled out in the light of emerging of so many detached facts. As per the record provided by Superintendent of Police, DIB, Malda, several cases

have been registered against Ashadullah Biswas S/o Late Fazlur Rahaman Biswas.

- 30.** It is prayed that Rupesh Agarwal S/o Mahender Agarwal, may be directed to co-operate with the investigating agency. Hence, warrant of arrest in this regard may kindly be issued in the name of Rupesh Agarwal S/o Mahender Agarwal, vill-Dewanmaro, P.O. Nimpura, P.S. Kharagpur (Town), District- Paschim Medinipur (W.B.), PIN-721301 in favour of Zonal Director, Narcotics Control Bureau, Kolkata Zonal Unit.
- 31.** The NCB has prayed that the petitioner should face trial in this case relying upon the judgment of the Supreme Court in **Central Bureau of Investigation vs. Aryan Singh Etc. in Criminal Appeal Nos. 1025-1026 of 2023 reported in 2023 LiveLaw (SC) 292** dated April 10, 2023 wherein the Court held as follows:-

“High Court cannot quash criminal proceedings at Section 482 Cr.P.C. stage by saying charges aren’t proved – High Court cannot conduct a “mini trial” while exercising powers under Section 482 Cr.P.C. – At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not.” –Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial – What is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.”

32. Mr. Debabrata Roy, learned counsel has appeared for accused Rupesh Agarwal, against whom a Co-ordinate Bench of this Court by setting aside his discharge, has directed re-investigation.

33. In *Surinder Kumar Khanna vs Intelligence Officer Directorate of Revenue Intelligence, Criminal Appeal No. 949 of 2018, on 31 July, 2018*, the Supreme Court held:-

*“12. The law laid down in *Kashmira Singh* (supra) was approved by a Constitution Bench of this Court in *Hari Charan Kurmi and Jogia Hajam v. State of Bihar*¹¹ wherein it was observed:*

“As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, [1911] I.L.R. 38 Cal. 559 at 588 [1931] I.L.R. 54 Mad. 75 at 77.

*(1964) 6 SCR 623 at 631-633 **the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right.** As was observed by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chuckerburty* a confession can only be used to **“lend assurance to other evidence against a co-accused”**. In *re Periyaswami Moopan Reilly, J.*, observed that the provision of Section 30 goes not further than this: “where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence”. In *Bhuboni Sahu v. King* the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board, observed that “a confession of a co-accused is obviously evidence of a very weak type. It does not indeed*

*come within the definition of "evidence" contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved the case; it can be put into the scale and weighed with the other evidence". It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in *Kashmira Singh v. State of Madhya Pradesh* where the decision of the Privy Council in *Bhuboni Sahu* case has been cited with approval."*

- 34. In the present case,** the prima facie case of the prosecution (NCB) against the petitioner Ashadullah Biswas is that he stores contraband in his godown and a huge quantity of poppy straw (85 bags each containing 40 kgs, **total 3400 kgs**) was loaded for transportation from the godown of Ashadullah Biswas. Further case is that Ashadullah Biswas, the petitioner on regular basis stores poppy straw (contraband) unlawfully in his godown

and transports the same to different parts of the country. The said fact has been stated by a co-accused. Other than the said statements there are also other materials on record to show that there is a prima facie case against the petitioner to proceed towards trial.

35. The revisional application being CRR 2066 of 2019 is accordingly dismissed.

36. Trial Court to also proceed against accused Rupesh Agarwal in accordance with law.

37. All connected applications, if any, stands disposed of.

38. Interim order, if any, stands vacated.

39. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

40. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)