

IN THE HIGH COURT OF KARNATAKA AT BENGALURU  
DATED THIS THE 17<sup>TH</sup> DAY OF JANUARY, 2022  
BEFORE  
THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR  
**WRIT PETITION NO.1983 OF 2021(GM-RES)**

**BETWEEN:**

Mr. Virendra Khanna,  
S/o Sri Ram Khanna,  
Aged about 35 years,  
R/at No.301, Pearson Nest  
Apartment, Langford Road,  
1<sup>st</sup> Cross, Richmond,  
Bengaluru-560008.

...Petitioner

(By Sri Hasmath Pasha, Senior Counsel for  
Sri Nasir Ali, Advocate)

**AND:**

1. The State of Karnataka  
By Banaswadi Police Station,  
Bengaluru City.
2. The Police Inspector,  
Women & Narcotic Squard,  
CCB Police, Bengaluru City,
3. The Police Inspector & SHO  
Cottonpet Police Station,  
Bengaluru City.
4. Sri K.C.Gowtham,  
The Asst. Commissioner of Police,  
CCB Police, Bengaluru City.

:: 2 ::

(Respondent Nos.1 to 4 are  
Represented by Learned  
State Public Prosecutor,  
High Court of Karnataka,  
Dr. Ambedkar Veedhi,  
Bengaluru-560001).

...Respondents

(By Sri Veeranna G Tigadi, Spl.P.P.,)

This Writ Petition is filed under Articles 226 and 227 of the Constitution Of India, praying to quash the proceedings in Spl.C.C.No.529/2019 pending on the file of the Hon'ble XXXIII Additional City Civil Judge and Sessions Judge and Special Judge for NDPS cases Bengaluru which is arising out of Crime No.588/2018 of Banaswadi Police Station, Bengaluru City as per Annexure-A to C as an abuse of process of Law consequently and etc.

This Writ Petition coming on for **preliminary hearing** this day, the Court made the following:

**ORDER**

The petitioner has sought writ of certiorari for quashing proceedings against him in Spl. C.C. 529/2019 on the file of XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS cases, Bengaluru; supplementary charge sheet dated 1.3.2021 filed in Crime No. 588/2018 of Banasawadi Police Station, and the charge sheet including the supplementary charge sheet filed in

connection with FIR in Crime No. 109/2020 of Cottonpet Police Station, Bengaluru.

2. The necessary facts for disposal of this writ petition are as below:-

On 2.11.2018, the Police Inspector Narcotic Control Bureau, N.T.Pet, Bengaluru, upon a credible information, raided on the house bearing No. 25/1, I Floor, behind Jyothi School, Kacharakanahalli, Thomas Town, Bengaluru, and seized 1.50 Kgs of Cocaine, 940 grams of ecstasy pills, a Toyota Corolla car, a Hero Honda motor bike, a mobile phone and cash of Rs.6,000/-. They arrested three persons namely Faith Chuks and Kante Henry, two foreign nationals and Prateik Shetty, an Indian. This led to registration of FIR in Crime No. 588/2018 for the offences punishable under sections 21(c), 22(c) and 21(b) of NDPS Act. On 30.4.2019, charge sheet came to be filed for the said offences under NDPS Act as also for

offences under sections 460, 471, 420, 120B of IPC and section 14 of the Foreigners Act. Initially the charge sheet filed was only against accused 1 to 3. In the said charge sheet a foot note was made indicating that further investigation under section 178(3) Cr.P.C had been undertaken.

3. In the last week of August 2020, there was a rumour in Mumbai, Bengaluru and other places that film actors and other celebrities were in the habit of consuming narcotic drugs. In this connection, on 2.9.2020, the Assistant Commissioner of Police, CCB, Bengaluru, namely Sri K.C.Gautam secured one B.K.Ravishankar and subjected him to interrogation. During interrogation, since it appeared that he revealed the name of the petitioner and stated that the latter was supplying ganja in the parties that he used to arrange at various places in Bengaluru, the petitioner came to be arrested on 4.9.2020

and remanded to the custody in connection with Crime No. 588/2018. If B.K.Ravishankar came to be arrayed subsequently as accused No.4, the petitioner was arrayed as accused No.5 in Crime No. 588/2018. A search was also conducted in the house of the petitioner at Bengaluru and certain articles came to be seized by drawing a mahazar on 8.9.2020. In the meantime, the Assistant Commissioner of Police Sri K.C.Gautam, submitted a suo-motu report to the Cottonpet police for registration of a separate FIR against twelve accused persons and accordingly, a fresh FIR in Crime No. 109/2020 was registered for the offences under section 21(c), 27(b), 27A, 29 and 21 of NDPS Act and section 120B of IPC. In this FIR, the petitioner was shown as accused No.3. Charge sheet in connection with FIR 109/2020 was filed on 26.2.2021. Supplementary charge sheet was also filed lateron.

4. I have heard the arguments of Sri. Hashmath Pasha, learned Senior Counsel for the petitioner as Sri.V.G.Tigadi, learned Special Public Prosecutor.

5. It was argued by Sri. Hashmath Pasha that prosecution of the petitioner in relation to two cases is in violation of section 300 of Cr.P.C. and Article 20(3) of the Constitution of India. FIR No.588/2018 was initially registered against three accused in relation to seizure of certain quantities of narcotic substances on 2.11.2018. In the guise of further investigation, the petitioner came to be implicated as accused no.5, but there is nothing on record to show that he was involved in connection with sale of narcotic substances on 2.11.2018. Based on the statement of one B.K.Ravishankar, who is accused no.4, the petitioner came to be implicated and a separate FIR in Cr.No.109/2020 was registered at Cottonpet

Police Station. If the statement of B.K.Ravishankar led to registration of a separate FIR in Cr.No.109/2020, the petitioner could not have been arrayed as accused no.5 in Cr.No.588/2018. Moreover what the further investigation discloses is that the petitioner is said to have sold the narcotic substances such as cocaine and ecstasy pills in the parties that he arranged on 3.11.2018 and 7.11.2018. That means, these two alleged incidents constituted altogether distinct offences and therefore a separate FIR should have been registered. Instead the petitioner has been implicated as accused in Cr.No.588/2018 which is against the procedure established under law. Pursuant to raid conducted on 8.9.2020, a separate FIR in Cr.No.225/2020 was registered for the offence under section 171 IPC as the petitioner was found to have possessed gadgets and police uniform. If a separate FIR could be registered for the offence

under section 171 IPC, it is quite astonishing that the police have connected the petitioner with Cr.No.588/2018 even in relation to offences of the dates 3.11.2018 and 7.11.2018.

6. He further argued that in so far as the allegations against the petitioner in relation to FIR No.109/2020 is concerned, they are totally false. There is nothing to show that petitioner was arranging the parties and selling the narcotic substances and drugs to those who participated in the parties. He was just an organizer of the parties on commission basis. In this view, both the proceedings against the petitioner cannot be sustained and that they are to be quashed.

7. Sri. V.G.Tigadi submitted that the petitioner came to be arrayed as accused no.5 in FIR No.588/2018 on the allegation of conspiracy with other accused. The investigation clearly shows the involvement of the petitioner in



procuring the substances for sale in the parties that he used to organize. Therefore the information that the investigator collected during further investigation are relatable to FIR No.588/2018 and there was no need to register a separate FIR. Procedure has been followed. He further submitted that the investigating officers in both the FIRs are not same, they are different officers. On 4.9.2020, the officer who examined B.K.Ravishankar was one K.C.Gautam. He was not the investigating officer in relation to FIR No.588/2018. This was the reason for registration of a separate FIR in Cr.No.109/2020. But the further investigation was undertaken in relation to FIR.No.588/2018 and supplementary charge sheet came to be filed. Thus the petitioner was arrayed as accused no.5 in that case. Moreover the petitioner has given voluntary statement disclosing his involvement in all the parties that he arranged. Petitioner has been subjected to prosecution in

accordance with law and there is no case for quashing the proceedings against him.

8. After hearing both sides, firstly the events that led to registration of FIRs in Cr.Nos.588/2018 and 109/2020 may be traced. FIR 588/2018 pertains to seizure of 1.5 kilograms of cocaine, 940 grams of ecstasy pills, a Toyota car, a hero honda motor cycle, a mobile phone and cash of Rs.6,000/- from three accused viz., Faith Chuks, Kante Henrey and Pratheek Shetty. B.K.Ravishankar was not arrayed as accused earlier. Charge sheet was filed on 30.4.2019 reserving further investigation under section 173(8) of Cr.P.C. It was on 3.9.2020 that B.K.Ravishankar was taken to custody in this crime number as accused no.4. Thereafter another police officer viz., K.C.Goutham subjected him to interrogation in connection with certain rumours about involvement of film actors in

consumption of drugs. Based on his statement, FIR in Cr.No.109/2020 came to be registered showing the petitioner as accused no.3 therein. Therefore it is not in dispute that FIR No.109/2020 came to be registered only after B.K.Ravishankar was subjected to interrogation.

9. Now in FIR.No.588/2018, the petitioner has been arrayed as accused no.5. The supplementary charge sheet filed in connection with FIR No.588/2018 shows that the petitioner had arranged Diwali Pataka party on 3.11.2018 at Taj Hotel, Bengaluru and another party at the Park Hotel, Bengaluru on 7.11.2018 and that in both the parties, he sold the drugs that he had purchased from accused no.1 to 3. The charge sheet filed in relation to FIR No.109/2020 shows that the petitioner was involved in the sale of drugs since the year 2015, that he had arranged a music party in E-zone Club, Marathahalli in March,

2018 and that he had arranged other parties on 9.10.2018, 25.01.2019, 1.6.2019, 8.3.2020 etc. The involvement of the petitioner, as can be made out from the charge sheet filed in relation to FIR.No.109/2020 came to light only after recording the statement of B.K.Ravishankar. If a separate FIR came to be registered thereafter, it is not understandable as to how the petitioner could be connected with FIR.No.588/2018 in relation to two parties said to have been arranged on 3.11.2018 and 7.11.2018. According to FIR No.588/2018, it was registered only in relation to raid held on 2.11.2018. The further investigation in FIR.No.588/2018 led to implication of the petitioner as accused no.5. Further investigation must always relate to the incident of crime in respect of which charge sheet has been filed already. As has been held by the Supreme Court in the case of ***Vinay Thayagi Vs. Irashad Ali - 2013(5) SCC 762***, further investigation,

reinvestigation and de-novo investigation or fresh investigation, take different meanings. Further investigation is always in accordance with Section 173(8) of Cr.P.C. with a view to collecting further evidence supplemental to the evidence already on record. It is not reinvestigation. In fact, the petitioner had moved for bail by filing Crl.P.No.684/2020 in relation to FIR No.588/2018. In the order passed in the said petition, it has been held that further investigation envisaged in section 173(8) of Cr.P.C., can be undertaken only with the permission of the court. It is also held that further investigation is not reinvestigation or fresh investigation and their meanings can be commonsensically understood. In this case it is alleged that the petitioner purchased the drugs from accused no.1 to 3 for the purpose of selling them in the parties that were arranged on 3.11.2018 and 7.11.2018. Even if these allegations were to be true, it cannot be said that

the sales said to have been made by the petitioner on these two dates can be connected with FIR No.588/2018. It is pertinent to mention here that if the police could register a separate FIR in Crime No.225/2020 in connection with seizing a police uniform from the possession of the petitioner, it is not understandable as to why, the police did not think of registering a separate FIR in relation to incidents dated 3.11.2018 and 7.11.2018. Absolutely there are no materials to connect the petitioner with the raid conducted on 2.11.2018. As the FIR 588/2018 discloses, initially it was against accused 1 to 3 only and it was from their possession that certain articles were seized. Whatever the police detected in the course of further investigation was altogether a different incident of crime in respect of which a separate FIR was necessary. Thus viewed, as rightly argued by Sri. Hashmath Pasha, arraying the petitioner as accused no.5 in FIR No.588/2018 and

subjecting him to prosecution in Spl.C.C.No.529/19 does not appear to be in accordance with procedure established by law.

10. The petitioner has assailed of implicating him as an accused in FIR No.109/2020 in relation to offences punishable under Section 27(b), 27A, 29 and 21 of the NDPS Act said to have been committed in between the period 11.04.2020 and 04.09.2020. This FIR is not second FIR as has been contended by the petitioner. This is in relation to a distinct offence for the aforesaid period and not in relation to the offence in connection with which FIR No.588/2018 was registered. But the investigation undertaken pursuant to FIR No.109/2020 revealed certain past incidents right from the year 2015, as is forthcoming in the charge sheet. Thus it was the argument of Sri Hashmath Pasha that the charge sheet filed in FIR No.109/2020 is bad and against

the procedure in as much as the petitioner cannot be prosecuted in relation to past incidents which would extend beyond period of twelve months prior to the date of registration of FIR No.109/2020. In respect of the past incidents, he cannot be tried in the absence of FIR for every distinct offence. Though Sri V.G.Tigadi tried to meet this argument by arguing that the petitioner was a member of conspiracy from the beginning and thereby he is involved in a continuing offence, it is difficult to accept his argument. As the FIR No.109/2020 discloses, it was registered on 04.09.2020 for the offences committed in between the dates 11.04.2020 and 04.09.2020. Ofcourse the charge sheet filed in this connection shows the involvement of the petitioner in similar kind of offences since the year 2015. In the charge sheet, it is clearly mentioned that he had arranged parties at several places in the year 2015, 2018 and 2019 and sold narcotic substances and



drugs. Certainly the past incidents of crime detected for the first time during investigation in connection with FIR No.109/2020, must be tried, but it must be in accordance with procedure established by law. It so happens that many a time, the past incidents of crime will be detected when investigation is undertaken in connection with some other case. Whenever past crimes committed by the same person come to light, nothing prevents the police from registering separate FIR for every distinct offence detected and filing a separate charge sheet, if all those offences cannot be tried jointly in accordance with Section 219 of Cr.P.C. According to Section 219(1), if a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of same person or not, he may be charged with and tried at one trial for any number of them not exceeding three.

That means, not more than three distinct offences committed by the same person within a span of twelve months may be tried in one trial. In this case, as the charge sheet shows the petitioner's involvement is there right from 2015. If the FIR No.109/2020 is in connection with offences said to have been committed between 11.04.2020 and 04.09.2020, the petitioner cannot be tried for the earlier offences of the years 2015, 2018 and 2019, in view of Section 219(1) of Cr.P.C. It was necessary for the police to have registered separate FIRs for those past offences and filed separate charge sheets after investigation. Probably, the police might be under the impression that the same FIR would suffice even for those offences relating to the years 2015, 2018 and 2019. The charge sheet also shows that the last date of involvement of the petitioner was on 08.03.2020 in a party called DIVINE EX-MAHOLLI arranged at Ashoka Hotel. The charge sheet does

not disclose his involvement in any offence committed after 08.03.2020 and therefore it is not understandable as to how the petitioner could have been arraigned as accused No.3 in FIR No.109/2020. In this view, not only the FIR but also the charge sheet against the petitioner requires to be quashed. However, the supplementary or the additional charge sheet filed in connection with FIR No.109/2020 cannot be quashed, as has been sought by the petitioner as it is against accused No.26 and 27.

11. It is to be noted here that what is made out by the counsel for the petitioner is a sheer procedural lapse. This can be set-right. If really the petitioner's involvement is there in commission of offences punishable under the NDPS Act, he must be tried in accordance with law and punished in case the prosecution is able to prove its case beyond reasonable doubt. The lapses in

procedural aspects should not come in the way of prosecuting the petitioner. Though this petition is liable to be allowed, it should not be understood as though petitioner cannot be prosecuted without following the procedure established under law. Therefore, permission is to be accorded to the prosecuting agency to set-right all the procedural mistakes and take action against the petitioner in accordance with law. In this view the following:

ORDER

*Writ petition is allowed.*

*The proceedings against the petitioner in Spl.C.C.No.529/2019 on the file of the XXXIII Additional City Civil and Sessions Judge and Special Judge, Bengaluru and the FIR in Crime No.109/2020 and the charge sheet filed against the petitioner as per Annexure-U are quashed. Consequently, the order of taking cognizance against the petitioner on this charge sheet in Spl.C.C.No.212/2021 on the file of the*

*XXXIII Additional City Civil and Sessions Judge and Special Judge, Bengaluru, is also quashed.*

*However, this order does not come in the way of prosecuting the petitioner in accordance with law in the light of the observations made above.*

**Sd/-  
JUDGE**

sd/kmv  
ct-bl