

Sri Rangappa Vs. State By

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Court : Karnataka

Decided On : Dec-07-2022

Judge : K.Natarajan

Appeal No. : CRL.P 11678/2022

Appellant : Sri Rangappa

Respondent : State By

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE7H DAY OF DECEMBER, 2022 BEFORE THE HONBLE MR. JUSTICE K.NATARAJAN CRIMINAL PETITION NO.11678 OF 2022 BETWEEN SRI RANGAPPA S/O LATE DEVAPPA AGED ABOUT73YEARS, KASHETTIHALLI BELALAGERE POST CHANNAGIRI TALUK DAVANAGERE DISTRICT-577 231 ... PETITIONER (BY SRI GOPALAKRISHNAMURTHY, ADVOCATE) AND1. STATE BY BASAVAPATNA P S REP.BY ITS SPP OFFICE HIGH COURT OF KARNATAKA BENGALURU-560001 2 . SRI DEVARAJ T V AGED ABOUT43YEARS INSPECTOR OF POLICE C E N POLICE STATION, DAVANGERE CITY AND DISTRICT - 577 230 ... RESPONDENTS (BY SRI B.J.

ROHITH, HCGP) THIS CRIMINAL PETITION IS FILED UNDER SECTION482OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.340/2021 (OLD NO.C.C.NO.234/2020) PENDING ON

THE FILE OF THE HONBLE2PRINCIPAL CIVIL JUDGE (Sr.Dn.) AND CJM COURT, CHANNAGIRI VIDE ANNEXURE D FOR THE OFFENCES PUNISHABLE UNDER SECTIONS20A)(i), 20(b)(ii)(A) OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT 1985 IS REGISTERED BY THE RESPONDENT NO.1 (BASAVAPATNA POLICE STATION) IN SO FAR AS PETITIONER IS CONCERNED BY ALLOWING THE PETITION. THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON0212.2022, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner-accused No.2 under Section 482 of Cr.P.C. for quashing the criminal proceedings in C.C. No.340/2021 (old C.C. No.234/2020) pending on the file of Principal Civil Judge (Sr. Dn.) and CJM Court, Chennagiri, for the offences punishable under Sections 20(a)(i), 20(b)(ii)(A) of the Narcotic Drugs And Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') registered by Basavapatna Police Station, Davanagere.

2. Heard the arguments of learned counsel for the petitioner and the learned High Court Government Pleader for the respondent-State. 3

3. The case of prosecution is that on the suo moto complaint by the respondent-police on 21.03.2019, the case was registered. It is alleged that when the police officer Devaraj T.V. was in the CEN Police Station, he got credible information that some persons selling ganja in the jurisdiction of Basavapatna police station. Immediately, he recorded first information and registered FIR against unknown person and he along with police staff, apprehended the accused Nos.1 and 2. When they searched the accused, they found that the accused were in possession of 750 grams of Ganja and the same was seized under the panchanama in the presence of panchas. After investigation, charge sheet came to be filed against the accused persons, which is under challenge.

4. Learned counsel for the petitioner has contended that as per the seizure panchanama, the seized material is not ganja, which has only leaves and seeds

totally 750 grams, therefore, it does not fall under the definition of Section 2(iii)(b) of NDPS Act. The seized material cannot be considered as ganja in order to bring under the 4 provisions of the NDPS Act. Therefore, prayed for quashing the criminal proceedings. In support of his arguments, the learned counsel for the petitioner has relied upon the judgment of Mehaboob Daula @ Daula and others Vs. The State of Karnataka and another passed in Criminal Petition No.8192/2016 decided on 02.01.2017.

5. Per contra, learned High Court Government Pleader appearing for respondent No.1 State objected the petition and contended that the ganja contains leaves, fruiting tops, seeds, stems and it cannot be bifurcated at the time of seizure and therefore, it is contended that, even if the leaves are removed, the quantity of Ganja will come down and therefore, that itself is not a ground to quash the criminal proceedings. The matter is under trial. Hence, prayed for dismissing the petition.

6. Having heard the learned counsel for the parties, perused the records. 5

7. The main contention of the learned counsel for the petitioner is that the seized ganja of 750 grams is containing the leaves and seeds which is not considered as ganja as per the provisions of Section 2(iii) (b) of the NDPS Act. In order to verify the same, it is worth to mention the provisions of Section 2(iii)(b) of the NDPS Act. Section 2(iii)(b) : Cannabis (hemp) means GANJA, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; 8. If we read the definition, ganja which excludes the seeds and leaves, contains flowering or fruiting tops of cannabis plant. In the complaint especially seizure panchanama, which reveals that the bag in possession of the petitioner looked like a leaf, but it contained the flower, fruiting top, leaves and seeds. Considering the same, it not only contains the seeds and leaves, but also accompanying the flowering and fruiting tops. Therefore, 6 the material seized is containing flowering and fruiting tops accompanying the seeds and leaves which amounts to Ganja i.e., the leave and seed accompanied with flowering or fruiting tops of the cannabis plant. It falls under ganja. The conclusion is only the leaves and seeds not accompanied, then it

cannot be considered as ganja. In order to exclude the definition of ganja, the seeds and leaves shall not accompany the tops and fruits.

9. That apart, the opinion of FSL indicates the positive of ganja. The trial Court has also examined three witnesses. Considering the facts, the contention of the petitioner that the seized quantity of ganja will not fall under the definition of ganja under Section 2(iii) (b) of the NDPS Act, cannot be acceptable.

10. In this regard, the Hon'ble Supreme Court in case of HIRA SINGH AND ANOTHER VS. UNION OF INDIA AND ANOTHER reported in (2020) 20 SCC272 at para 12.1 and 12.2, has observed as under:

7. "12.1. The decision of this Court in E. Micheal Raj taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law. 12.2. In case of seizure of mixture of narcotic drugs or psychotropic substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the small or commercial quantity of the narcotic drugs or psychotropic substances.

11. Therefore, considering the above, I am of the view that for determining the weight of ganja, to bring under the small or medium or commercial quantity, it cannot be bifurcated by removing seeds and leaves and it cannot be a ground for quashing the criminal proceedings, 8 when the FSL report was issued stating that the result of chemical analysis is positive of the ganja. Therefore, even for the purpose of considering the bail application, if the commercial quantity of ganja is seized, the accused cannot plead to bring under the medium quantity claiming that it is not a commercial quantity by excluding the seeds and leaves as per the judgment of the Hon'ble Supreme Court of Hira Singh's case, stated supra. Therefore, it is not a ground for quashing the criminal proceedings stating that

seized material is not that of ganja. Hence, the contention of the petitioner is not sustainable under law and therefore, I hold that the contents of seized material is ganja, that includes fruiting tops, flower accompanying the seeds and leaves. Therefore, the petition deserves to be dismissed. Accordingly, the criminal petition dismissed. Sd/- JUDGE CS

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