(2012) 07 CAL CK 0061

Calcutta High Court

Case No: CRR No. 1746 of 2011

Mujibar Sk. and Another		APPELLANT
	Vs	
The State of West Bengal		RESPONDENT

Date of Decision: July 31, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 401, 482
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15, 18, 29, 30, 48

Citation: (2012) 07 CAL CK 0061

Hon'ble Judges: Dipak Saha Ray, J

Bench: Single Bench

Advocate: Kazi Saifiullah, Ms. Madhuri Das and Mr. Kazi Abrarullah, for the Appellant; Jay Sengupta, Ld. , Assistant Public Prosecutor and Mr. Navanil De for the State, for the Respondent

Final Decision: Dismissed

Judgement

Dipak Saha Ray, J.
The present case arises out of an application u/s 401/482 of the Code of Criminal Procedure, 1973, for quashing the proceeding of Tehatta Police Station, Case No. 74 dt. 24.02.2011 u/s. 15/18/29/30 of the NDPS Act, 1985 which is pending before the Ld. Judge, Special Court, Krishnanagar, Nadia. The relevant facts of the present case are, in a nutshell, as follows:

2. On 24.02.2011 the defacto complainant along with other police personnel and also BDO - II, Sri Ajoy Kr. Saha went to the northern field of Dhangapukur par near nonapara and found 105 pieces Poppy plants with flower tips and fruits thereon. Accordingly, the said plants were seized under Seizure List in presence of witnesses. On inquiry it was

revealed that one Mujibar Sk cultivated the said land to grew the said poppy plants. Attempts were made to apprehend the accd. but in vain. Subsequently after keeping two of the said poppy plants as sample, rest were destroyed as per the order of BDO - II, Tehatta. On the basis of the said complaint, Tehatta P.S. Case No. 74 dt. 24.02.2011 was started.

3. Being aggrieved by the initiation of the said Case, the accd. Mujibar Sk. has filed this application for quashing the proceeding of the case.

4. The case of the petitioner is that as per the NDPS Act quantity in terms of weight is required to be given for adjudication of the case. Because such quantity would determine in which court the trial would be conducted and what would be the quantum of punishment. But in the instant case no quantity in terms of weight has been given in compliance with the mandatory provisions of the NDPS Act. It is further alleged that the mandatory provisions of Sec. 48 and 52A were not followed during investigation of the case. Accordingly, it is contended, if the case is allowed to be continued, the same will be mere abuse of process.

5. The Ld. Advocate for the state on the other hand has submitted that the FIR discloses the alleged commission of criminal offence. So the allegations made therein have to be taken on the face value.

6. Now after taking into consideration all relevant facts and materials and giving due regard to the submission made by the Ld. Counsels for the parties, it appears that the following points are to be considered:

i) Whether the allegation made in the FIR prima facie discloses commission of offences,

ii) Whether there is sufficient ground for proceeding against the accd./petitioner herein,

iii) Whether there is an abuse of process of the court,

iv) Whether ends of Justice demands quashing of the proceeding.

It is well-settled principle that the inherent power u/s. 482 Cr.P. C. has to be exercised sparingly, carefully and with great caution and also in the rarest of the rare cases.

7. Now from the photo copy of the certified copy of FIR and Seizure List it appears that 105 pieces of Poppy plants with flower tips and fruits were seized from Northern Side field of Dhangapukur Par under Abhaynagar Mouza and that the acad./petitioner herein is said to be the owner of the said land.

8. So, prima facie it appears that the FIR constitutes offences u/s. 15/18 of the NDPS Act.

9. Regarding argument of the Ld. Counsel for the petitioner that quantity of the article in terms of the weight has not been disclosed in the FIR and that the mandatory provisions

of Sec. 52A have not been complied with during investigation of the case, it appears that the said points are subject matter of trial and it is not the proper stage for adjudication of such points. So it appears that the argument as advanced on behalf of the petitioner has no force at all.

10. Considering the above facts and circumstances and materials on record and since the FIR Constitutes Criminal Offences, I find no merit in the present application which must be dismissed.

11. Accordingly the instant application fails.

12. CRR No. 1746 of 2011 is dismissed. There is no order as to the cost.

13. Let a copy of this judgement be sent to the learned trial Court for information and necessary action. Urgent Photostat certified copy of this judgement be supplied to the parties, if applied for, subject to compliance with all necessary formalities.